

Intergovernmental
PERSPECTIVE

Winter 1992, Vol. 18, No. 1

**Reinventing Surface Transportation:
New Intergovernmental Challenges**

Bruce D. McDowell

Taxation of Interstate Mail-Order Sales

Henry A. Coleman

**An ACIR Roundtable:
Balancing Environmental Protection
and Public Works**

Building Consensus on Development Issues

*Barbara Sheen Todd
and Robert M. Jones*

Is Education Too Intergovernmental?

John Kincaid

**Federal Anti-Crime Efforts:
The Fallout on State and Local Governments**

Vivian E. Watts

State ACIRs and County Research

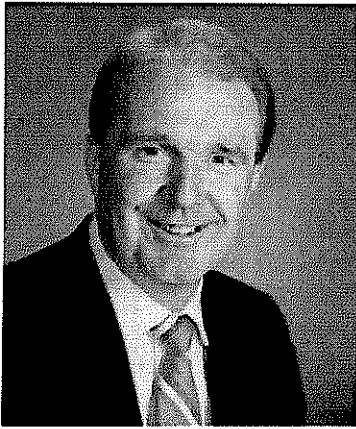
Beverly Cigler

**Governing Diversity:
The International Experience**

Bruce D. McDowell



A View from the Commission



In mid-December, several members of ACIR participated in a Moscow conference with leaders from republics of the former Soviet Union to assist them in their steps toward representative government. As we met, the dismantling of the Soviet Union and the establishment of the Commonwealth of Independent States was occurring. Within days, the Soviet flag was lowered. These were remarkable events, and the Soviet participants in the conference came and went over three days.

It was not a heady or theatrical agenda. Practical problems of governing in their republics and in the United States were under discussion. At one point, a passionate Russian exclaimed, "Thank you for coming to teach us—for coming to *listen* to us, for we are surely not listening to each other and that will be our curse."

I pondered the institutional processes by which American governments hear matters in the state legislatures, Congress, and local governments and how elaborate—even perfunctory—the processes have become. We have a ritual of public hearings, and yet, for all our hearings, we have stopped listening.

Groups that represent the public, private agencies, and other advocates are frequently pointing a finger rather than seeking a passage. Recently, in discussions on environmental decision-

making before the ACIR, one group asserted that federal regulators have become adversarial; another argued that the word "balance," as applied to the relation between environmental protection and economic development, is a code word for those who feel that the pendulum has swung too far toward environmentalism. Regardless of the merits, it was clear that opposing presenters had tuned each other out and off. Shakespeare's Henry IV spoke of the same disease in his time, "It is the disease of not listening, the malady of not marking, that I am troubled withal."

It may be that we can assert, "I have heard it all before," which I suspect may be the case. But hearing it all before is not necessarily listening. There is a certain quantum of courtesy essential to public forums and a certain self-discipline necessary to giving ear. Just to hear is not to listen. The burden of listening is integral to representative government and democratic institutions.

I marvel at how quickly business and industry hear what consumer preferences are and how effectively they respond. The intergovernmental system in the United States could follow their lead when trying to deal with matters of storm water runoff and storms in people's lives. In so doing, we do not need a few more good lawmakers but simply a few good listeners who will start to trust that some other officials put their hand to the square, took an oath, and stand for election too.

Oscar Wilde said that, "Listening is a dangerous thing. If one listens one may be convinced." Some simple practices might help intergovernmental America listen better.

- Take a few notes on what the other person is saying.
- Avoid listening for what you want to hear.

- Concentrate on what is being said.
- Hear the person out—don't jump to conclusions—making no judgments until the person is finished speaking.
- Report back what was said. This serves two purposes; it helps you listen and it convinces the other party you in fact did hear what he or she said.

People and groups may not always get their way, but they deserve to have their say.

Occasionally, when a distracted look comes to my face in conversation with my seven year old, she stops and asks, "Daddy, are you there?" It works. It brings me back to the matter at hand, it ensures that I am listening. Periodically, I have been tempted to ask my counterparts, and perhaps they me, "Are you there?" Are you listening?

Doing the business of government is not busy work and is not easy work. It deserves the best thinking and attention of our times.

D. Michael Stewart
Salt Lake County Commissioner
Salt Lake City, Utah

PERSPECTIVE

- 6 Reinventing Surface Transportation:
New Intergovernmental Challenges**
Bruce D. McDowell
- 9 Taxation of Interstate Mail-Order Sales**
Henry A. Coleman
- 15 An ACIR Roundtable:
Balancing Environmental Protection
and Public Works**
- 19 Building Consensus on Development Issues**
*Barbara Sheen Todd
and Robert M. Jones*
- 28 Is Education Too Intergovernmental?**
John Kincaid
- 35 Federal Anti-Crime Efforts:
The Fallout on State and Local Governments**
Vivian E. Watts
- 39 State ACIRs and County Research**
Beverly Cigler
- 43 Governing Diversity:
The International Experience**
Bruce D. McDowell

2 A View from the Commission
D. Michael Stewart

4 ACIR News

24 Intergovernmental Digest

46 Books, etc.

Staff

John Kincaid

Executive Director

Joan A. Casey

Pamela L. Reynolds

Co-Editors

Intergovernmental Perspective
(ISSN 0362-8507) is published
four times a year by the
U.S. Advisory Commission
on Intergovernmental Relations
Washington, DC 20575
202-653-5640

The Chairman of the Advisory Commission on Intergovernmental Relations has determined that the publication of this periodical is necessary in the transaction of the public business required by law of this Commission. Use of funds for printing this document has been approved by the Director of the Office of Management and Budget.

On the ACIR Agenda

The last meeting of the Advisory Commission on Intergovernmental Relations was held in Washington, DC, on December 6, 1991. Following are highlights from the agenda and Commission actions.

Environmental Decisionmaking

ACIR has found that there is a need to create effective intergovernmental procedures for equitably resolving the nation's needs for environmental protection and for continued economic and infrastructure development. There are strongly held views on both sides. The Commission convened a panel to explore diverse views before acting on the draft findings and policy options of a forthcoming study on environmental decisionmaking for state and local public works projects.

The panel members made presentations on "A Framework for Intergovernmental Decisionmaking to Balance the Nation's Need for Environmental Protection and Public Works." Partici-

pating on the panel were Dinah Bear of the Council on Environmental Quality, Edward Osann of the National Wildlife Federation, Robert Tonsing of the Nationwide Public Projects Coalition; and Max Whitman of the American Public Works Association. (See page 15 for panel highlights.)

National Water Resources Governance Review Commission

The Commission adopted a resolution (see box below) recommending creation of a National Water Resources Governance Review Commission. The purpose of this resolution is to build on a bill pending in the U.S. Senate to support the creation of a National Water Resources Policy Study Commission. The pending bill (S.1228) is sponsored by Sen. Bill Bradley of New Jersey, chairman of the Subcommittee on Water and Power, and by Sen. Mark O. Hatfield of Oregon. The commission proposed in S.1228 would be comprised of ten members from the

1992 Commission Meetings

March 20, 1992
June 12, 1992
September 18, 1992
December 18, 1992

water and appropriations committees of Congress and members appointed by the President, and would be empowered to make comprehensive studies of western water issues and to advise the Secretary of the Interior.

The ACIR resolution was developed by a senior advisory group on federal-state-local cooperation in water governance that was established in July. Co-chairs are Governor George A. Sinner of North Dakota and Mayor Robert M. Isaac of Colorado Springs.

The advisory group proposed that a congressionally enacted commission focus on water governance issues nationwide, that it have a 15-month ten-

Resolution of the Senior Advisory Group on Federal-State-Local Cooperation in Water Governance Recommending Creation of a National Water Resources Governance Review Commission

WHEREAS, water resources issues are becoming increasingly important to the economic and environmental health of the nation;

WHEREAS, lack of integration of water resource responsibilities within the federal, state, and local governments, and among governments, have become characteristic of the existing water governance structure;

WHEREAS, the states should be recognized as the pivotal governments in the federal system for integrating state and federal programs and addressing interstate issues; and

WHEREAS, restructuring intergovernmental governance of water resources will require careful deliberations among many governments and branches of governments, and among diverse water resource interests, users, professions, and service providers;

NOW, THEREFORE, BE IT RESOLVED that the President and the Congress establish an independent, temporary National Water Resources Governance Review Commission to conduct a comprehensive study of all of the nation's water governance structures, policies, and programs, and to make recommendations within 15 months to the President, the Congress, and the states concerning needed state and federal reforms.

BE IT RESOLVED, FURTHER, that the membership of the National Water Resources Governance Review Commission be structured to broadly represent and consider the views of the executive and legislative branches of the federal, state, local, and tribal governments, as well as the nation's agricultural, environmental, commercial and industrial, energy, and financial sectors, among others.

ure, that it be comprised of affected constituencies, including governments, providers, financiers, and water users, such as agricultural, commercial, and industrial sectors, and that it consider a pivotal role for states in water governance. The resolution has been sent to the members of relevant congressional committees.

Mail Order Sales Update

The Commission authorized publication of *State Taxation of Interstate Mail Order Sales: Estimates of Revenue Potential, 1990-1992 (M-179)* as an information report.

On September 20, 1985, the Commission recommended to the Congress that legislation be enacted to offset the Supreme Court's *National Bellas Hess* decision by requiring mail order vendors to collect state use taxes on interstate sales delivered in any state in which the vendor engaged in regular or systematic sales solicitation. The Commission's recommendations, the dissent from the recommendations, and the staff study were published in April 1986 as *State and Local Taxation of Out-of-State Mail Order Sales (A-105)*. The revenue potential estimates were updated for 1985, 1986, and 1988 in a 1987 staff information report, *Estimates of Revenue Potential from State Taxation of Out-of-State Mail Order Sales*.

ACIR has revised the estimates in light of the Supreme Court's decision to hear *Quill Corporation v. North Dakota* this year. This case provides an opportunity for the Court to review its ruling in *National Bellas Hess*.

Commission Reappointments

President George Bush has reappointed Debra Rae Anderson, deputy assistant to the President and director of the Office of Intergovernmental Affairs at the White House, and Mary Ellen Joyce, senior regulatory analyst for the American Petroleum Institute, to two-year terms.

ACIR Preemption Bill

On November 26, Sen. Carl Levin of Michigan, an immediate past member of ACIR, introduced the "Preemption Clarification and Information Act of 1991" (S.2080) with cosponsor Sen. Dave Durenberger, a current ACIR member. The bill is based on legisla-

tion recommended by the Commission at its June 1991 meeting.

Hawkins Addresses IGA Officers

Robert B. Hawkins, Jr., chairman of ACIR, addressed intergovernmental affairs officers of federal executive agencies at a White House meeting on December 4, 1991. He discussed the impacts of federal mandates, regulation, and preemption on state and local governments and citizen self-governance.

Local Partnership Act Hearings

In October 1991, Commission members Ted Weiss, Craig Thomas, and Donald Payne were prominent participants in U.S. House of Representatives hearings on H.R. 3601, "The Local Partnership Act of 1991," before Representative Weiss' Subcommittee on Human Resources and Intergovernmental Relations of the Committee on Government Operations.

Skinner to White House

Once again, an ACIR member has moved to the White House. Former Secretary of Transportation Samuel K. Skinner was appointed Chief of Staff by President George Bush on November 28, 1991. Skinner succeeded John Sununu, former vice chairman of ACIR.

ACIR in Moscow

From September 28-October 6, Vivian E. Watts, principal investigator for ACIR's criminal justice study, traveled to Moscow as part of an exchange delegation on "Perestroika and Federalism: Criminal Justice," sponsored jointly by the Brookings Institution and the Atlantic Council.

From November 11-16, John Kincaid, ACIR's executive director, participated with a delegation of federal, state, and local officials in a series of consultations with officials of the Union government, several republics, the Moscow city government, the Moscow *oblast*, several autonomous regions, and a collective farm. The American delegation was led by former long-time ACIR member, Sen. Edmund S. Muskie. The project was organized by the American Committee on U.S.-Soviet Relations, Washington, DC.

On December 16-20, ACIR members John Ashcroft, Robert M. Isaac, and D. Michael Stewart, as well as

John Kincaid, participated with other federal, state, and local officials in a conference on "Federalism and Power-Sharing" held at the Foundation for Social and Political Studies in Moscow. The foundation is headed by Mikhail Gorbachev. The project was organized by The International Center, Washington, DC.

New Staff Member

Patricia Pride has joined the staff as a senior policy analyst in the Government Policy Research section. For the past 13 years, Ms. Pride was director of government relations for the Connecticut-based Financial Accounting Standards Board and the Governmental Accounting Standards Board. She will be working on ACIR's water governance, environmental decisionmaking, and national drought planning studies.

Former ACIR Member Dies

William O. Beach of Tennessee, a member of ACIR from 1966-68 and 1978-80, died November 26, 1991, of complications from Hodgkin's Disease. He had served in many positions in county government from 1953 to 1982, when he retired. In addition to serving on ACIR, Judge Beach had been president of the National Association of Counties and the National Association of Regional Councils.

State ACIRs

The 1991 Minnesota Legislature created an ACIR, which replaces the Governor's Advisory Council on State-Local Relations as the recognized state counterpart to the U.S. ACIR. One of the primary duties of the new Minnesota group is to devise a system for distributing state aid derived from a dedicated sales tax.

ACIR Staff Member Directs Risk Study

Bruce D. McDowell, ACIR's director of Government Policy Research, recently chaired a committee on the subject of risk appraisal in the development of facility design criteria. The committee, convened by the Building Research Board at the request of the Federal Construction Council, completed its work in 1991. Its final report, *Uses of Risk Analysis to Achieve Balanced Safety in Building Design and Operations*, was published in December by the National Academy Press.

Reinventing Surface Transportation: New Intergovernmental Challenges

Bruce D. McDowell

On November 27, 1991, Congress passed a new *Intermodal Surface Transportation Efficiency Act* (P.L. 102-240). The President signed it into law on December 18, 1991. This is landmark legislation. It is the first post-Interstate reauthorization of the federal highway and transit programs, and it makes big changes in the programs and in the intergovernmental relationships surrounding them.

The act was the product of more than five years of studies and attempts at consensus building by the government and numerous interest groups, plus a highly regarded strategic plan prepared by the Secretary of Transportation with strong support from the President. Despite all of this preparation, striking differences in approach developed between the Administration, the House of Representatives, and the Senate. These differences threatened to scuttle the whole legislative effort in 1991, until the proposal finally was viewed as a political "must" jobs bill essential to getting the economy moving again. This new statute was practically the last measure passed as Congress left town for the year.

As important as the new jobs will be in the short run, the lasting significance of this legislation is likely to be its far-reaching reform of the intergovernmental system. It includes major grant reforms, unprecedented funding flexibility, "reimbursement" for some environmental mandates, real clout for the larger metropolitan planning organizations, and requirements for a whole new style of "performance" planning.

This article, based on a quick reading of the long and complex text of the law, highlights the key reforms that seem to be intended, and the importance of the regulations to be written in 1992, along with some other follow-up actions that will be necessary to turn these reforms into reality.

Key Intergovernmental Reforms

Very little in the surface transportation programs goes unchanged by this law. The *Intermodal Surface Transportation Efficiency Act*:

- Provides a longer authorization period than usual (six years instead of five) at an annual average increase of 28 percent in the level of spending (\$151 billion total over the six years);
- Places new emphasis on transit by doubling its authorized funding and opens the possibility for other funds to be shifted to transit;
- Replaces the four existing federal-aid highway systems with one—the 155,000-mile National Highway System, which includes the 44,000-mile Interstate system and other major roads still to be designated largely from existing federal-aid highways;
- Creates a new multimodal surface transportation block grant, with substantial funds allocated by formula to urbanized areas of 200,000 population or more, and project selections determined by the metropolitan planning organizations.
- Provides \$1 billion per year for the next six years in competitive grants for projects in the nation's most congested and air polluted "nonattainment" areas to help remedy those conditions;
- Requires the metropolitan transportation plans to be consistent with the newly enhanced and much more effective plans of state and regional air quality agencies;
- Authorizes transfers of funds between most surface transportation programs in response to state or metropolitan requests, and provides for a

uniform nonfederal match of funds among most programs to avoid biasing state and local choices in the use of funds;

- Directs that the fiscal capacity of recipients be considered in establishing the nonfederal match for certain fixed guideway transit capital investment grants;
- Channels the metropolitan planning funds from the transit programs through the states for the first time;
- Requires statewide transportation plans, for the first time, in addition to metropolitan plans, which have been required since 1962;
- Specifies a new style of potentially more effective "performance" planning by the states and the metropolitan planning organizations, including reliable systems for managing and monitoring federal-aid highway pavement maintenance, bridge maintenance on and off federal-aid highways, highway safety, traffic congestion mitigation, transit facility and equipment maintenance, and intermodal transportation facility provision, maintenance and operations; and increases supporting research, development, statistical, education, and training services, including creation of a new National Surface Transportation R&D Plan, Bureau of Transportation Statistics, National Highway Institute, Office of Intermodalism, and Transit Cooperative Research Program, comparable to the long-standing National Cooperative Highway Research Program.

Effects on Intergovernmental Relations

There are two primary intergovernmental effects of these changes. One is to expand the traditional federal-state partnership into a much broader federal-state-local partnership. The other is to significantly reinvent the metropolitan planning organizations (MPOs) in urban areas with populations of 200,000 or more.

The Federal-State Partnership Becomes Federal-State-Local

The federal-aid highway program, which remains the centerpiece of this new act, was one of the first cash grant programs offered by the federal government. It originated in 1916, and has been almost exclusively a federal-state partnership. Local government involvement in the highway and transit programs began in the early 1960s when a major focus on national urban policy began to develop. But primary decisionmaking authority for most highways remained with the states through 1991. Only the relatively small federal-aid urban highway system and certain portions of the recently declining transit programs were under significant local control.

With the new act, a substantial portion of the surface transportation block grant, most of the expanded transit programs, and the air pollution/congestion mitigation funds are under growing local control in the larger, more congested, and severely polluted metropolitan areas. In

addition, the new funding flexibility invites the metropolitan planning organizations to request transfers of funds from the National Highway System for more productive uses within their multimodal surface transportation systems. The stage is set for real bargaining between state and metropolitan agencies.

Although this shift to local control has been evolving through a long, slow process, the current step is, potentially, very significant. It could vastly change relationships between state departments of transportation, governors, and local governments, and it will undoubtedly put significant new pressures on the metropolitan planning organizations to perform effectively. There is added emphasis on the governor, as distinct from the state transportation department, in an effort to recognize that transportation issues should not be separate from air quality, water pollution, and community development issues.

Understandably, the state departments of transportation resisted the new steps toward local control. Consequently, the act requires consultation and coordination between the state and metropolitan organizations, and MPO recertification every three years. The governor must approve the MPO's transportation improvement program (TIP) for the organization to be federally certified.

The Question of Metropolitan Competence

The unanswered question as this partnership expands to include local governments more directly, concerns the competence of the metropolitan planning organizations to perform in this new arena. This is a complex issue that includes questions of technical competence, political competence, and boundaries.

Many of the larger MPOs have good technical competence, but poor records of political effectiveness. With most MPO plans being advisory until now, many have been ignored in important respects; the real political agreements about implementation issues frequently have been reached outside of the MPO forum.

Technical Capacity. The 1980s also brought some losses of regional council and MPO capacity. Many of the smaller organizations lost direct access to federal funding, and most MPOs that were regional councils, regardless of their size, also lost other federal planning funds for such related tasks as preparing land use, development, and housing plans (Department of Housing and Development), as well as wastewater treatment and air quality plans (Environmental Protection Agency). Even those MPOs and regional councils that continued to receive federal highway and transit planning funds through the 1980s usually got less and were unable to acquire fresh data and update their analytical computer models. With the "performance" planning required by the law, new types of performance and benefit-cost data will be needed. There may be a substantial need to rebuild technical planning capacity in many MPOs, whether they are regional councils or not.

Political Capacity. The need to build political capacity will be a major challenge. This kind of capacity generally has been assumed to emerge automatically from the MPO membership, which includes (theoretically) all local gov-

ernments and transportation agencies in the metropolitan area plus representatives of the state department of transportation. But, as long as the MPO plans have remained advisory, they have not been considered and debated seriously by all of the principal policymakers. The adopted plans generally have been more in the nature of technical documents exploring possibilities rather than political decision documents.

Under the new act, the intent seems to be that these plans will constitute solid, unavoidable political commitments to the means by which, and the schedule by which, congestion will be reduced, bridges and pavements will be maintained in good repair, air quality requirements will be achieved, and safety goals will be met. That commitment should be expected to transform the seriousness with which these plans are prepared, debated, and adopted. These plans will allocate federal and other transportation funds and guide regulatory actions by a wide variety of local and state agencies in the land development and environmental fields, if they are to have any chance at all of achieving their purposes. Annual performance monitoring also is required.

Boundaries. Despite the "metropolitan" in their name, MPO boundaries have always been defined by the usually much smaller "urbanized areas" of the U.S. Census Bureau. Although there is a provision allowing the 20-year expected growth of the urbanized area to be encompassed within the MPO boundary, that is a debatable proposition.

At the same time, air quality regions and general purpose regional planning districts often are larger. They frequently use the metropolitan area boundaries established by Census. The 1991 act requires that MPO regions encompass the whole air quality region in nonattainment areas. This requirement may suggest changing some MPO boundaries and memberships, and redesignating them through a difficult political process involving the governor and local officials. The 1991 act authorizes local governments to initiate a request for redesignation through the governor, but it also allows existing MPOs to continue operating with less formal means of providing for participation by officials in the expanded area.

There is also another boundary question. From the first MPO requirement in 1962 until about 1984, a single MPO was required for each metropolitan area, whether interstate or within a single state. There are 52 interstate metropolitan areas, including many of the largest ones (New York, Philadelphia, Washington, DC, Chicago, Saint Louis, Memphis, Cincinnati, and Kansas City). Since 1984, some interstate and some large single-state metropolitan areas have created multiple MPOs, often based on single counties.

The new requirement that, where multiple MPOs exist within a single metropolitan area or within a consolidated metropolitan area, the governors and local officials of the areas must provide some means of coordinating MPO activities and plans. There are several approaches to doing this, but their effectiveness is uncertain and variable. Whether this coordination requirement will have a significant bearing on the continuing certification of MPOs is an issue that deserves some thought.

The 1991 act allows state laws creating MPOs or regional councils to override certain specifics of MPO structure provided for in federal law.

The Importance of Regulations

How all of these intergovernmental reforms will work will have to be spelled out in federal regulations. Thus, we can expect 1992 to be every bit as significant as 1991 for establishing these landmark intergovernmental reforms.

The chief issues will be in metropolitan areas with populations over 200,000, and will revolve around the roles of the reinvented MPOs. These MPOs will have to establish new relationships with state departments of transportation and other MPOs in their own area, as well as much stronger participation and commitment by their own member governments, and closer, indeed operational, working relationships with environmental and land development regulators.

These new relationships probably will require legislation in many states. For example, the need for effective congestion management systems strongly suggests state growth management legislation, especially in air quality nonattainment areas; such legislation exists in only about a half-dozen states. Interrelating metropolitan air quality and transportation regions is another potential issue that could be eased by state legislation.

Obviously, there is no single best way of meeting all of the new requirements in the 1991 *Intermodal Surface Transportation Efficiency Act*. Thus, the main point to be made about writing the implementing regulations is the need to retain flexibility while providing guidance. For example, new county congestion management agencies set up in California following a voter initiative has been suggested by some federal officials as a potential "way to go." But much longer standing programs in Florida, Oregon, Maryland, and a few other places have substantial track records, and might be better ways to go, at least in some states.

One way to bring forward more of these possibilities would be for the U.S. Department of Transportation to initiate a negotiated rulemaking process involving MPOs, state transportation departments, transit authorities, environmental and land development regulators, and others, under authority of the *Negotiated Rulemaking Act of 1990*. In such a process, the affected parties could sit down together before any regulations are drafted and explore the various approaches that should be authorized and facilitated by the regulations.

A negotiated rulemaking process undoubtedly also would show that regulations alone will be insufficient to make these radically new intergovernmental reforms work. It could be expected to bring forth a rich agenda of research, technology transfer, technical assistance, education, and training suggestions essential to implementing the new act. Chief among these suggestions are likely to be projects in support of constructive political dynamics in the new MPOs, and projects needed to help establish the intricate intergovernmental relationships that will be essential to developing the newly required "management systems." With less urgency, perhaps, but of equal interest might be the question of how to make best use of the smaller MPOs that will have considerably less support and less clout than the larger ones, and how to use the regional planning councils that are quite common in non-metropolitan areas where the new act requires states to

(continued on page 18)

Taxation of Interstate Mail-Order Sales

Henry A. Coleman

Should interstate mail-order firms be required to collect taxes on sales to residents in states that levy a sales tax? The U. S. Supreme Court ruled on this issue in a 1967 decision, *National Bellas Hess v. Illinois Department of Revenue*.¹ In that case, the Court held that out-of-state mail-order firms could not be compelled to collect state (and local) sales taxes unless the firm had a nexus with the state.² Nexus, as determined by the Court, meant a physical presence.

Economic and technological circumstances have changed significantly since 1967. As a result, many states believe that *Bellas Hess* is obsolete. Several states have sought to require out-of-state mail-order firms to collect "use" taxes on sales to residents within the state.³ The U. S. Supreme Court has agreed to hear *Quill Corporation v. North Dakota* this term, thereby revisiting the issue of taxing interstate mail-order sales.

This article reviews the major issues involved in requiring out-of-state firms to collect state and local sales taxes, and the revenue potential if such collections were required. The discussion assumes no changes in current federal statutes pertaining to state taxation of out-of-state mail-order sales. Legislation to clarify and extend the states' authority to require sales tax collection by out-of-state retailers doing business in states where they have no physical presence was recently introduced in the House by Rep. Jack Brooks. As a result of disagreements among representatives of direct marketing firms, state governments, and local governments over the distribution of local taxes and other matters, no bill was reported out of committee.⁴ However, there also are concerns that federal legislation to outline conditions under which states can tax interstate mail-order sales may actually lead to intrusions by the Congress in other areas of state taxing authority.⁵

Bellas Hess

At the time of the Court decision, National Bellas Hess was a retailer of wearing apparel with sizable sales in Illinois. Despite the scale of its retail activity in Illinois, National Bellas Hess had no offices, warehouses, agents, other tangible property, telephone listings, or advertisements in the state. The Court held, therefore, that:

... if the power of Illinois to impose use tax burdens upon National were upheld, the resulting impediments upon the free conduct of its interstate business would be neither imaginary nor remote. For if Illinois can impose such burdens, so can every other state, and so, indeed, can every municipality, every school district, and every other political subdivision throughout the nation with power to impose sales and use taxes. The many variations in rates of tax, in allowable exemptions, and in administrative and recordkeeping requirements could entangle National's interstate business in a virtual welter of complicated obligations to local jurisdictions with no legitimate claim to impose "a fair share of the costs of the local government."⁶

The Court's decision rests in part on the Commerce Clause, which allows the Congress to override state impediments to interstate commerce, and partly on the Due Process Clause, which requires a quid pro quo. (That is, a state must provide services that are used by the out-of-state mail-order firm.) Thus, a mail-order firm must have a minimum physical presence and benefit from services provided by the state before it can be compelled to collect use taxes, according to the Court. In addition, the Court was very concerned about the burdens that would be imposed on firms by the costs of compliance if each state (and the thousands of local governments with sales tax authority but

widely varying rate structures and base definitions) imposed collection requirements on mail-order firms. Therefore, the Court ruled that an out-of-state mail-order firm cannot be required by a state to collect taxes on sales to residents of a state that has a sales tax unless the firm has a nexus.

Base Erosion

This restriction on the ability of states and localities to require out-of-state firms to collect sales taxes results in a significant revenue loss for two reasons. First, the size of the mail-order industry has grown considerably. Although estimates vary, Kate Herber reports that the mail-order industry grew from \$2.4 billion in 1967 to \$183 billion in 1989.⁷ The second reason is that sales tax rates generally have increased. According to the National Governors' Association (NGA), 18 states have increased the rates on their sales and use tax since 1988.⁸ Before addressing the subject of the amount of revenue potential that could result if this sales-tax base erosion was halted, several of the major issues associated with the taxation of interstate mail-order sales are considered, including nexus, equity and efficiency, compliance costs, and state taxing authority.

Nexus

What constitutes nexus in determining whether an out-of-state firm should be required to collect sales taxes? States contend that the concept of "physical" presence is obsolete, and should give way to the expanded nexus concept of "economic" presence. NGA identifies three general classes of legislation in this area. Mail-order firms are required to collect use taxes if:

1. They engage in a regular or systematic solicitation of sales in a state;
2. Their solicitation of sales in a state is substantial and recurring; and
3. They benefit from the use of state services or institutions.⁹

A few examples are illustrative. First, in Vermont, "companies with gross sales over \$50,000 and all mail-order companies having offices, stores, or contracts in the state are required to register with the tax department and begin collecting and paying sales taxes."¹⁰ New York State requires mail-order firms that regularly or systematically solicit business in New York to collect the use tax. Regular or systematic solicitation is defined as "more than \$300,000 in gross receipts and more than 100 sales during the last four quarters. . . . A seller who meets this statutory threshold would be required to collect use tax—even if it has no additional connections with New York."¹¹

Connecticut's attempt at expanding its nexus concept was rebuffed by the state's supreme court in 1991, and the U.S. Supreme Court refused to hear the case on appeal. The case involved SFA Folio Collections, Inc., a New York-based mail-order firm affiliated with Saks Fifth Avenue. The Connecticut Department of Revenue advanced a "single enterprise" theory, which held that SFA Folio shared a corporate name, logo, and other features with Saks Fifth Avenue. Because Saks established a physical presence in Stamford, Connecticut, SFA Folio should be

viewed as sharing the Saks nexus in Connecticut under the single enterprise theory. As noted above, this line of reasoning was rejected by the Connecticut Supreme Court.¹²

The concept of expanded nexus has been upheld by lower courts in Tennessee and by the Supreme Court of North Dakota. These two states employ similar concepts of expanded nexus:

. . . anyone who engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio, or television media. . . .¹³

The Tennessee court also addressed several other issues raised in *Bellas Hess*. First, it argued that modern computer technology has lessened, if not eliminated, concerns about compliance costs, even for small firms. Second, the need to dispose of catalog and other advertising material distributed into the state by Bloomingdale's By Mail and by SFA Folio (the mail-order companies that filed suit in the two Tennessee cases) meant that the state provided refuse collection and landfill services. Finally, the state successfully argued that the mail-order companies received fire and police protection on their personal property shipped into the state before actual delivery to the customer and during the period when the customer had the option of returning the goods purchased.¹⁴

The case before the U.S. Supreme Court involves North Dakota. In deciding whether the Quill Corporation (a company incorporated in Delaware, with principal operations located in Illinois, and no offices, workers, telephone listings, or advertisements in North Dakota) should collect the use tax in North Dakota, the state's supreme court held that

. . . the concept of nexus encompasses more than mere physical presence within the state, and that the determination of nexus should take into consideration all connections between the out-of-state seller and the state, all benefits and opportunities provided by the state, and should stress economic realities rather than artificial benchmarks.¹⁵

In general, mail-order firms reject the above arguments in favor of expanded nexus. In briefs filed with the U.S. Supreme Court, the Quill Corporation succinctly characterizes the counter argument in noting that,

. . . the national application of the North Dakota decision would result in unconstitutionally burdensome and discriminatory obligations on out-of-state mail order companies and would replace the long-standing "bright line" physical presence test with a confusing standard that would hamper tax planning and compliance.¹⁶

Equity and Economic Efficiency

Which firms should be required to collect sales taxes where fairness is the overriding concern? There are several aspects to the fairness issue. First, out-of-state companies that are not required to collect sales taxes will have a competitive advantage over in-state retailers. As

observed by the U.S. Advisory Commission on Intergovernmental Relations (ACIR),

Tax advantages for out-of-state vendors distort consumer decisions and encourage expansion of the mail-order industry relative to other types of retail suppliers. In equity terms, the amount of sales and use tax paid by a particular consumer should not depend on his or her choice between an in-state retailer and an out-of-state mail order supplier.¹⁷

However, out-of-state retailers argue that they should be exempt from collecting state sales taxes because they have no voice in determining those taxes. In this variant of the "no taxation without representation" argument, mail-order companies contend that it is unfair to force them to perform as fiscal agents of a jurisdiction when they are not allowed to participate in policymaking in the jurisdiction. Direct marketing firms also contend that they do not enjoy an economic competitive advantage because their total purchase price includes a charge for shipping and handling, which may exceed the amount of sales tax in question.¹⁸ Finally, many argue that it would be unfair to impose collection requirements on small firms that may not have the flexibility or resources to contend with them. As a result of this concern, several proposals for excluding firms below a certain size have been considered, in the event that the authority to require mail-order firms to collect sales taxes is upheld. However, some members of ACIR take exception to this line of reasoning in arguing that if a citizen

... should not be able to evade a sales tax by purchasing from a large mail order firm rather than from the local merchant, then neither should [a citizen] be able to evade the tax by buying from a small mail order firm rather than a large one.¹⁹

Overall, ACIR sums up the equity and efficiency concerns as follows:

Economic efficiency implies that consumers should be choosing suppliers on the basis of total costs and benefits, taking into account transaction costs, services, price, etc., but should not be induced to select a supplier by tax differences.²⁰

Compliance Costs

As noted earlier, the compliance costs associated with the collection of state and local sales taxes by out-of-state mail-order companies were a major consideration in the *Bellas Hess* decision. Although sales tax rate structures and base definitions vary significantly among the 45 states (and the District of Columbia) that impose the tax, much of the concern about compliance costs is related to local sales taxes.

While it is easier to accommodate a collection requirement in states like California and Virginia, which have uniform and universal local taxes, it is more difficult in states where the local tax is not universal, not at uniform rates, or not even on the same base. It is also more difficult to comply with

and to administer an interstate use tax where the local sales tax is locally administered.²¹

According to ACIR, 6,155 local governments levied sales taxes in 1990, down from 8,814 in 1989.²²

Today, companies with interstate operations must deal with a myriad of state (and local) statutes and regulations, ranging from banking and credit conditions to environmental provisions related to product packaging. Information on sales taxes would be far more readily available and, quite likely, much easier to implement. Those who place less significance on compliance costs as an obstacle to out-of-state retailers collecting sales taxes argue that even small in-state firms manage to deal with the variations and complications. Moreover, enhancements in modern computer technology have lowered the administrative and compliance costs of collecting sales taxes since the *Bellas Hess* decision in 1967. Several states help defray compliance costs by providing fees (flat amounts or a percentage of collections) to vendors. In addition, exempting firms below a certain size or establishing a uniform state-local rate are other options aimed at reducing compliance costs.

However, the issue should not be so readily dismissed in light of the potential magnitude of administrative costs and problems in determining how those costs are to be distributed. The Quill Corporation has estimated that it would spend "at least \$500,000 in administrative expenses to collect sales taxes nationally and return the revenue to state and local governments."²³ It is not clear how such costs would vary by the size, type, or location of a mail-order firm. In addition, in many instances, consumers would be required to calculate the amount of sales tax due on a purchase. Surveys conducted by the National Education Goals Panel found that many adult Americans were unable to "calculate the costs of a number of items they filled out on an order form."²⁴ The additional responsibility of computing sales taxes due would compound the difficulty for many customers. If mistakes were made by a consumer in determining the amount of sales taxes due on a purchase, how would the costs of follow-up billing (where too little sales taxes were remitted) or providing refunds (where too much taxes were paid) be distributed among the mail-order firm, the state (and perhaps local governments), and the purchaser? While these difficulties are not insurmountable, they are a component of compliance costs and could prove to be significant.

State Taxing Authority

Proponents on all sides on the issue of state taxation of interstate mail-order sales have argued that the Court should defer to the Congress to resolve the matter.²⁵ Such proponents contend that federal legislation would result in more uniform and efficient standards for taxing interstate mail-order sales. As noted by ACIR, "Congressional actions could weigh a broader business presence standard against legitimate business concerns about compliance costs and protection for small firms."²⁶

However, there are concerns about the implications of federal legislation for state taxing authority more generally. As observed by some members of ACIR,

Table 1
Summary: Revenue Potential Estimates, 1990-1992
(millions)

	1990 Base*	Nexus-Adjusted Base	Estimated Revenue Potential		
			1990	1991	1992
State Tax Only	\$65,530	\$59,020	\$2,906	\$3,080	\$3,265
State/Uniform Local	\$65,530	\$59,020	\$3,072	\$3,256	\$3,451
State/All Local	\$65,530	\$59,020	\$3,488	\$3,694	\$3,914
\$5,000,000 de Minimis	\$48,820	\$42,309	\$2,087	\$2,249	\$2,411
\$10,000,000 de Minimis	\$45,544	\$39,033	\$1,925	\$2,075	\$2,224

*Less than \$67.09 billion because it includes the 45 states and D.C. with sales taxes.

Source: ACIR, *State Taxation of Interstate Mail Order Sales: Estimates of Revenue Potential 1990-1992* (1991), p. 4.

If Congress can set standards for the collection of sales taxes in other states, using federal courts to settle disputes, then Congress may, at a later point, set uniform sales tax rates for the states.²⁷

These members of ACIR hold that "federalism is more than mere efficiency and administration"²⁸ and that "those state and local officials who would give up a little authority to the national government in exchange for a little revenue, deserve neither revenue nor authority."²⁹

Revenue Potential

ACIR has produced estimates of revenue potential from state and local taxation of interstate mail-order sales for the 1990-to-1992 period.³⁰ These estimates reflect a refinement of the methodology developed by ACIR in the mid-1980s and the most recent data available from Fishman's *Guide to Mail Order Sales 1990* and the Bureau of the Census' *1987 Census of Retail Trade*.³¹

Several scenarios are provided (see Table 1). First, estimates are made for state taxes only; states could generate almost \$3.3 billion in 1992 if out-of-state retailers were required to collect state sales taxes. If state taxes were collected along with a uniform local rate for all localities within the state, almost \$3.5 billion would result in 1992. If state taxes and actual local rates were imposed and collected, \$3.9 billion would be available to states and localities in 1992.³²

Finally, two *de minimis* estimates were made. In the first, all out-of-state mail-order firms with sales of less than \$5 million annually would be exempted from the collection requirement. This would preserve almost 75 percent of the nexus-adjusted base while excluding 93 percent of all mail-order firms. Still, over \$2.4 billion would be collected in 1992. The \$10 million *de minimis* rule would exclude 97 percent of all firms and generate \$2.2 billion in 1992.

The Direct Marketing Association, the principal trade association for the industry, contends that these revenue potential estimates are greatly inflated and that state tax revenue losses are more accurately pegged at just under \$700 million, based on a 1988 study.³³ However, this organization also estimates that mail-order sellers could be liable for \$9.5 billion in back taxes based on sales made since 1985 if *Bellas Hess* is reversed.³⁴ This projected back-tax liability would sug-

gest an annual state (and local) tax revenue potential of approximately \$1.6 billion to \$1.9 billion.

Conclusion

Economic and technical circumstances have changed considerably since 1967. The mail-order industry has grown, and state (and local) sales tax bases have been further eroded as a result. In addition, advances in computer technology have made lower compliance costs possible for out-of-state retailers in dealing with the maze of state and local sales tax rates and base definitions. Several states have introduced or enhanced a use tax component of their sales and use tax to reflect current conditions. We must await a decision in *Quill* to see if the Supreme Court feels that these economic and technological changes have been significant enough to warrant modification of the conditions under which state and local governments can require out-of-state mail-order firms to collect taxes on sales to in-state residents.

Henry A. Coleman is director of Government Finance Research at ACIR.

Notes

¹ 386 U.S. 753 (1967).

² See U.S. Advisory Commission on Intergovernmental Relations (ACIR), *Significant Features of Fiscal Federalism 1991*. Volume 1 (Washington, DC, 1991), p.91.

³ Use taxes are assessed by state governments on the use of tangible goods purchased by residents in the state from out-of-state retailers and are equivalent to sales taxes levied on in-state purchases. See National Governors' Association, *Governors' Weekly Bulletin*, September 20, 1991, p. 1.

⁴ See Rob Bennett, "Mail-Order Madness," *Tax Notes*, July 29, 1991, p. 600; and Government Finance Officers Association, "Legislative and Regulatory Overview," November 5, 1991, p. 2, Mimeo.

⁵ See ACIR, *State and Local Taxation of Out-of-State Mail Order Sales* (1986), pp. 18-21.

⁶ *Ibid.*, p. 115.

⁷ See Kate Herber, "NLC files amicus briefs in Yee; Quill with High Court," *Nation's Cities Weekly*, December 9, 1991, p. 21.

⁸ *Governors' Weekly Bulletin*, p. 2.

⁹ *Ibid.*, pp. 1-2.

¹⁰ See John Godfrey, "Tax Commissioner to Enforce Mail-Order Sales Tax," *State Tax Notes*, November 25, 1991, p. 445.

¹¹ See "Out-of-state mail order firm required to collect tax on sales to residents," *Multistate Tax Analyst*, July 1991, p. 8.

¹²“Mail order firm lacks nexus with state despite presence of affiliated stores,” *Multistate Tax Analyst*, December 1990, pp. 4-5.

¹³See “Landmark Mail-Order Sales Cases Ruled in State’s Favor,” *Tennessee Tax Quarterly* (January-March 1991): 1.

¹⁴*Ibid.*, pp. 1, 3.

¹⁵See, “State’s ‘expanded nexus’ statute held constitutional as applied to large, out-of-state mail order company,” *Multistate Tax Analyst*, February 1991, p. 2.

¹⁶Maryann B. Gall, “Mail Order Companies Defend Use Tax Precedent,” *State Tax Review*, December 17, 1991, p. 2.

¹⁷ACIR, *State and Local Taxation of Out-of-State Mail Order Sales*, p. 5.

¹⁸See Edward Walsh, “States Eye Catalogues for Tax Revenue,” *The Washington Post*, December 31, 1991.

¹⁹ACIR, *State and Local Taxation of Out-of-State Mail Order Sales*, p. 19.

²⁰*Ibid.*, p. 5.

²¹ACIR, *Local Revenue Diversification: Local Sales Taxes* (1989), p. 40.

²²ACIR, *Significant Features of Fiscal Federalism 1991*, Volume 1, pp. 94-95.

²³See Walsh, “States Eye Catalogues for Tax Revenue.”

²⁴National Education Goals Panel, “First Report on Six National Education Goals Released,” September 30, 1991, mimeo, p. 2.

²⁵See Gall, “Mail Order Companies Defend Use Tax Precedent,” p. 2; and ACIR, *State and Local Taxation of Out-of-State Mail Order Sales*, p. 14.

²⁶ACIR, *State and Local Taxation of Out-of-State Mail Order Sales*, p. 14.

²⁷*Ibid.*, p. 20.

²⁸*Ibid.*

²⁹*Ibid.*, p. 21.

³⁰See ACIR, *State Taxation of Interstate Mail Order Sales: Estimates of Revenue Potential 1990-1992* (December 1991). Although only aggregate estimates are reported here, state-by-state estimates are also provided.

³¹See *ibid.*, pp. 2-4, and *State and Local Taxation of Out-of-State Mail Order Sales*, pp. 103-105 for a detailed discussion of the methodology used to derive the estimated revenue potential.

³²ACIR, *State Taxation of Interstate Mail Order Sales*, p.4.

³³See Walsh, “States Eye Catalogues for Tax Revenue.”

³⁴See Gall, “Mail Order Companies Defend Use Tax Precedent.”

Metropolitan Organization: The Allegheny Case

This information report continues ACIR's effort to learn how complex metropolitan areas function.

Allegheny County, the central county of the Pittsburgh metropolitan area, is by conventional measures the premier fragmented county among those nationwide with populations of more than one million—and by traditional accounts should exhibit all the “pathologies” of jurisdictional fragmentation.

But it doesn't.

Allegheny County has a complex organization for delivering police and fire protection, street services, and education—the services that are the focus of this report. The study also describes patterns of growth, political economy and geography, intergovernmental cooperation, and the functional dimensions of metropolitan organization.

M-181 1992 \$10

(see page 42 for order form)



Finance Data Diskettes

1988 Now Available for State-Local Government Finance Data. The diskettes developed by ACIR provide access to Census finance data in a format not previously available, and are designed for easy use. State-by-state data for 129 revenue and 200 expenditure classifications, population, and personal income are included for state and local governments combined, state government only, or all local governments aggregated at the state level.

Format: *Lotus 1-2-3*

Price: \$295—Six-year set

\$110—FY 1989 (5.25" diskette)

\$120—FY 1989 (3.5" high density diskette)

\$75 —FY1988

\$50—FY1987

\$25 each—FY1986, 1985, 1984, 1983

A demonstration disk for the State-Local Finance Data is available for \$5.

(see page 42 for order form)

State Taxation of Interstate Mail Order Sales

State Taxation of Interstate Mail Order Sales estimates the 1990-1992 revenue potential for states if they could require out-of-state mail order firms to collect state sales and use taxes. The revenue potential for all states is estimated at \$2.91 billion for 1990, \$3.08 billion for 1991, and \$3.27 billion for 1992. These aggregate estimates show an increase of 73 percent over ACIR's 1985 estimates and 34 percent over 1988. ACIR estimates of the revenue potential if state and local sales taxes were collected are \$3.49 billion for 1990, \$3.69 billion for 1991, and \$3.91 billion for 1992. These new estimates are particularly important in light of the U.S. Supreme Court's agreement to hear *Quill Corporation v. North Dakota*. In accepting this case, the Court agrees to review its 1967 ruling in *National Bellas Hess v. Illinois Department of Revenue*, which limited the ability of state (and local) governments to require out-of-state mail order firms to collect state and local sales and use taxes.

M-179 1991 14 pages \$10

State Taxation of Interstate Mail Order Sales

Estimates of Revenue Potential
1990-1992



The Changing Public Sector: Shifts in Governmental Spending and Employment

The Changing Public Sector updates and broadens ACIR's 1982 analysis of expenditure and public employment data. From 1967-1987, the public sector continued to expand, and government spending priorities shifted, particularly those of the federal government. In 1987, states were spending more in relation to both federal expenditures and local expenditures than in 1967. Among local governments, county and special district expenditures increased the most. The analysis is based on the Census Bureau's five-year Census of Governments. Total spending by all governments rose from \$257.8 billion in 1967 to \$1,811.7 billion in 1987, or by 603 percent (115 percent in constant 1982 dollars). Per capita, total public spending grew from \$1,297 in 1967 to \$7,427 in 1987, a 473 percent increase (75 percent in constant dollars).

M-178 1991 112 pages \$15



U.S. Advisory Commission on
Intergovernmental Relations
Volume 1991 • M-178

(see page 42 for order form)

Balancing Environmental Protection and Public Works

Pursuant to its examination of intergovernmental decisionmaking processes in environmental protection, the Advisory Commission on Intergovernmental Relations invited four experts to address its December 6, 1991, meeting. The panelists were each asked to address, from their particular perspective, the question of balance between the need to protect the environment and the need to develop public works projects.

The framework for developing a proper balance between these two concerns is the complex and delicate task before the Commission, which expects to approve research findings and recommendations on the subject in March. Following are excerpts from the four presentations.

Statement of

ROBERT L. TONSING

*Secretary, Nationwide Public Projects Coalition,
Denver*

The Nationwide Public Projects Coalition was formed in 1989 by a group of state and local government officials who found that they had something unfortunate in common. All were experiencing a growing inability to provide for basic needs of their constituents, such as new water supply facilities and highways, because of the ways that federal agencies were administering environmental laws, particularly through the regulatory processes. Millions of taxpayers' dollars are wasted every year because the current relationship between federal regulators and state and local infrastructure project sponsors is unnecessarily adversarial. There has to be a better way to serve the American people and still protect our environmental assets.

From the beginning, the Coalition's credo has been: "Seeking to restore balance between environmental values and our ability to provide for the basic needs of people."

We are pleased to see that basic balancing principle repeated again and again in the documents before the Commission. The Coalition's board of directors proposed a presidential executive order on intergovernmental regulation in 1989. In reviewing the ACIR framework, it is my belief that seven of the 13 major points in the proposed executive order are addressed with great clarity, and that the framework highlights at least as many other items that we didn't think of.

We suggest strengthening or adding the following items:

- Increasing states' roles in federal environmental permitting and standards. Compliance will work only if the authority of federal agencies to arbitrarily veto the determinations of the states is well defined and limited to major national concerns. States have the ability to take over the Section 404 *Clean Water Act* permitting mechanisms today, but they nearly always choose not to do so. It's partly a fiscal issue, we believe, but the primary concern is that EPA will exert the current kind of heavy-handed veto and threatened veto powers regardless of how good a job they do.
- The statement that federal agencies should refrain from arbitrarily substituting federal agency discretion for local and state determinations is a vital part of the recommendations, but we ask ACIR to state that this is particularly true of statements of project purpose in federal permit applications. Federal regulators can and do fiddle with the stated project purpose in such a way that even absurd alternatives would meet the project purpose, at least on paper. That, of course, lays the groundwork for some particularly high-handed denials and vetoes.

- One point in the Coalition's proposed executive order addresses a great abuse in the current system. As we put it, "Schedules should not be arbitrarily extended by federal agencies through the threat that an early decision will generally be negative; a negative decision should only be made when it is clearly justified by the record and not based upon hypotheses or lack of current knowledge."
- While economic well-being and international competitiveness are important considerations in infrastructure investment, our Coalition believes that the largest issue of all has to do with sustaining or improving the quality of life—where we live, work and play—for our constituents, the American people. We urge that "quality of life" be a principle of the ACIR framework.

Members of the Coalition from Alaska say their experience has been that "ecosystem management" as a prelude to specific permit applications has been frustrating and often counterproductive. Delays of years in what ought to be simple permitting processes have occurred because one item of many in an "ecosystem management" process cannot be brought to closure. They believe that unqualified advocacy of "ecosystem management" within the permitting processes is attractive in concept but can impede stewardship to people and their institutions.

They also are uneasy about what seems to be an unqualified endorsement of "advance designation." They say that in Alaska advance designation has not only steered development away from pristine wetlands, as the paper suggests, but by overclassifying less than pristine wetlands it has been used as a weapon to, as one of our Alaska members put it, "stop everything up here."

The Coalition believes that an executive order, along the lines of our draft, is necessary. An executive order has an immediacy about it, and can do something that legislation usually doesn't—set standards for federal employee attitudes. When you get down to it, there is far less wrong with our federal environmental laws and regulations than there is with the attitudes of some of those who administer them.

Statement of
EDWARD OSANN

*Director, Water Resources Program,
National Wildlife Federation, Washington, DC*

The National Wildlife Federation is the nation's largest environmental organization, a federation of 51 independent state organizations. Our membership meets annually and adopts resolutions setting policy for the federation. Over the past 10 or 12 years, we have had some 50 resolutions dealing with some aspect of water resources policy or projects.

The federation has been deeply involved in infrastructure projects and controversies. We were the principal environmental organization supporting the enactment of the 1986 *Water Resources Development Act*, which many recognize as landmark legislation, authorizing over \$15 billion of federal infrastructure investment and, at the same

time, setting new standards for environmental protection, fish and wildlife mitigation, cost sharing, and user fees for beneficiaries of federal investment.

Balance has become a code word for those who believe the pendulum has swung too far in environmental regulation and seek to yank it back. I urge caution in adopting the nomenclature of those who seek to turn back the clock on environmental regulation. My view of ACIR's framework is that it is very hostile to environmental protection, and I believe that most environmental organizations will view it in this light in its present form. That is not to say that there cannot and should not be improvements in the way federal agencies administer environmental statutes, including the way they are applied to state and local projects. But there are assumptions with which the Federation disagrees:

- There is an assumption that state and local infrastructure investment is entitled to special deference by federal environmental decision-makers and regulators. This flies in the face of experience that the environmental movement has had in this country over the last 25 years. Highways, dams, incinerators, and municipal power projects are environmentally problematic in their construction and in their operation.
- There is an assumption that the adversarial role is somehow inappropriate. We view a certain amount of dynamic tension as inevitable and somewhat desirable. Quite often, state environmental reviews are coopted, and the ability of state regulators to exercise full oversight and carry out their professional recommendations is limited by the politics of the situation. We are talking about some of the most well-entrenched bureaucracies in the country, such as port authorities and water agencies, that have tax and eminent domain authorities and large engineering staffs. These are the folks we hire to get things done and that is their orientation.
- There is discussion of an enhanced state role. Additional costs for a state or a local project by virtue of the migratory bird habitat are a subject of federal treaty obligations and not something on which the state can temporize. There is a need for an active state role in such areas of critical concern. Florida and California have identified areas that are beyond local concern and others have this kind of activity, but not all 50.
- ACIR recommends that federal agencies simply accept needs determinations for infrastructure by state and local agencies. In the face of "spend it or lose it" federal funds, are we to believe that state needs determinations are always objective? That simply doesn't wash. The determinations are characterized as those made by duly elected state and local officials. Many of the actors in this arena are special service districts. They are creatures of the state, but their accountability to citizens is often indirect. Duly elected state and local

officials are often presented with a fait accompli rather than passing judgment on elements or project formulation such as a needs determination.

- The reference to the federal government being held to the same standards as state and local governments carries more of a connotation of tit-for-tat than a serious attempt to address this complex issue. Federal agency environmental compliance is a serious issue, and if ACIR seeks to move in that area, it will have the support of the environmental community.

I have a concern that opponents of federal environmental regulation generally do not care about process. They care about outcomes. Some have long argued that federal wage and hour standards should not apply to state and local government, but that issue has been decided. We believe that the wage and hour standards, worker health and safety standards, and environmental protection standards can be set by the federal government and should apply to state and local government activities as they apply to activities of the private sector.

Statement of
MAX WHITMAN

*President, American Public Works Association,
Chicago*

The American Public Works Association (APWA) is a nonprofit educational and professional association established in 1984 as an outgrowth of the American Society of Municipal Engineers. APWA defines public works very broadly as "the physical structures and facilities developed or acquired by public agencies to house governmental functions and provide water, waste disposal, power, transportation, and similar service to facilitate the achievement of common social and economic objectives."

Over the years, APWA members have become aware of their role as good stewards of the environment in their day-to-day work. For example, the manner in which solid waste or wastewater is disposed of can have either a positive or negative effect on environmental quality. Keeping the streets clean of dirt and debris, besides the aesthetic value, can also help to minimize urban stormwater runoff. Additionally, providing well designed streets and highways that are properly configured to minimize urban congestion also contributes to keeping the air clean and conserving energy as well as lowering the frustration level of citizens and enhancing safety.

APWA members also frequently find themselves engaged in interaction with the federal government on environmental matters. The need to get a project accomplished to better serve people's needs may often run headlong into the need to protect and preserve the environment, with unfortunate results. Although the association is quite supportive of the need for addressing environmental needs, it often appears that the process is barely workable and does not support good public policy.

Another concern is the cost of environmental protection. One way to avoid incurring these costs is to not undertake public works projects. Although many in the

environmental community might laud this approach, it is generally not an option. If public works officials are going to discharge the responsibility of improving the quality of life and accommodate the needs of an expanding population, we must be sure that environmental concerns and infrastructure needs are in balance. This cannot be accomplished if action is not taken. Public works officials, however, are quite happy to minimize the impact on the environment to the maximum extent that is practicable. We are pleased to designate project funds to mitigate against verifiable threats to the environment.

Nevertheless, state and local governments do not have inexhaustible funds and must be prepared to budget for environmental protection on the front end of the project. Generally, we must by law balance our budgets and raise funds through taxes and bond issues. We cannot afford local environmental protection that does not make economic sense. When environmental mitigation is required, it should be put to some kind of a cost-benefit test to ensure that the environmental benefits to be derived do not exceed the costs of achieving them. Good decisionmaking policy generally implies trade-offs, and this must include the environment. Almost as important, if we have no idea what the costs of environmental protection for the project are going to be at the outset, we cannot budget intelligently and secure the needed funding.

We strongly concur with ACIR's recommendations that environmental laws and regulations should be revised to avoid conflicts, eliminate inconsistencies, and require cooperative and consultative environmental decisionmaking. We particularly like the notion that federal agencies should work with all parties to identify early the criteria for project evaluation. A schedule is needed to provide a timetable for decisions that are clearly justified by the record, and reasonable limits should be placed on information that must be developed for review. We also like the notion of getting the decisionmaking to state and local governments by certifying them to administer federal environmental standards. However, once the federal government has relinquished responsibility for administering these standards, it must override responsibility on individual actions only when there is a clear violation of federal law, not just a difference of opinion.

APWA endorses the notion of the federal government picking up the tab for its mandates, as we do in Illinois for state mandated expense. We also like the idea of more research, training, education, and technology transfer in the environmental area.

Statement of
DINAH BEAR

*General Counsel, Council on Environmental
Quality, Washington, DC*

The Council on Environmental Quality (CEQ) has three major responsibilities: preparation of an annual report on behalf of the President, involvement in the formulation of environmental policy in the White House, and oversight of the *National Environmental Policy Act* (NEPA). The act is commonly identified with environmental impact statements. CEQ promulgates the regulations that

bind all federal agencies, serves as the last administrative arbitrator of disputes between state and local governments and the federal government, and interprets regulations.

The Council issued NEPA implementation guidelines to federal agencies in 1970, 1971, and 1973. During the 1970s, there was a great deal of litigation involving NEPA. There were voluminous impact statements and a great deal of frustration about management problems, delay, and duplication.

In 1978, President Jimmy Carter issued an executive order that directed CEQ to promulgate regulations after consultation with state and local governments and affected publics designed to "make the environmental impact statement process more useful to decisionmakers and to the public and to reduce paperwork and the accumulation of extraneous background data in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear and to the point, and supported by evidence that agencies have made the necessary environmental analysis."

The Council undertook extensive hearings and a great deal of work with the environmental and business communities and state and local governments to arrive at regulations that have been praised by people on all sides of the environmental spectrum. Regulations emphasize methods to reduce delay and duplication, many of the points made in the ACIR framework. Regulations also provide that agencies set time limits if requested by an applicant or interested party. While this was the most requested regulation, I know of only one request for a limit.

Regulations include page limits—150 for an environmental impact statement or 350 for a statement on a proposal of extraordinary scope and complexity. CEQ recommends 10 to 15 pages. The regulations mandate that environmental review requirements be integrated into the NEPA process. The NEPA process can act as an umbrella to integrate all the rest of the environmental requirements. There is a lengthy section mandating cooperation between federal and state governments and avoiding duplication of paper or hearings.

However, there is a great deal of frustration and concern at CEQ that many of these lofty sounding and well-intentioned provisions are not working as they should. Many of the same kinds of problems are identified in the ACIR recommendations. We are in many cases creeping back to the problems of the early 1970s, albeit with considerably less litigation. We are really talking about what went wrong and how we can fix it. While the NEPA process does not encompass all of the concerns addressed in the framework, the dynamics are similar. Many of the NEPA problems have developed because agencies respond to pressure, and the pressure has resulted largely from litigation. The primary enforcer of NEPA has been the courts, and the courts have done an excellent job and have been a necessary tool, particularly in the beginning of NEPA, to get the agencies to consider environmental impacts, to look at

alternatives, and to make it a true pre-decisional process. Courts, however, are not the right forum in which to address lack of coordination and consistency.

There have been several instances in which it was believed that an environmentally good action could not be taken because of legal blocks related to the NEPA process. There is considerable flexibility in the process—more than is often used.

The ACIR framework recommendation for an environmental mediation service is very important, but it is not realistic or desirable to eliminate judicial review from the process. However, we should seek alternative methods to resolve these conflicts. Too much of what goes on is driven by fear of litigation as opposed to trying to manage a process and achieve good results for the public. An environmental mediation service would have to be structured to provide adequate resources so that public interest organizations can participate fully.

CEQ is well known for criticizing agencies for not doing the process well. We are going to identify successful examples of integration between federal and state governments and make these known. We also are holding workshops focusing on procedural and substantive integration. Other agencies are having similar workshops focusing on their particular problems.

Reinventing Surface Transportation

(continued from page 6)

perform "comprehensive surface transportation planning . . . through a process that includes consultation with local elected officials with jurisdiction over transportation."

Objections to negotiated rulemaking have been raised because they could bog down over too many details contested by too many parties whose vital interests would be affected. Two ways of overcoming these objections would be to (1) establish deadlines for the negotiation process, or (2) use a less formal consultation process with conferences and hearings on the general issues before drafting the regulations and entering the official rulemaking process. This second suggestion would be consistent with the strategic planning processes recently used by the U.S. Department of Transportation.

Conclusion

Enactment of the *Intermodal Surface Transportation Efficiency Act of 1991* has created a significant challenge to intergovernmental relations. The precise shape of the reforms it has set in motion is unclear at this time. They will become somewhat clearer in the year ahead, as federal regulations take shape, but it may take years for them to come into sharp focus. The intergovernmental community should follow this evolution closely, contribute to its development, and study the consequences carefully.

Bruce D. McDowell is director of Government Policy Research at ACIR.

Building Consensus on Development Issues

Barbara Sheen Todd
and Robert M. Jones

As state and local governments implement growth management laws, which typically provide for citizen participation,¹ they often find that balancing economic development and environmental protection leads to confrontation and fragmented decisionmaking. Through consensus building and conflict resolution, however, communities may come to accept the legitimacy of differing interests and values and recognize the need to readjust relationships between government and the governed.

In recent years, some communities have experimented with consensus building to negotiate policies and agreements in land use, development, and environmental disputes. The agreements can be more pragmatic, easier to implement, longer lasting, and less costly than those arrived at through traditional decisionmaking processes.

Growth Management and Community Change

Rapid growth can transform communities, bringing to the forefront conflict between groups and individuals with divergent interests. Neighborhoods may organize against developers on environmental and quality of life issues; residents may view newcomers as antagonistic to their interests; affordable housing advocates may be pitted against developers and more affluent residents. New and potentially unstable coalitions also may form between former adversaries.

In a recent study based on interviews with public officials, business interests, and community activists in California's growing central valley, for example, the debate was characterized in the following terms:

Developers and other proponents of growth argue that growth controls simply raise prices to consumers of housing and commercial space. They argue that slow-growth groups, and sometimes governments, are little more than self-interested blackmailers who are trying to "pull up the drawbridge" as rapidly as possible. Those concerned about the negative effects of growth cite overcrowded schools and the declining quality of education, the inability of government to pay for the infrastructure needs of new development, increased traffic congestion, increased air and water pollution, and an overall deterioration in the quality of life as reasons to limit new development.²

Growth management controversies may call into question a community's decisionmaking structures and strain the ability of local governments to generate a new consensus better reflecting demographic and cultural shifts. Local elected officials must weigh neighborhood protection and controls with economic development and its implications for tax revenue. Buffeted by competing interests, public officials find it increasingly difficult to develop fair, pragmatic, and efficient solutions to the problems of managing growth and its impacts.

Decisionmaking Paralysis

In their work on consensual approaches to resolving public disputes,³ Lawrence Susskind and Jeffrey Cruikshank suggest that this country's public policy process is in the throes of decisionmaking paralysis. Several factors are identified as contributing to this situation:

Tyranny of the majority, which refers to the tendency for policymaking to be driven by the size of the majority rather than legitimate policy debate. This results in fragile and temporary coalitions to create a majority on a policy issue or project. Members of the minority then avail themselves of administrative procedures in order to block implementation of policies until "the necessary realignment of interest groups can be completed."

Lack of long-term commitment resulting from short tenures for administrations and pressures for solving problems within a limited time.

The limited value of voting in complex public policy decisions due to the inability of the ballot process to take into account and balance competing interests and its tendency to overgeneralize or simplify options.

Technical dilemmas, scientific uncertainty, and legal complexity in implementing a policy, which can thwart action and dissipate consensus.

Reliance on adjudicating distributional disputes as “winner-take-all” propositions when administrative and legislative efforts fail to resolve disputes. Often the result is a yes-or-no decision based on legally recognizable causes of action and procedural grounds, and not on what would constitute a fair, wise solution to the problem.

Characteristics of Growth Management Disputes

Like other policy disputes, development conflicts involve multiple parties and complex technical, fiscal, policy, and legal issues requiring cooperation from a variety of agencies and professions. These disputes often address a tangle of social, political, and planning issues that are linked and overlapping—environmental protection, water quality and quantity, road building, affordable housing, locally undesirable land uses, economic development, redevelopment of coastal cities, education and school integration, and preservation of historic resources, to name a few.

Growth management disputes share some special characteristics that make them especially difficult to resolve. The decisions and the disputes they engender are distributional. They focus on identifiable places and involve specific individuals and interests having stakes in the allocation of tangible costs and benefits. As such, they present decisionmaking challenges for public officials. In addition, the factors underlying growth management conflicts are often rooted in basic value differences. Contested development projects or policies also introduce physical, social, and economic changes that bring forth less tangible issues of community development, pride of place, and attachments to a neighborhood or community.

Growth often produces more population diversity based on race, ethnicity, and culture, or income and ideology. In these communities, growth management may be intertwined with civil rights issues and class conflicts. In addition, rapid growth and increasing diversity pose challenges to the development of community and political leadership and to the ability of elected officials to adequately represent shifting constituencies.

Growth Management Frameworks

In a growing number of states and communities, development disputes are shaped by land use laws. These laws typically specify the procedures for making growth management decisions, regulate the rate and timing of growth, and result in benefits to some while imposing costs on others. The impact of this regulation creates winners

and losers as controversial public decisions alter the distribution of goods and services.

Comprehensive planning, the heart of most growth management frameworks, has traditionally left implementation and the conflicts it engenders to political leaders. Planners have sought to rationalize the physical, social, and economic structures of communities and identify and link planning objectives with solutions. Planners typically lack the political support to implement these plans and the skills and resources needed to build community consensus:

Comprehensive planning does not resolve conflict efficiently. [It] best generates solutions to problems when consensus already exists around desired outcomes. In the absence of this consensus, comprehensive planning may actually accentuate differences and therefore aggravate conflict.⁴

In a critique of the traditional approach, scholars have pointed to several characteristics of comprehensive planning that accentuate conflict:

Reliance on centralized control over political decision-making runs counter to the trend toward decentralized decisionmaking brought on by proliferating administrative and legal review processes and by the increasing number of better organized interest groups.

A single standard for defining the public interest is used when there may be diverse and competing community perspectives, values, and stakes in the outcome of planning.

The use of planning expertise and rational analysis to resolve political disputes often has partisan purposes in public debate. Comprehensive planning, necessarily broad and general, often comes under attack by more specialized engineering, legal, and social analysis.

A presumption that planners' rational technical criteria will lead to a plan that can be implemented when it is developed in isolation from the sources of political conflict (i.e., decisionmakers and interest groups) often means that planners cannot gain political support for their proposals or develop a consensus among competing interests.

Collaborative Dispute Resolution

The traditional use of litigation and administrative and electoral procedures for growth management conflict has not always produced fair and wise solutions. Can collaborative dispute resolution succeed in building a consensus to balance questions of development with environmental and community preservation?

Litigation can be time consuming and expensive. Direct participation, for the most part, is discouraged, and communications become distorted. Adversarial relationships make compliance and implementation problematic. Although a winner is declared and a decision is rendered, the dispute may not be resolved, and the losing interests may redirect their efforts to block decisions.

Collaborative dispute resolution is a voluntary process that involves many interests in a facilitated—or mediated—

face-to-face negotiation. The impartial facilitator, often selected by the participants, assists in defining issues, exploring the parties' mutual interests and those that divide them, generating and assessing options, and reaching an acceptable solution. The agreements are reached by consensus, not by majority decision. These processes supplement conventional dispute resolution forums, and they are most often initiated when the normal decisionmaking process has proven ineffective.

Building consensus through negotiation may be motivated by a desire to advance a shared vision through an exchange of information or by a need to resolve conflict to produce a joint agreement, or both.

Growth management conflicts may arise out of policymaking or decisionmaking. Consensus processes for policy disputes include forums or dialogues guided by mediators. The object of a dialogue is to clarify the issues, assess the extent of the controversy, refine positions, explore interests, and search for shared interests as well as potential compromises. These processes have been used to develop national, regional, state, and local consensus solutions to environmental disputes, such as groundwater management and waste management siting.⁵ Following are some examples:

In 1988, Modesto, California, created an Urban Growth Committee following passage of a ballot measure giving citizens the right to an advisory vote on sewer trunk extensions. The city brought adversaries together to improve the decisionmaking process for growth management.⁶

In 1989, San Luis Obispo County, California, created a 16-member Growth Management Advisory Committee representing all sides of the debate. The mediator assisted the committee in developing recommendations, many of which were enacted, including creation of a county agency to coordinate growth management and help provide dispute resolution services.

Orange County, Florida, used mediators to help citizen advisory groups provide input on the county's new comprehensive plan, and develop recommendations for the planning commission and the county council.

Skagit County, Washington, and the Swinomish Tribe, long adversaries on land issues affecting the tribal reservation and the adjoining county, developed, with the assistance of a mediator, a plan that recognizes the tribe's jurisdictional authority while working with the county's land use programs. The plan calls for collaborative decisionmaking. Based on this success, the region's 326 tribes are developing similar compacts with 14 counties.

Deciding to Negotiate

The supplementary negotiated process may not be appropriate for all growth management disputes. Many such decisions are neither overly contentious nor perceived to be unfairly or inappropriately handled through traditional channels. Other disputes may grow out of questions of fundamental values, human rights, or consti-

titutional issues, or may provide an opportunity to establish important legal precedent. These may not be appropriate for a negotiated process.

Some commentators have suggested prerequisites for a growth management negotiation process, including:

Are there enough issues and parties to allow for linkages and trades?

Can key stakeholders be identified, and are they willing to negotiate? Their willingness will be related to whether they believe they can better promote their interests through more conventional forms of resolution.

Can affected parties who lack access to the conventional decisionmaking process block implementation of a decision?

Are the power relationships sufficiently balanced so that each party has some leverage?

Are continuing interactions and relationships likely after resolution of the conflict?

Are there negotiable issues primarily focused on substantive and procedural questions and not on structural or value concerns?

Answering these questions affirmatively likely will mean that a collaborative resolution is appropriate.

Judging Negotiated Outcomes

Negotiated outcomes often are evaluated according to the level of participant satisfaction, comparison with the likely result of conventional processes, and the ability to garner community support to implement the agreement. Additional evaluation criteria may include the following:

Agreements are reached efficiently when agreement is possible.

The process promotes the legitimate interests of all participants.

The process reconciles conflicts fairly by including all interested parties and informing and empowering them to make wise decisions. It does not necessarily impinge on outside interests and sets a good precedent.

The negotiation produces agreements that are durable and can be implemented.

The agreements stabilize or improve relationships among the parties.

The process produces quick, reasonably low-cost decisions.

Agreements are compatible with existing legislative or administrative authority.⁷

Community Consensus Building

There are three stages of mediated consensus building illustrated in the following two examples—pre-negotiation, negotiated consensus building, and implementation.⁸ The structure and potential usefulness of mediated

negotiations can be illustrated by a road improvement case in Sarasota County, Florida.

In 1989, the state Department of Transportation (DOT) proposed to widen 2.8 miles of U.S. Route 41 in Sarasota County because of increasing traffic and accidents. After two stormy public hearings and discussions among county and state legislative representatives and DOT, a task force was formed to recommend options for median control, access, and landscaping. Members of the task force included the Sarasota city engineer, county transportation and forestry department officials, the DOT district head, the Sarasota-Manatee metropolitan planning staff, and representatives of the Sarasota Chamber of Commerce.

The task force retained a mediator who, after interviewing all the parties, presented two pre-negotiation recommendations. The first was to create an advisory committee of property and business owners who would participate in the negotiations. The second recommendation was to conduct surveys of property and business owners and other community road users. The survey responses and a summary of discussions with the advisory group set the initial negotiating agenda for the task force.

The negotiations took place over two and a half months. The mediation involved 14 joint and public sessions and eight separate private meetings with interested parties. The mediator established and distributed the agendas before each meeting and prepared minutes. After the negotiations, the mediator assisted in preparing and presenting the report and implementation checklist.

The county commission adopted the report as its recommendations for the road design. DOT accepted the recommendations and agreed to monitor road conditions before and after the work was done. The task force agreed to review the design as the work progressed.

This process of mediated community involvement resulted in savings of time and costs for projected litigation, right of way, and business damages. One measure of satisfaction with the process is that Sarasota County adopted a mediation provision in its concurrency management ordinance. The city of Sarasota also adopted a mediation mechanism to resolve growth management issues. The case also served as a model for DOT's work in other counties.

In 1991, Tallahassee and surrounding Leon County were embroiled in a series of long-standing conflicts over a proposed urban parkway. A joint city council-county commission, sitting as the Metropolitan Planning Organization (MPO), was in the midst of a corridor location study process and wanted to understand the source of the differences in the community. The Management Conflict Resolution Consortium, a statewide office, was asked for assistance. The consortium presented the MPO with a proposal to hire a mediator to assess the conflict and present recommendations for a mediation process.

An experienced environmental mediator from south Florida was retained. After conducting over 30 interviews with representatives of neighborhoods, businesses, universities, and state agencies, she found that opponents were unwilling to participate in a mediation over just the proposed parkway, but would participate in a policy forum

on the parkway and other transportation options. The MPO asked the mediator to conduct such a forum and provided the necessary funds.

The forum took place in seven sessions over a three-month period and involved more than 40 organizations. Their negotiations on transportation options covered canopy roads, pockets of congestion, flextime/staggered work hours, transportation systems management, wetlands and waterbodies, and the capital parkway. The process went through three stages: (1) establishing the boundaries of the problem, including joint framing of the issue, identification of the transportation needs of each party, and a review of the current plans and options; (2) creating and assessing options in the six main areas; and (3) selecting final policy options through the use of a written survey of preferences on 202 specific recommendations. At the conclusion of the process, the participants voted unanimously to forward to the MPO survey results that garnered more than 75 percent support by the forum. The forum sent 48 recommendations for consideration. In November 1991, the MPO adopted all the recommendations and has begun the implementation process.

Institutionalizing Negotiation

By and large, consensus-building initiatives are ad hoc, informal efforts in which the parties, with the assistance of the mediator, design the process. This flexibility is a strength, but it also poses potential difficulties in initiating the process and securing official support and encouragement.

The most common procedural framework for state growth management is a traditional agency review and appeal process, which relies on public hearings and adversarial fact finding and decisionmaking. In Florida, for example, there is a complex process for developing and implementing local comprehensive plans. Legal standing to intervene in these decisions is broad, and conflict is channeled through judicial and administrative litigation forums.

Florida's growth management law gives the 11 Regional Planning Councils (RPC) the role of providing mediation in disputes, but none has done so (although all of them have adopted formal policies or rules governing the use of mediation). Several factors seem to explain this situation: RPCs may not be perceived by cities and counties as neutral agencies; no funds were appropriated or budgeted for this role; and no attempt was made to educate the RPCs, their staffs, or local governments about the process.

Three years after passage of the law, the legislature created the Florida Growth Management Conflict Resolution Consortium, a small, university-based program to test mediated approaches. Six other states have created offices to provide for consensus-building negotiation in policy disputes.

The lesson may be that as states and localities establish or revise growth management laws, they should pay greater attention to consensus building, in particular, how the growth management framework helps or hinders these processes.

Community Consensus and Regional Issues

Generally, the focus for mediation initiatives is not on the size of the community but on the number of interests in the process. The outcome is a consensus among the stakeholders.

(continued on page 38)

Coordinating Water Resources in the Federal System: The Groundwater-Surface Water Connection

All types of governments have roles to play in improving water resource coordination. One of the most important of those roles is to change laws and policies that obstruct more efficient resource use. A consensus favoring coordinated use of groundwater and surface water—conjunctive management—has arisen in the past decade. This policy report contains contrasting perspectives on groundwater use and management, and an analysis of institutional arrangements and intergovernmental relations. The report identifies barriers to better coordination and suggests changes that the federal and state governments can make to eliminate those barriers.

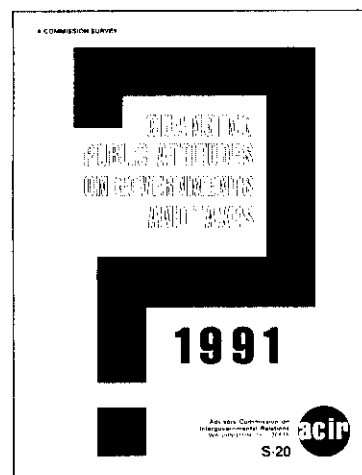
A-118 1991 152 pages \$15



1991 Changing Public Attitudes on Governments and Taxes

This staff report contains the 20th annual ACIR opinion survey. The poll has been conducted by The Gallup Organization since 1983. Every year since 1972, citizens have been asked what they think is the worst tax, that is, the least fair. This year, citizens chose the local property tax as worst, followed by the federal income tax. Asked to identify the government from which they get the most for their money, citizens picked the local government. Other questions this year included the question of federal mandates to state and local governments; intergovernmental cooperation; the government that spends tax dollars most wisely; state constitutions; and the balance of power between federal, state, and local governments.

S-20 1991 42 pages \$10



(see page 42 for order form)

Intergovernmental Digest

Proposed Preemption Clarification and Information Act

A proposed "Preemption Clarification and Information Act of 1991" (S. 2080) has been introduced into the Senate by Senators Carl Levin and David Durenberger. The measure, based on ACIR recommended legislation, would require a federal statute to state explicitly Congress's intent to preempt state and local government powers before the courts and federal agencies could invalidate or prohibit any state or local government law, ordinance, or regulation. Final federal regulations also would have to contain an express statement of preemption before courts may construe them to preempt state and local government powers. Exceptions would be direct conflicts between federal and state or local law, in which cases the supremacy clause would require federal law to prevail.

S. 2080 would also direct the Congressional Research Service to prepare an annual report on the extent of federal statutory preemption of state and local government powers. That report, which would be due within 90 days of Congress's adjournment, would cover laws enacted during the past session and court cases interpreting federal statutes. It would contain as well a cumulative list of federal statutes preempting, in whole or in part, state and local government powers.

By requiring a specific statement of intent, this legislation seeks to remove the uncertainty and confusion that now plagues intergovernmental relations. The Commission also hopes that this measure will promote greater deliberation by the Congress and federal agencies of any proposals likely to entail preemption. The bill may be obtained from any United States Senator or by writing the Senate Document Room.

Proposed Local Partnership Act

On October 22, 1991, Rep. John Conyers (D-MI), Chairman of the House Government Operations Committee, introduced H.R. 3601, "The Local Partnership Act of 1991." The bill is intended to alleviate the fiscal plight of local governments by reviving General Revenue Sharing (GRS), although with a few modifications. Like General Revenue Sharing, the money authorized under this legislation would go to approximately 39,000 local and tribal governments for each to spend on its own priorities. Unlike GRS, however, this bill removes the former law's "ceiling" that restricted local government shares to 145 percent of the state's per capita allocation—a provision that curbed receipts of severely distressed urban areas and tax enclaves. Nor does the bill contain the GRS "floor" that guaranteed each local government a minimum amount.

H.R. 3601 uses a two-step process to channel the money to local governments. First, the money is allocated among the states using whichever of two formulas results in a greater payment. The first formula includes four variables: relative population, per capita income of state residents, tax effort (i.e., total taxes collected divided by total income of the residents), and the state's unemployment rate. The second formula uses those four factors as well as the extent of urbanization and the amount of state income taxes collected.

In the second step, the proposal uses states as "pass-throughs" to channel money to the local governments. Funds apportioned to each state subsequently would be allocated to local governments on the basis of relative population, per capita income of the residents, and tax effort. Statutory guidelines govern the further allocation of funds. On a per capita basis, the bill allows states to receive more money if they score high on unemployment, low on per capita income, high on urbanization, and high on tax effort, and if they rely heavily on a state income tax and raise substantial revenues from taxes.

Payments to local governments may not exceed 50 percent of the amount of local taxes collected and intergovernmental transfers received. Furthermore, no payment will be made if the locality is to receive less than \$600. By including in the distribution formula the per capita income for each locality as well as the unemployment rate for the state in which the local government is located, the bill seeks to target the funds to the neediest local governments and to reward local self-help by giving more money to those local governments that have imposed high taxes relative to income. Both features distinguish this bill from the original revenue sharing program. The bill authorizes an appropriation of \$2 billion in FY 1993, with the authorization increasing by \$3 billion per year until it reaches \$14 billion in FY 1997.

Mandate Relief in Louisiana

On October 19, 1991, 58 percent of Louisiana voters approved a constitutional amendment that limits the state's ability to mandate requirements and costs on local government. This was the largest margin of victory for any of the five constitutional amendments passed that day. This new constitutional provision, effective January 1, 1992, says that no state law, executive order, rule or regulation requiring additional expenditures by a local government will become effective unless:

- The local government agrees to abide with the mandate;
- The state provides funds to pay for the new mandate;
- The state gives the local government authority to raise revenue to cover the cost of the new mandate; or
- The legislature enacts the mandate by a two-thirds vote of both houses.

The amendment does not apply to state laws or rules required for compliance with federal standards (such as wastewater treatment or accommodations for the disabled), existing state mandates, laws requested by individual political subdivisions, existing benefits for policemen and firefighters, laws defining crimes, or local school systems.

Supreme Court Relaxes Consent-Decree Modification

On January 15, 1992, the U.S. Supreme Court ruled 6-2 that federal district courts should use a more flexible standard than a 1932 "grievous wrong" standard in responding to requests from state and local officials for changes in consent decrees governing state and local institutions as a result of institutional reform litigation. In *Rufo v. Inmates of Suffolk County Jail*, a case involving "double celling," the Court said that: "The upsurge of institutional reform litigation" since 1954 "has made the ability of a district court to modify a decree in response to changed circumstances all the more important." However, "a party seeking modification of a consent decree bears the burden of establishing" that there has been "a significant change in factual conditions or in law." In an *amicus* brief, the State and Local Legal Center had urged the Court to adopt a "less burdensome alternative" standard. The Court did not go this far, but generally concurred with the Center's argument for federal deference to state and local officials. Within the constraints of the "flexible standard" rule, said the Court, "the public interest and . . . the allocation of powers within our federal system . . . require that the district court defer to local government administrators, who have the 'primary responsibility for elucidating, assessing, and solving' the problems of institutional reform, to resolve the intricacies of implementing a decree modification." Courts should also recognize fiscal concerns: "Financial constraints may not be used to justify the creation or perpetuation of constitutional violations, but they are a legitimate concern of government defendants" and "are appropriately considered in tailoring a consent decree modification." The Court emphasized, however, that state and local officials should not be allowed to drive a decree down "to the constitutional floor" if they had originally agreed to something more than that.

Local Governments Increase Reliance on User Charges

In fiscal 1990, local governments raised \$72.7 billion from user fees and charges (e.g., hospital room charges, sewerage charges, airport fees). Revenues from these charges were the second largest portion of local government own-source general revenue (OSGR). Property taxes, which amounted to \$149.9 billion, were the largest source of OSGR in 1990. The Bureau of the Census reported that property taxes and user fees and charges accounted, respectively, for 46.7 percent and 22.6 percent of local OSGR.

Hospital charges were the largest revenue producers for local governments in 1990—\$21.9 billion, or 30.6 percent of all user charge revenues. Sewerage charges were the second largest source of local user revenues in 1990—\$12.8 billion, or 17.2 percent. Other major sources of user revenues were: air transportation charges—\$4.6 billion (6.3 percent); sanitation other than sewerage charges—\$4.5 billion (5.6 percent); school lunch sales—\$3.4 billion (5.1 percent); and higher education charges—\$3.1 billion (4.4 percent).

In recent years, local governments have increased their reliance on user fees and charges. From fiscal year 1987 to FY 1990, user charge revenues climbed 33.8

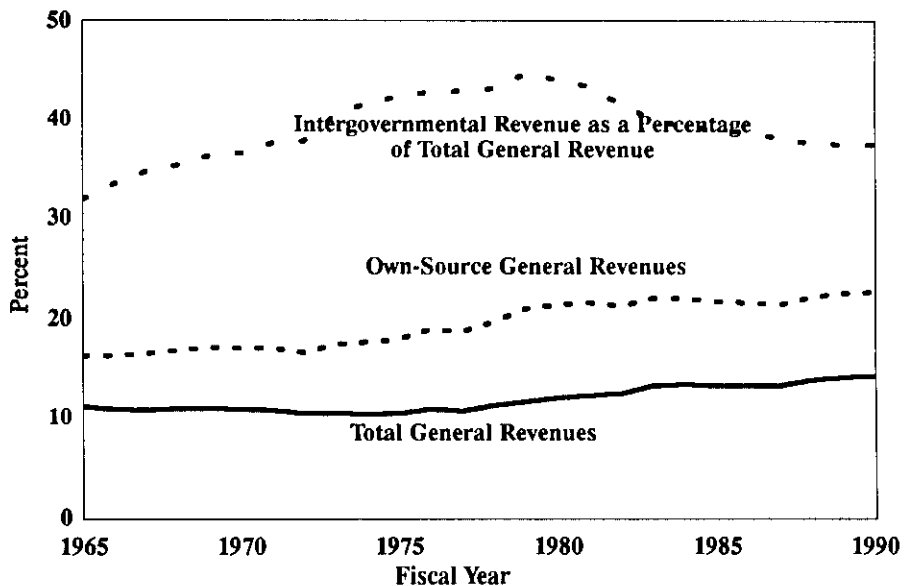
percent, from \$54.3 billion to \$72.7 billion. In FY 1987, user fees accounted for 13.2 percent of local government general revenue (GR) and 21.4 percent of local government OSGR. In FY 1990, the corresponding proportions were 14.2 percent and 22.6 percent respectively (see Chart).

From 1972 to 1984, user fees and charges increased by 12.2 percent per year—from \$10.9 billion to \$43.3 billion, or, from 16.6 percent to 22.0 percent of local OSGR and from 10.4 percent to 13.3 percent of local GR. Between 1977 and 1980, user fees increased from 18.7 percent to 21.4 percent of OSGR and from 10.7 percent to 12.0 percent of GR.

The increased reliance by local governments on user fees and charges is due, in part, to declining intergovernmental aid. Since 1979, the peak year, intergovernmental revenues as a percentage of local GR have declined from 44.7 percent to 37.4 percent in 1989 and 1990 (see Chart). Direct federal aid declined from 9.7 percent of local GR (the peak year was 1978—10.0 percent) to 3.6 percent. State aid, which contains an unknown amount of federal aid that is subsequently passed through to local governments, declined from 35.0 percent of local GR in 1979 and 1980 to 32.7 percent in 1984. This proportion has since risen to 33.8 percent in 1990.

Local governments in Mississippi relied on user fees and charges for 46.2 percent of their OSGR in 1990—the highest level in the country. Other states in which local governments rely heavily on user fees and charges are: Alabama (38.8 percent), Idaho (36.1 percent), South Carolina (35.7 percent), and Tennessee (32.9 percent). On the other hand, the District of Columbia received only 7.9 percent of OSGR from user fees and charges. Other states in which local governments do not rely heavily on user fees and charges are: Rhode Island (8.6 percent), Vermont (9.8 percent), Hawaii (10.2 percent), and Connecticut (10.3 percent).

Local User Charges as a Percentage of Own-Source General Revenue and Total General Revenue, FY 1965-1990



Bush Bashes Mandates

In his State of the Union address on January 28, 1992, President Bush said: “We must put an end to unfinanced federal government mandates. These are requirements Congress puts on our cities, counties, and states—without supplying the money. If the Congress passes a mandate, it should be forced to pay for it, and balance the cost with savings elsewhere. After all, a mandate just increases someone else’s burden—and that means higher taxes at the state and local level.”

The President's FY 93 Block Grant Proposal

The President's FY 93 budget proposes a single consolidated block grant totaling \$14.6 billion. The Administration has modified the block grant ("turnover") proposal contained in the FY 92 budget in order to achieve general agreement with representatives of state and local government. Five areas (education, environment, health and human services, justice, and other programs) covering 24 program candidates are included in the FY 93 proposal (see table). The major changes from the FY 92 proposals are the addition of education programs recommended by the governors and the deletion of housing and community development programs, as recommended by local representatives. In addition, transition provisions include a five-year phase-in period and maintenance of delivery systems features. Hold-harmless provisions are included so that no state would be harmed as these programs are incorporated into the new block grant. FY 97 outlays for the new block grant are projected to increase to \$15.7 billion, although funding shifts among individual programs are also projected.

Block Grant Program Candidates
(millions of dollars)

	Enacted 1992	Proposed 1993 1997	
Education:			
Chapter 2	\$517	\$478	\$450
College assistance migrant program	2	2	2
High school equivalency	7	8	8
Drug free schools and community act	654	648	654
Vocational education	859	961	1,138
Education for homeless youth	10	22	25
Follow-through program	7	7	-
Adult education act (state grants)	175	202	261
Foreign language assistance	5	8	-
Student literacy corps	4	4	-
Workplace literacy partnerships	16	16	19
Literacy training for the homeless	8	8	10
Environment:			
Construction grants	2,196	2,110	1,162
Health and Human Services:			
Maternal and child health block grant	553	674	674
Social services block grant	2,800	2,800	2,800
State welfare administration expenses—			
Medicaid	2,649	2,802	1,672
AFDC	1,403	1,466	1,681
Food stamps	1,457	1,456	1,672
Justice:			
Drug control	341	502	496
Juvenile justice	68	58	8
Other Programs:			
Job training for the homeless	11	11	17
ASCS cost share	204	171	127
Community service employment for older Americans	84	85	75
National and Community Services Act	38	57	73
Total	14,068	14,622	15,726

Is Education Too Intergovernmental?

John Kincaid

Is education too intergovernmental? A heretical question? Perhaps not. Since passage of the *National Defense Education Act of 1958* and, especially, the *Elementary and Secondary Education Act of 1965*, there has been a tremendous increase in state and federal involvement in public elementary and secondary (K-12) education. Each new intervention and new institution (e.g., the U.S. Department of Education, created in 1980) has been heralded as a step toward better education.

Yet, are we better off? Apparently not. Our schools are so bad, reported the National Commission on Excellence in Education (NCEA), as to place the "nation at risk."¹ Two recent surveys found most American adults "unable to interpret the main argument from a lengthy newspaper column, interpret a bus schedule, . . . or calculate the cost of a number of items . . . on an order form."² In 1991, scores on the Scholastic Aptitude Test declined for the fourth year in a row. The national average verbal score dropped to a record low, and the average mathematics score fell for the first time in a decade.³ Even *The Washington Post* editorialized: "The SAT scores are solid evidence of non-performance."⁴

Why, after 30-some years of increasing intergovernmental activity, has educational performance declined? The answer, perhaps, lies partly in a contradiction. Virtually all of the factors most associated with academically effective education are school- and neighborhood-based. Yet, we have shifted more control and financing of education to state and national institutions.

Today, intergovernmentalized education is big business, larger than at any other time in our history. Yet, reported NCEA: "For the first time in the history of our country, the education skills of one generation will not surpass, will not equal, will not even approach, those of their parents."

Despite dramatically increased state and federal spending, policymaking, and research on public education, "the number of private schools increased by nearly 30 percent during the 1980s, reaching 26,800, while the number of public schools declined 3 percent, to 83,200." The number of children taught at home has increased "from 10,000 in 1970 to over 300,000 today."⁵

Even many public school teachers lack confidence in the system. For example, a 1987 survey found that 62 percent of Milwaukee's teachers did not want their own children to go to the schools where they taught, and that nearly half of their children attended private schools.⁶ Yet, public educators opposed the limited "choice" program offered in 1990 to 1,000 inner-city children in Milwaukee's public schools. These students can attend any public or nonsectarian private school.

So, what will we do about the problem? Intergovernmentalize education some more. Hold presidential-gubernatorial summits, convene legislative hearings, pass new laws, set national standards, mandate curricula, commission studies, invent more teaching methods, allocate more money to education, and base teacher merit pay on national test scores.

But who are the key players? Who has to make education work? Teachers, students, and parents. There is no escaping the fact that this simple pedagogical triangle is the heart of education. Unless we strengthen the bonds of learning, community, and affection among teachers, students, and parents in each classroom, we will get more unrewarding reforms. Education will become more bureaucratic as it becomes more intergovernmental, and learning will become more impersonal as it is tied to more tests.

Experience and research suggest that the principal characteristics of academically effective schools include:

- High parental expectations of school and student performance
- School accountability to parents and local taxpayers
- Parent involvement in school affairs and their children's education
- Rigorous scholastic standards
- An orderly and safe school environment
- Clear and fair discipline policies
- Strong administrative and instructional leadership by the principal
- Teacher participation in decisionmaking, with a measure of classroom autonomy
- Well trained and academically competent teachers
- A sense of community and participation among students, teachers, and parents.

These characteristics are rooted in schools, homes, and neighborhoods. Perhaps it should not be surprising, therefore, that after decades of shifting authority to states and to the federal government, public schools are not meeting the nation's needs.

Possible Intergovernmental Barriers To Effective Education

Given the local foundations of effective schooling, intergovernmentalizing education poses a problem: Of what use are state and federal officials? Lacking a hands-on role in education, these off-site officials employ the tools most readily available to them: money and mandates.

Money and Achievement

Since Sputnik, a major reason for intergovernmentalizing education has been to increase funding by tapping the wealthier and presumably more progressive tax bases of the states and the federal government. Per pupil spending on public K-12 education has increased by more than 77 percent since 1970 in real (inflation-adjusted) dollars. In FY 1989, state and local governments spent \$185 billion on K-12 education, which was about 24 percent (and the single largest category) of all state and local spending. In FY 1991, 26 federal agencies spent about \$59 billion for programs that support the national education goals articulated by President Bush and the governors in 1990.

Although analysts disagree on exactly how U.S. education spending compares to that of other nations, most place the United States at or near the top. Yet, Americans score at or near the bottom on proficiency tests compared to students in other industrialized nations. Of course, various factors affect test outcomes; nevertheless, one is hard pressed to find indicators of a 77 percent improvement in education to match the 77 percent increase in spending.

One of the most consistent research findings is that there is little, if any, relation between school spending and student achievement. As early as 1971, a Rand Corporation study for the President's Commission on School Finance concluded that: "Increasing expenditures on traditional education practices is not likely to improve

educational outcomes substantially."⁷ A recent study in Ohio even reported that: "After controlling for the overwhelming effects of family income and welfare rates, lower spending Ohio public school districts have higher student achievement."⁸ Indeed, Rand advised that: "There seem to be opportunities for significant reduction or redirection of educational expenditures without deterioration in education outcomes."⁹

Indeed, American parochial schools seem to get better education results for less dollars. How much better is disputed, but even where performance between the two systems is only equal, parochial schools get that performance on less money.¹⁰

It is often objected, however, that even where parochial schools educate poor, inner-city children, their students are still different from public school students because they are self-selected. Parents choose to send their children to a parochial school for a better, sometimes just safer, education. Also, parochial schools can reject problem children. But these points only highlight the point that the key problems of education lie outside the traditional, intergovernmental, money-and-mandates approaches to reform.

Equalization, Equity, and Achievement

Another intergovernmental approach to increasing funding is to equalize per pupil spending across districts. Although equalization has the laudable goal of improving opportunities for children in poor districts, there is, again, no evidence that more spending itself improves learning.

Education lobbyists refer to equalization as "fiscal equity," although "fiscal adequacy" is often the goal. Given that high-spending districts resist spending reductions and that a legislature is pressed to spread money around the state, equalization can be a way to ratchet up overall school spending.

Equalization is at least a way to shift more funding from local tax bases to the state's tax base. This is a politically astute move. Local officials may not mind being relieved of tax increase responsibilities, and educators can marshal stronger lobbies in 50 state capitals than in 15,600 school districts. Yet, student performance does not increase as states increase their share of funding. Children in Hawaii, where the state provides the highest proportion (87 percent) of school financing of all the states, scored 35th out of 37 states and three territories on the 1990 national math assessment test. Children in New Mexico, with the second highest state share (74 percent) of school financing and second highest federal share (12 percent), scored 30th. Children in New Hampshire, where both the state and the federal governments provide the smallest proportions (9 percent and 0.4 percent, respectively), scored 7th.¹¹ High school students in New Hampshire also ranked the highest in SAT and ACT scores. Students in North Dakota, where teacher salaries and per pupil spending are below the national average, scored the highest on the national math test.

In focusing on fiscal differences among districts, moreover, no one seems to ask whether high-spending districts overspend. What message, for example, does a high school country club atmosphere, with well equipped

sports teams and cheerleader squads, send to students about the value of studying calculus, reading *The Souls of Black Folk*, or writing an essay? Perhaps this is one reason why, on average, all types of students in all states, not just disadvantaged students, scored below grade level on the 1990 math test, and why drugs, crime, and other problems have spread to suburban schools. An indicator of unproductive overspending in high-income districts is that "the average SAT verbal score at what are called selective colleges has dropped 50 to 60 points in the last 25 years."¹²

Certainly there are equity issues in state or federal financing of high-spending districts. For example, because private school tuition is not tax deductible, parents desiring private-like public schools with small classes and extracurricular amenities have every incentive to spread their costs across all local and all state taxpayers rather than paying the full bill themselves.

Finally, true fiscal equity may require unequal spending. Above-average pay, for example, may be needed to attract good personnel to what teachers call "combat zones." Furthermore, equalization programs target money mostly to school districts, not social groups. Although there is overlap between disadvantaged districts and disadvantaged groups, equity may require extra spending for certain students in all districts. Thus, interdistrict equalization does not necessarily channel adequate funding to the most needy children.

Equalization in California

The state with longest court-driven equalization experience is California, whose supreme court held the old school-financing system unconstitutional in 1976 (*Serrano v. Priest*). Yet, California has not leaped ahead of other states in education performance. In fact, Peter Schrag, in a commentary on Jonathan Kozol's *Savage Inequalities*, raises disturbing questions about California.¹³

For one, equalization reduced local incentives to raise taxes and improve schools, in part because the state's funding formula reduced state financing by one dollar for each additional dollar raised from local property taxes. Then, as funding for schools shifted increasingly from local tax sources to state tax sources, especially because of Proposition 13 (1978), California's relative spending per pupil dropped sharply. In 1970, California ranked 16th (and above the national average) in per pupil spending. In 1980, it ranked 23rd; in 1989, it ranked 31st. In that year, California ranked fourth in terms of the state's share (66 percent) of funding for education.

Schrag also suggests that equalization has weakened links between schools and community groups, while strengthening the influence of professionals. Now that local boards have little to do with school-tax rates, local business, taxpayer, and civic groups are less motivated to participate in school affairs. Because school boards spend the state and local dollars, however, professional educators have incentives to control the boards, in part by financing school board candidates. "As fiscal control moves to the state," writes Schrag, "the moderate citizens' groups that once were the backbone of local government and local schools are less and less involved."

In turn, there apparently has been a reduction in school accountability to communities and an increase in

professional perquisites as school boards have increased teacher and administrator salaries while cutting program spending. "No state," notes Schrag, "has as large a gap between what it pays its school employees and what it spends on everything else. California is fifth in the nation in teachers' salaries and dead last—meaning worst—in class size." Citizens also find it difficult "to know who is responsible for the financial problems of the local schools—the board that allocates the funds and overspends or mismanages them or the governor and legislature that fail to pony up enough to begin with."

The lack of accountability and responsibility that arises when one government raises money and another spends it is a classic intergovernmental problem. To combat the problem, the government that raises the money places mandates on the governments that spend the money.

Bureaucracy Building

Intergovernmentalizing education tends to increase bureaucracy because states and the federal government need to expand and create agencies to monitor money and enforce mandates. In turn, agencies down the line need to increase personnel. More money and mandates are then needed to fund and regulate administration, and more administrators are needed to manage the new money and mandates.

School bureaucracies in such cities as Chicago and New York became notoriously bloated with the rise of intergovernmentalized education. One observer argues that New York City's school system, which spends "more than \$7,000 per student—or 1.5 times the national average—with unimpressive results . . . is a jobs-and-patronage machine overwhelmed with non-teaching personnel; a boondoggle bonanza, where library books are purchased at retail-plus. The system by some estimates spends as little as half its funds on actual education."¹⁴ Washington, DC's 81,000-student public school system has a central staff of about 1,500 people. DC's archdiocese operates its 50,000-student system with a headquarters staff of 17.¹⁵

It is precisely large central cities—the main centers of severe public education failure—that have the largest bureaucracies, which siphon monies from the intergovernmental pipeline and then add mandates to the diminished flow that goes to classrooms. This is another reason why more money and mere equalization do not produce better education. "Pouring more money into ineffective and politically contentious bureaucracies will not benefit disadvantaged children, but only increase the stakes for political control."¹⁶

Much of this bureaucracy is mandated by the state, and some of it is required by the federal government. In Ohio, for example, a citizens review committee for a rural school district found that administrative costs could hardly be cut because all but one of the district's administrative positions are mandated by the state. The one non-mandated position probably cannot be cut because, among other things, the district must file at least 183 reports to the state each year.¹⁷ Given these restrictions and many other mandates, local residents can hardly be responsible citizens because intergovernmental rules leave little room for local reform and self-government.

Institutional Bigness

Intergovernmentalization has also fostered institutional bigness under the assumptions that consolidated school districts and comprehensive schools, especially high schools, improve management, capture economies of scale, provide a richer curriculum, increase teacher professionalism, enhance equity, and improve education. One of the proudest achievements for many reformers has been the reduction of independent school districts from 128,548 in 1932 to 14,741 as of 1987.

Obviously, these reforms have not improved education, though they have increased costs, because most of the underlying assumptions were faulty. For example, there is some evidence that student achievement decreases as the size of a school district increases.¹⁸ There is growing evidence that large "comprehensive" schools of the kind advocated in 1959 by James B. Conant, a leading education reformer, are often alienating, unmotivating, and uninnovative. Many districts are now breaking up such schools or reorganizing them into smaller schools within schools so as to promote community and common purpose among students, teachers, and parents.¹⁹

Aside from bureaucracy, bigness improves the ability of professional insiders to insulate a system from ordinary citizen control. Yet, large systems are often less manageable than small ones; indeed, some big-city systems have trouble recruiting a superintendent willing to take on the job, even at high pay.²⁰ The Rand study, moreover, found that: "Innovation, responsiveness, and adaptation in school systems decrease with size and depend upon exogenous shocks to the system."²¹

Because of consolidation, some children in rural areas spend as much as two hours in the early morning and two hours in the late afternoon riding to and from school. This comes to about 20 hours a week spent on school buses—hardly an ideal learning environment—compared to 30 hours a week in the classroom.

As bigness reduces local citizen input, the external shocks must come from the state or federal governments, thus further intergovernmentalizing a problem largely created by intergovernmental reform, and further distancing local citizens from school governance. Yet, as performance deteriorates, more people label it a "national crisis" requiring a "national solution." Hence, the more intergovernmental the system becomes, the more intergovernmental it must become, such that we are now talking about national standards, national tests, and perhaps even a national curriculum.

Many reformers see consolidation as an unfinished task. Today, the case is increasingly based on efficiency (e.g., to reduce duplication). For example, the New Jersey Governor's Quality Education Commission recommended that the state consolidate its 600 school districts into about 250 in order to cut administrative costs.²² But the major source of these costs is state and federal mandates. Furthermore, the duplication lies mainly in administrative staff. Consolidation does not reduce the number of teachers needed in classrooms.

Thus, administrative costs arising from intergovernmental mandates and money create pressure for more

intergovernmental intervention to consolidate districts for administrative efficiency. Hence, school districts may become more efficient at processing intergovernmental mandates but not necessarily more effective at educating children.

Institutional Proliferation

Intergovernmentalizing education also stimulates institutional proliferation. What was once a local function now involves the White House, executive agencies, congressional committees, and the federal courts; the governor's office, state agencies, legislative committees, state courts, and state schools of education; and numerous regional and local government institutions. What was once a public function now involves many private profit and nonprofit enterprises providing money, services, supplies, personnel, lobbyists, and advice to schools, with numerous consultants and researchers requiring government and foundation support.

This increase in what is often called "institutional capacity," but also has been called "governance busy-ness,"²³ has coincided with a decrease in student achievement, primarily because external institutions assume responsibility for managing and reforming education, but not for making sure that Johnny and Juanita understand their homework assignment. Furthermore, these external institutions do not always cooperate and coordinate with each other. Often they compete to penetrate school systems.

Vertical Fragmentation

Thus, while school district consolidation is advanced to rationalize the presumed nonsystem of horizontal fragmentation, the proliferation of intergovernmental and nongovernmental "education" institutions produces a nonsystem of vertical fragmentation, which makes "it very difficult to achieve a coherent policy framework."²⁴ Vertical fragmentation now hampers significant sectors of the federal system. Large numbers of state and federal legislative, executive, and judicial agencies exercise authority, for example, over health care, environmental protection, welfare, and education.

The fact that horizontal consolidation and vertical fragmentation have coincided with declining education performance should not be surprising because, among other things, vertical fragmentation introduces powerful centrifugal forces into each school district as external institutions compete to pull teachers, parents, and students in different directions, thus fragmenting the classroom itself. Schools are subject to more external interventions, and they must clear more bureaucratic and political hurdles to accomplish objectives. For example, even though leadership by a talented principal is important for effective education, some principals spend as much or more time outside of school attending administrative meetings than inside their school helping teachers and students. One outcome of vertical fragmentation, then, is that off-site officials can diminish the effectiveness of on-site factors by pulling key on-site personnel off site.

Vertical Inequity

Intergovernmentalized education also aggravates imbalances in benefits awarded to classroom teachers and non-classroom administrators, some of whom have

never been in a classroom. Such imbalances signal teachers that upward professional mobility lies in management, not instruction.

Being the most valuable professional players in education, one would think that classroom teachers would get the biggest salaries. Not so. A teacher who wants to make a better living in education is well advised to become an administrator, specialist, lobbyist, consultant, state legislator, or education professor. The financial incentives are all on the side of moving out of the classroom and up the administrative and intergovernmental ladders. Institutional proliferation further multiplies the non-classroom opportunities available.

The perks are up the ladder too. How many district, regional, state, and federal education administrators work in offices with no air conditioning? Some. How many teachers and students work in classrooms with no air conditioning? Many. Who is more likely to have a private office, and with a carpet and telephone? Who is more likely to attend, at public expense, high-level meetings on improving education held in interesting places? Yet, who is more likely to be assaulted by a troubled student? Who is more likely to comfort a distressed child?

Information Overload

Institutional proliferation has also produced a flood of information. The number of books, articles, papers, reports, speeches, seminars, conferences, and audiovisual materials on education produced in the last 30 years is astounding. Consider, for example, the *Resources in Education* index for January-June 1991 published by the Educational Resources Information Center. ERIC, established in 1966, is operated by the U.S. Department of Education. There were 6,375 new entries for this one six-month period—more than 50 documents per school day.

This information, however, is not readily translated into school effectiveness, partly because some of it has only marginal value, and partly because no teacher or parent can cope with it. How does a teacher rationally choose from among 99 ways to teach fractions? Decisions to implement “the latest research” are frequently made by administrators and professors who have time to attend to information because they are not in the classroom. Given their influence over the intergovernmental and professional networks of decisionmaking and communication, actors outside of the classroom are in strong positions to channel fads to classrooms. Hence, bizarre ideas sometimes infect entire school systems.

This flood of information may also undermine the confidence of some parents and teachers by creating the illusion that the experts know better. Successful teachers are regularly urged to adopt new methods to be more successful. Parents, led to believe that their ideas are old-fashioned, are encouraged to leave education to the experts. For some parents, this leads to inflated expectations and more demands on schools; for others, it leads to disclaimers of responsibility for their children’s behavior.

Yet, the quality of some of today’s expertise is questionable. Much time and money, for example, have been spent on improving textbooks. Textbook production is

now an expensive and elaborate process involving teams of experts. Even so, student achievement has not increased accordingly, and the Texas Board of Education found it necessary in early 1992 to fine several publishers \$239,500 for more than 3,700 errors discovered in several U.S. history texts adopted for the state’s schools.²⁵

State Lobby Building

Another outcome of intergovernmentalized education has been the transformation of state teachers’ associations into powerful lobbies, especially in state capitals. Until the early 1960s, most of these organizations were politically inert social service associations. Indeed, the principal rationale for creating independent school districts in the 19th century was to shield education from the partisan political and patronage pressures of general government. Although we maintain independent school districts in form today, their independence has been curtailed by intergovernmentalization, which has pulled them back into the partisan political process, though not that of nearby local governments, but of the state and federal governments.

As the state and federal governments increased their roles in education financing and policymaking after the 1950s, teachers’ organizations, representing the nation’s single largest group of public employees, found both opportunities and incentives to lobby in the state capitals and Washington, DC. Today, in most states, teachers’ organizations are the most influential interest groups in state politics.²⁶ The single largest, or one of the largest, contributors to state legislative and gubernatorial candidates is often the political action committee of the state teachers’ organization. In turn, there has been an increase in teachers serving in legislatures since the 1960s. Some states protect the jobs of teacher-legislators, and a school can sometimes save money by paying a substitute at a lower rate while the classroom teacher is off on legislative business.

The increase in education lobbying and teacher-legislators has corresponded with more state spending and mandates, but not with increased student achievement. This should not be surprising because lobbying organizations exist to benefit their members. Teachers’ organizations are naturally interested in more state and federal spending and mandates that override less favorable tax and policy decisions made by local school boards.

These lobbying organizations reflect the contradictions that develop in intergovernmentalized education. For example, they generally support:

- Higher teacher pay and benefits
- Greater job security
- Better retirement benefits
- Smaller classes
- Higher taxes and spending for education
- Statewide fiscal equalization

but oppose:

- Teacher competency testing
- Merit pay
- Alternate teacher certification
- Student performance assessment testing
- School report cards
- School choice.

There is nothing inappropriate about teachers lobbying for higher pay and benefits in a democratic society, and given the importance of education, compensation should be commensurate with teachers' key role in schooling. However, because lobbying organizations thrive when they benefit their members (i.e., teachers), not nonmembers (i.e., students and parents), the lobbying incentives are to maximize members' benefits and minimize threats to those benefits. Policies that tie benefits to teacher merit and competency or to school and student performance render benefits less secure and more variable among members, thereby weakening the organization's unity and political clout. Noncentralized policymaking by local school boards poses a similar threat, as well as a divide-and-conquer danger to the organization.

Hence, there are strong incentives to (1) criticize outcome measures (e.g., if we test students, teachers will only teach to the test), (2) base benefit claims on input measures of resources and professionalism (e.g., spending and graduate school education credits), (3) link benefit claims to the public interest (e.g., better paid teachers produce better educated students), and (4) centralize decisionmaking in the state capital and, failing that, the federal government.

Intergovernmental Supports For Effective Education

Other facets of intergovernmentalized education, especially grants-in-aid and unfunded mandates, could be examined, but the above points raise enough concerns about intergovernmental approaches to education. An underlying problem is that the intergovernmentalization of nearly all domestic policy has largely ignored the diverse characteristics of different policy areas. In environmental protection, for example, a state or the federal government can mandate both exact levels of pollution reduction and their attainment by local governments over a specified period, so long as sufficient money and technology are available. In education, a state can mandate the teaching of algebra but not its attainment as a learned skill by students. We fine and imprison polluters, therefore, but not teachers whose students fall short of mandated learning objectives. Thus, intergovernmental behavior that is effective in one policy area may be ineffective in another area.

Federal Roles: Vision, Not Provision

Defining useful roles for the federal government in K-12 education is difficult, partly because the U.S. Constitution does not envision a direct federal role. However, the federal government has supported education since the Northwest Ordinance of 1787. History suggests a valuable federal role defined in terms of the basic parameters and capacity of education: guaranteeing fundamental rights, protecting equal opportunity, targeting resources to ensure essential capacities for education, and affirming a compelling normative vision of education.

Given the highly intergovernmental nature of domestic policy, the federal government must now, by necessity, coordinate its myriad health, welfare, housing, and other social policies with education, or at least ensure that these

policies do not adversely affect education. A related role lies in a rarely mentioned goal of the President's "America 2000 Education Strategy," that is, reducing federal regulatory constraints to allow more flexibility in state and local uses of federal resources.

It is often said that the federal government should provide information, especially about school performance; sponsor research; and underwrite experiments and demonstration projects. Such efforts, however, have had mixed results and have not, thus far, stemmed the decline of education.

Federal-aid efforts also need reexamination. *The National Defense Education Act of 1958*, for example, was intended to make American math, science, and foreign language instruction the best in the world. Today, student achievement in these subjects is among the worst in the world. Title I of the *Elementary and Secondary Education Act of 1965* (ESEA) was aimed at disadvantaged students. The act helped many children, but, as a group, the "disadvantaged" have become an "underclass" falling farther behind educationally in a technologically demanding society. Title V of ESEA, which funded state education agencies, was more successful. The agencies grew in size and power.

State Roles: Provision, Not Production

Being mandated by their constitutions to provide for education, states occupy the keystone position in education. They determine most of the organization, rules, standards, and financing of education. Historically, states have met their constitutional obligation by providing for education but not producing it. Production has been delegated to local governments, usually independent school districts—logical sites, given that the producers and consumers of education are teachers, students, and parents.

As education has become more intergovernmental, however, states have moved more into production. This role is problematic because it can lead to a General Motors model of education in which off-site headquarters staff manage production by money and mandates while on-site production staff go through the assembly motions. In turn, two giant forces, management (state officials) and labor (teachers), contend over production and benefits, all the while producing more costly and less competitive products. At least with automobiles, consumers can switch to Japanese models. Few parents can switch their children to Japanese schools.

States need to return to basics by defining their roles in terms of the producers of education and in terms of the characteristics of academically effective K-12 schools, rather than mandating "one best system."²⁷ Given the school-based nature of effective education, states need to redefine their intervention to concentrate on provision decisions, leaving production largely to the producers. State provision decisions are crucial for the producers because states determine such matters as the organizational choices available to producers, the incentives that drive the system, the methods and equity of school financing, and the standards of quality expected from schools. In addition, given the variability of schools and their students, the state

may have to perform different roles for different places, persons, and facets of K-12 education.

Of course, states are also responsible for guaranteeing rights and equal opportunity, ensuring essential capacities for education, and affirming a compelling vision of education. Even more than the federal government, states, as the legal administrators of most of the nation's social programs, bear principal responsibility for coordinating state and federal health, welfare, housing, crime, and other social policies with education.

The Missing IGR Link: Local Service Integration

There is one area in which education may not be intergovernmental enough, namely, relations between schools and neighboring local governments. Whether or not a school district is independent, schools must interact with surrounding county, municipal, township, and special district governments. Teachers, students, and parents must work with social workers, health care professionals, police officers, housing officials, and so forth. Yet, each policy field is encased in its own intergovernmental pillar, such that local officials often communicate upward to their state and federal counterparts more than they communicate across town to each other.

These arrangements pose barriers to school-based service integration. Such integration requires, among other things, coordination by the people who are at the point where integration is needed; yet, the various agencies, including schools, that should engage in coordination are often either reluctant or legally unable to cross jurisdictional lines.

Conclusion

The rise of intergovernmentalized education and the decline of student achievement suggest that traditional intergovernmental approaches to education reform have produced deficiencies in the institutional arrangements for education and distortions in the environment of education. Despite the school-based nature of effective education, intergovernmental links occur least where they should occur most, namely, horizontally among local service agencies. Given the structure of power, however, intergovernmental links occur most where they should occur least, namely, vertically. Hence, responses to the "crisis in education" continue largely along traditional intergovernmental lines. Corrective action can be taken by recognizing the characteristics of academically effective schools and then organizing the necessary intergovernmental arrangements around them so as to support dedicated teachers, sustain student learning, and help parents realize the best for their children.

Notes

¹ National Commission on Excellence in Education, *A Nation at Risk: The Imperative for Educational Reform* (Washington, DC, 1983).

² National Education Goals Panel, "First Report on Six National Education Goals Released" (Press Release, September 30, 1991), p. 7.

³ Kenneth J. Cooper, "SAT Scores Drop Fourth Straight Year," *The Washington Post* (August 27, 1991).

⁴ "Testing School Reform," *The Washington Post* (August 28, 1991). The editorial also noted: "A few people have attempted to dismiss this year's disheartening results with vague references to 'demographic' factors, presumably referring to minorities. On the contrary, white students' scores declined this year as much as or more than blacks' and Hispanics'. Over the past 15 years, minority students' scores have generally risen while white students' have fallen. The main trend is located, specifically, among middle class white kids."

⁵ Thomas Toch, "The Exodus," *U.S. News and World Report*, December 9, 1991, pp. 67 and 73.

⁶ John H. Fund, "Milwaukee's Schools Open to Competition," *The Wall Street Journal*, September 4, 1990.

⁷ Harvey A. Averch et al., *How Effective is Schooling?* (Santa Monica, CA: The Rand Corporation, December 1971), p. 155.

⁸ Marjorie Davies, "Revitalizing Public Education: An Innovative Proposal for Choice," *Cities & Villages: The Journal of the Ohio Municipal League* 39 (March 1991):9.

⁹ Averch, *How Effective is Schooling?* p. 155.

¹⁰ See, for example, Gary Putka, "Back to Basics: Education Reformers Have New Respect for Catholic Schools," *The Wall Street Journal*, March 28, 1991.

¹¹ Kenneth J. Cooper, "U.S. Youth Fail Math Test: District Eighth Graders Rank Near Bottom," *The Washington Post*, June 7, 1991.

¹² Albert Shanker, "The Higher Education Crisis," *The New Republic* 205 (January 6, 1992): 1.

¹³ Peter Schrag, "Savage Equalities," *The New Republic* 205 (December 16, 1991): 18 20.

¹⁴ Richard Vigilante, "The Core of the Big Apple's Budget Woes," *The Wall Street Journal*, June 20, 1991.

¹⁵ Toch, "The Exodus," p. 71.

¹⁶ Davies, "Revitalizing Public Education," p. 9.

¹⁷ Interview: Michael A. Pagano, Miami University, Oxford, Ohio, January 9, 1992.

¹⁸ Gina Davis and Elinor Ostrom, "A Public Economy Approach to Education: Choice and Co-Production," *International Political Science Review* 12 (October 1991): 324.

¹⁹ Thomas Toch, "Lost in Class: How Oversize Schools Fail Our Students," *The Washington Post*, October 20, 1991.

²⁰ Kenneth J. Cooper, "New Superintendents Wanted in 17 Cities," *The Washington Post*, December 16, 1990.

²¹ Averch, *How Effective is Schooling?* p. 156.

²² Wayne King, "Florio's Education Panel Proposes Changes, at a Hefty Price," *The New York Times*, January 9, 1992.

²³ Richard F. Elmore and Susan Fuhrman, "The National Interest and the Federal Role in Education," *Publius: The Journal of Federalism* 20 (Summer 1990): 155.

²⁴ *Ibid.*, 157.

²⁵ "Texas Fines History Text Publishers," *The Washington Post*, January 12, 1992.

²⁶ Clive S. Thomas and Ronald J. Hrebenar, "Nationalization of Interest Groups and Lobbying in the States," *Interest Group Politics*, in Allan J. Cigler and Burdett A. Loomis eds., 3rd Ed. (Washington, DC: CQ Press, 1991), p. 68.

²⁷ David B. Tyack, *The One Best System: A History of American Urban Education* (Cambridge: Harvard University Press, 1974).

Federal Anti-Crime Efforts: The Fallout on State and Local Governments

Vivian E. Watts

Congress recessed for 1991 without passing an anti-crime bill. There is little agreement on whether this is a net loss. Advocates for a number of highly charged issues, including gun control, extending the death penalty, limiting death row appeals, authorizing illegal searches, as well as enacting new initiatives in the war on drugs and youth gangs, express dismay over lack of congressional action. A more jaundiced view reflects that this would have been the sixth major anti-crime bill since 1982, each of which has had less effect than its accompanying rhetoric promised, in no small part because at least 90 percent of the war on crime is fought by the states and localities, not by federal action.

Within these differing perspectives, one aspect of federal anti-crime legislation that has received very little public debate has been its trend toward a significant shift in intergovernmental power. Some of the intergovernmental concerns involve basic issues of federalism, state and local budget impacts, mandates, and public confidence. The more light that is shed on these issues, the more the inevitable next round of federal anti-crime legislation can be shaped toward the most effective partnership.

Federalism

The only federal crime defined in the U.S. Constitution is treason against the United States. Criminal justice was seen by the founders as a function of the states, reflecting an historic fear of a central police authority. However, increasingly in the last 60 years, numerous acts of the Congress have cataloged more than 3,000 crimes that can be prosecuted in the federal courts. The anti-crime proposals passed by one or both houses of Congress in 1991 included even more incentives to move more criminal prosecutions out of the state and local criminal justice systems into the federal system.

Increasing Mandatory Federal Sentences. Some of the provisions for increased penalties included:

Firearms in commission of a violent or drug-related crime:

- 10 years for possession;
- 20 years for discharge;
- 30 years for use of silencer or machine gun; and
- 20 years for possession if it is a second offense.

Drugs:

- Higher penalties for sale at truck stops and highway rest areas; and
- 10 years for selling drugs to minors or using minors in drug activities.

Career Criminals:

- Life without parole for third conviction of a drug and/or a violent crime.

Drunk Driving on Federal Lands:

- 1 year if a child (under age 18) is in car;
- 5 years if serious bodily injury to a child; and
- 10 years if death occurs.

Death Penalty:

- Extended to more than 50 crimes, with a House floor amendment reducing the burden of proof to "reckless disregard for human life" rather than "intent to kill."

Shifting Prosecution from State to Federal Courts.

Whether these crimes—or others in the U.S. Code—are prosecuted as federal or state offenses does not depend on whether a federal law enforcement officer makes the arrest. Local law enforcement officials and prosecutors may urge the U.S. District Attorney to prosecute local arrests, especially if the penalty under state law is significantly less than the federal penalty. Although most U.S. District Attorneys are not eager to add to their caseloads, certain cases or types of cases may have great political or personal appeal. Such prosecutions helped fuel a 229 percent in-

crease in the number of drug cases filed in federal district courts since 1980, compared to only a 56 percent increase in the total number of criminal cases.

Direct extension of federal law enforcement was encouraged further in 1991 legislative proposals through the creation of targeted programs for "drug emergency areas" and for rural drug prevention. Rural Drug Enforcement Task Forces were to have heavy representation of federal law enforcement authorities and cross-designation of federal officers to enable them to enforce state laws. The "drug emergency areas" provision authorized the President to "direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law" in support of state and local efforts.

Nationalizing Capital Punishment through Federal Jurisdiction. There has been little public concern about substituting federal action for local prosecution or for state sentencing. Overburdened state criminal justice systems are not inclined to argue that they should have more cases. However, the 1991 anti-crime legislation would have made it possible to impose the death penalty in the 14 states plus the District of Columbia where it does not now exist by shifting cases to federal jurisdiction. Death penalty opponents regarded this as a direct affront on state sovereignty.

In particular, one successful floor amendment would have established federal jurisdiction over a crime committed with a firearm, simply because the firearm passed across state or national borders at any time since its manufacture. This provision had the potential for moving virtually any firearm homicide case from a state court into federal court.

Limiting Criminal Habeas Corpus Appeals under the U.S. Constitution. It should be noted, however, that expansion of the federal presence in criminal justice has been directed solely toward increased law enforcement in the last decade. It has not represented a desire to centralize all criminal justice issues. In fact, the 1991 provisions on habeas corpus (a petition to a court to review the legality of a person being detained) and the exclusionary rule (need for a search warrant) would have reduced federal court review of state law enforcement activities and set the stage for placing the interpretation of such matters back under state constitutional protections and state appellate court rulings.

Since every state constitution has a bill of rights that is at least as strong as the federal Constitution's, the shift back to the states need not reduce effective legal action in the long term. However, in the near term, these state provisions have seldom been used as the basis for appeal; therefore, little case law has been developed applying these state protections.

Those who argue that criminals abuse the appeals process cite a 20-fold increase in federal habeas corpus petitions since 1945, which is far in excess of the four-fold increase in the nation's prisoner population. Those who believe that current protections afforded by federal appeals should be kept in place, especially for inmates facing the death penalty, point out that the 20-fold increase encompasses actions of the 1950s and 1960s that are not representative of the current situation. In the last 15 years, the number of federal habeas corpus petitions has increased at only half the rate of the increase in prison populations.

Proposed changes to the exclusionary rules of evidence reflect recent Fourth Amendment rulings by the U.S. Supreme Court. Under their constitutions, states can maintain exclusionary rule provisions that are more limiting than the good-faith exception that the U.S. Supreme Court has upheld in interpreting the federal Constitution. However, for a case involving a questionable search, the 1991 anti-crime legislation may provide the opportunity for local law enforcement and prosecutors to circumvent stricter state rules by getting a U.S. district attorney to take the case into federal court.

Budget Impacts

It has been almost as difficult for most state legislators to vote against increased criminal penalties as it has been for members of Congress. Changes in federal criminal laws are fully covered in the news media. As a result, these laws often become the measure by which citizens judge state and local officials.

This process has created an upward spiral. State elected officials, prosecutors, and judges have frequently acted to match tough federal statutes, in the same way that members of Congress have looked at individual states that have the toughest penalties for ways to enhance federal penalties, which in turn influences still more states to follow suit. The spiral also is fed by the mobility of certain types of criminal activity, creating the fear that criminals will move into any state with lesser penalties and/or lesser enforcement.

This upward spiral of longer sentences and increased criminal penalties has been largely responsible for the 15-year record growth in state and local correctional budgets, outstripping even the rate of growth in Medicaid funding during most of those years. Because of these costs, state and local officials increasingly are expressing concern about federal anti-crime legislation. They point out that members of Congress and the President get political credit for being tough on crime, even if the new laws are seldom enforced through the federal criminal justice system and little impact is felt on the federal budget. In fact, the states and localities bear the brunt by having to increase their criminal justice expenditures to meet heightened public expectations. In contrast, when states increase criminal penalties, they have no choice but to enforce those laws and pay the full costs from prosecution through imprisonment out of current tax revenues.

Federal Funding. Federal legislation has included some funding for state and local criminal justice activities. There are two perennial issues, however: How is it targeted? Is it enough?

Intergovernmental funding of criminal justice is affected both by the uneven distribution of criminal activity and by differing community standards. The incidence of crime varies significantly on a per person basis from region to region:

UCR Crime Rate/100,000 Population

West	6,405
South	5,256
National Average	5,206
Midwest	4,657
Northeast	4,627

State and local response to crime also varies. The following data reflect regional differences in the likelihood of arrest and conviction in relation to the number of crimes reported:

Penal Control/100 Crimes Reported

South	28.5
National Average	24.0
Midwest	20.8
Northeast	20.7
West	18.8

A greater likelihood of arrest and conviction will substantially increase total state criminal justice spending as much as an increase in crime. At issue, then, is whether federal funding should support a general increase in law enforcement activity in all states and localities, or whether it should be targeted to places where crime is the highest.

The question of whether federal funding is enough to match federal policy initiatives is usually given a resounding "NO." For example, in testimony before Congress in May 1990, an NCSL spokesperson pointed out that the \$6 million included in the President's "Crime Control Act of 1989" for states agreeing to adopt mandatory sentencing for certain firearm offenses would allow for the construction of only 2.2 beds per state, without even considering the annual operating cost per inmate.

Federal Mandates and Services

The amount of debate on mandates is often directly proportional to the amount of funding they include. For example, cities, counties, and states objected strenuously to a federally imposed "Police Officers' Bill of Rights" that set standards for internal investigations of police activity. The National League of Cities described its provisions as reading like a local personnel manual.

The amount of debate on establishing a nationwide computerized system of background checks for firearm purchases was more subdued. The difference hinges on the fact that a state of the art data bank represents an improvement that many states would like to make, money was authorized to help those states computerize, and the effect on states that have systems was unclear. However, these considerations did not overcome the classic issues that arise so often under federal mandates, even when they are partially funded: (1) the funding may not be enough, (2) subsequent agency regulations have the potential to significantly increase the costs on all states, and (3) failure to comply would incur a significant withholding of other state criminal justice funding.

An alternative to mandating state and local programs is for the federal government to take on the responsibility directly. Such initiatives in the 1991 anti-crime legislation included establishing federal regional drug treatment prisons and boot camps for state prisoners, training law enforcement officers, and increasing federal law enforcement through "drug emergency areas" and rural drug task forces. Such proposals come back to basic questions: Is the current crime problem such that federal action must be substituted for state and local responsibility? Is it inappro-

prate to be concerned about intended constitutional constraints on a centralized police power?

Public Confidence

The final focus of intergovernmental concern could have been given several different labels, such as fiscal impact, system coordination, or, simply, effectiveness. However, public confidence ultimately encompasses all of these issues because the public expects results. However, short-term results depend not only on new laws being placed on the books but on enforcement and, most importantly, on carry-through. Further, many argue that long-term results depend on prevention and treatment.

Although some treatment issues were addressed, the 1991 anti-crime bill was weighted toward law enforcement, that is, catching criminals with the assumption that they will be locked up to serve tough mandated sentences. For example, the proposed scholarship assistance could be repaid only by working in a state or local police force after graduation, not by working as a probation officer, a correctional guard, or a court employee.

The only attention given to the impact on the courts, prosecution, and public defense was Senate language asking the Judicial Conference to recommend additional judgeships based on workload models developed by the General Accounting Office rather than on historical data. (The legislative language noted that it has taken 502 days on average to fill federal judicial vacancies.)

Even a proposed "National Commission to Support Law Enforcement" was concentrated on police officials. No judicial, correctional, or state and local elected officials were stipulated in its makeup. This is in contrast to the 1965 Presidential Commission on Law Enforcement and the Administration of Justice, which was cited as a model for the 1991 commission, and in contrast to the recommendations of the International Association of Chiefs of Police conveyed to President Bush in 1990.

Thus, public confidence in government's ability to deal with crime is tested in several ways because of the lack of consideration of a broad range of intergovernmental issues in federal anti-crime legislation:

- *Constitutional responsibility:* The fact that federal courts account for only 4 percent of all felony convictions (this excludes traffic, juvenile, and petty crimes, such as disorderly conduct and shoplifting) means that changes in federal law may have little effect on the street.
- *Interagency, interbranch, and intergovernmental impacts:* Assuming state and local governments did follow the federal lead, heavy emphasis on enforcement without addressing the ability of the rest of the criminal justice system to respond raises public distrust of revolving door justice.
- *Intergovernmental funding:* Funding has not been addressed. There were no proposed budget allocations for the federal anti-crime provisions had they passed. Thus, the potential for tough laws without follow-through existed.

- *Budget impacts:* State and local officials are increasingly less able to appear as concerned as their congressional counterparts in fighting crime with new legislation. They must fund the results of past legislation. It will take leadership at all levels to help the public sort through the true cost of crime.

There are no simple answers. However, as dealing with crime is one of the most critical budget issues facing state and county governments, one of the most debilitating issues facing our nation's major cities, and one of the potentially most significant areas of intergovernmental change, ACIR is vitally interested. A report on the role of general government elected officials in the criminal justice system will be released this year. Informed debate among county council members, mayors, members of Congress, state legislators, governors, and the office of the President is essential to build public confidence in meeting the challenge of crime.

Vivian E. Watts is project director of the Criminal Justice study at ACIR.

Building Consensus on Development Issues

(continued from page 22)

While there are value differences in many growth management conflicts, these problems tend to be more distributional. As such, they may be amenable to a negotiation process. Mediators know that, in spite of basic value differences, issues can be reframed to find areas of mutual interest.

How can the process deal with the regional nature of housing, economic development, and natural resource problems? At one level, this is a representation issue—who are the affected parties? The discussions may have to be widened beyond the local government, developer, and community members. Mediators often can identify those interests. For example, in an EPA action against the city of Sheridan, Wyoming, for water quality violations, the mediator found that it was a growing regional problem, and brought into the negotiations state and regional agencies and the state legislature. The resulting agreement on water treatment will serve a broader area with thousands of residents over the coming decade.

Some states have established special regional bodies or planning review processes. Other states have set up special commissions to deal with issues related to water basins or ecosystems. In Florida, for example, special water management districts govern uses within naturally defined water basins. Conflicts often emerge when these natural boundaries cross jurisdictional lines.

Conclusion

Consensus-building approaches are not replacements for the traditional methods of resolving disputes. They are

creative supplements that engage the affected interests within a community in a legitimate public policy debate. These are not winner-take-all situations, but consensus-based negotiations in which the agreements must satisfy all participants' interests. These agreements may be converted into the formal political and legal structures as statutes, ordinances, or regulations; as consent agreements; as conditions for permits and licenses; and as contracts.

These approaches have the potential for broadening the options available to those seeking an acceptable balance between economic development and environmental conservation. This delicate balance can allow for progress in harmony with the environment and equity in the allocation of costs and benefits.

Barbara Sheen Todd is chair of the Pinellas County Commission, Florida, and second vice president of the National Association of Counties. She also is a founding member of the advisory council of the Florida Growth Management Conflict Resolution Consortium.

Robert M. Jones is director of the Florida Growth Management Conflict Resolution Consortium.

This article is adapted from "A Delicate Balance: Building Consensus and Resolving Conflict on Economic Development and Environmental Protection in Growing Communities," presented at the conference on Federalism: Problems and Experiences in Moscow, December 19, 1991.

Notes

- ¹ See John M. DeGrove, "Growth Management and Governance," in *Understanding Growth Management: Critical Issues and a Research Agenda* (Washington, DC: The Urban Institute, 1989).
- ² Gregory Buntz, "Dispute Systems Design: Integrating Policy Making and Dispute Resolution" (Stockton, California: University of the Pacific, School of Business and Public Administration, 1990). Unpublished.
- ³ Lawrence Susskind and Jeffrey Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* (New York: Basic Books, 1987), pp. 35-80.
- ⁴ Michael Elliott, "Conflict Resolution," in Anthony Catanese and James Snyder, eds., *Introduction to Urban Planning*, 2nd Ed. (New York: McGraw Hill, 1988).
- ⁵ See Barbara Gray, *Collaborating: Finding Common Ground for Multiparty Problems* (San Francisco: Jossey-Bass, 1989), pp. 197-205.
- ⁶ Buntz, pp. 29-30.
- ⁷ Lawrence Susskind, "Environmental Mediation and the Accountability Problem," *Vermont Law Review* 6 (1981): 1-47; and Michael Elliott and R. Gregory Bourne, "Resolving Development Disputes through Conflict Resolution and Collaborative Problem Solving," in Susan Robinson, ed., *Financing Growth* (Chicago: Government Finance Officers' Association, 1990), p. 191.
- ⁸ Susskind and Cruikshank; Elliott and Bourne; Susan Carpenter and William Kennedy, *Managing Public Disputes: A Practical Guide to Handling Conflict and Reaching Agreements* (San Francisco: Jossey-Bass, 1988); and Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (San Francisco: Jossey-Bass, 1987).

State ACIRs and County Research

Beverly Cigler

The research roles of most state advisory commissions on intergovernmental relations (state ACIRs) are limited, given their small staffs and budgets as well as sometimes narrow mandates for research.¹ Some state ACIRs, however, produce valuable reports that should be of widespread interest. This article outlines some of the recent state ACIR research on counties, which are growing in importance in many states because of their regional scope and increasing service delivery responsibilities, especially in human services and the environment.² The information came from telephone interviews conducted with state ACIR executive directors in January and February 1991 and a reading of recent state ACIR publications.

Very few of the state ACIR directors interviewed claimed that their organizations do county-specific research. Florida, New Jersey, and South Carolina, however, have produced a number of county studies. Reports that relate in part to counties have been completed in Tennessee and New York, while several universities in Ohio produced a report for the state commission with national implications. These reports highlight important topics for counties, such as fiscal difficulties, tax-base sharing, economic impacts, functions and structures, and planning for the future.

The Revenue Squeeze on Small Counties

Florida's ACIR (FLACIR) recently published *Florida's Small Counties: A Profile of Service Demands and Revenues* (1991), which focuses on the limited revenue generating capacity of small counties (i.e., those with less than 50,000 population) to meet expanding service needs. County service delivery responsibilities have increased dramatically for comprehensive planning, water and sewer, solid waste, industrial development, and public safety (including fire control, detention and corrections, and ambulance and rescue). At the same time, there has been a decrease in the number of small counties providing health and mental health, employment programs, housing, libraries, and parks and recreation programs. Despite that drop, the other increases suggest that Florida's small counties are experiencing or facing the prospect of becoming comprehensive service providers.

Many of the service demands on Florida's small counties are related to state and federal mandates. Examples include jail construction and environmental protection (i.e., density requirements for septic tanks, solid waste plans, and recycling programs). Federal clean water, safe drinking water, clean air, and resource conservation and recovery mandates also contribute to the small county service dilemma. County contributions to health care for indigent patients are mandated by the state as well. The 1985 Florida comprehensive planning and land development act also increases the counties' costs of preparing plans and regulations. Finally, small counties are especially hard hit as a result of their ultimate responsibility for covering salary deficiencies for constitutional officers, which is another state mandate.

The state ACIR directors documented that county governments in general are experiencing a service demand explosion, and that this trend likely will continue. This development may pose problems, especially for small counties because of their dependence on intergovernmental revenues and their relative lack of flexibility in turning to alternative revenue sources. In Florida, as elsewhere, the primarily rural character of small counties precludes them from taking advantage of revenue generating options available to more populated jurisdictions. Small counties, for example, find that establishing enterprise funds usually is not economically feasible. Similar conclusions are made for various types of licenses, such as an occupational license tax on businesses, occupations, and professions, or impact fees (which are expensive to administer).³

The Florida report examines potential additional revenue sources as a remedy for small counties facing fiscal constraints. The study also looks at the role of the state in

maintaining the fiscal health of local governments, including providing help with administrative shortcomings among small counties (e.g., assistance with financial management).

The data for the Florida report were collected through FACIR's recently developed Local Government Facsimile Network (FAXNET), a tool to aid in estimating the impact of proposed legislation affecting counties and municipalities. With FAXNET, FACIR communicates quickly and efficiently with local government members. Although the methodology is limited because not all governments have FAX machines, it does give FLACIR a relatively good idea of the impacts that certain bills would have on local governments.

Tax-Base Sharing

Ohio's State and Local Government Commission (SLGC) furnished a research grant to Wright State University and other cooperating universities (Akron, Toledo, Ohio, Cincinnati) to produce a monograph entitled *Tax Base Sharing: An Evaluation of Its Use and Its Potential in the State of Ohio* (1990). The document should be of interest to anyone seeking creative economic development approaches for meeting infrastructure and service needs. The report focuses on several Ohio initiatives, including a proposal in Montgomery County (part of the Miami Valley region of southwestern Ohio) to spur economic development through countywide sharing of the sales tax base. This proposal is the most interesting tax-base sharing initiative since Minnesota's Fiscal Disparities Act of 1971. The report also evaluates regional cooperation ventures nationally.

Tax Base Sharing also includes a study of the 1 percent county sales tax levied since 1983 and a plan for sharing the tax revenue in Washington County, Ohio. Unlike Minnesota's seven-county tax-base sharing model for the Twin Cities metropolitan area, which attempts to reduce fiscal disparities and induce regional cooperation, Ohio's Washington County program is concerned only with infrastructure improvements. The county is primarily rural, and is a good example of the increased cooperation in rural counties that the state ACIR directors mentioned during telephone interviews.

There is renewed interest in tax-base sharing among researchers and practitioners concerned with prospects for regional cooperation to counteract destructive interjurisdictional competition. The state ACIR directors pointed to changes in many states regarding county roles in promoting reasonable and environmentally sound land use practices, coordinating economic development, and meeting increased service and infrastructure needs.

The Ohio report explains tax-base sharing and outlines state legal restrictions on formulating sharing arrangements among local governments. Survey results from a study of experience, knowledge, and perception of tax-base sharing in Ohio local governments are presented, along with data on several municipal initiatives. Despite obstacles to political acceptability and lingering questions about the outcomes, tax-base sharing likely will be an option examined by many counties and regions.

Economic Impact Studies

The Tennessee ACIR (TACIR) produced reports on specific counties as the result of a legislative directive to

investigate the economic impact of the Saturn automobile plant. Although primarily analyses of questionnaires completed by thousands of potential plant employees, the studies made use of the Tennessee Industrial Location Impact Model (PC TILI) developed by TACIR and the University of Tennessee. The model was designed for personal computers to assist communities in understanding the fiscal impact of a major new development so they can estimate what public services will be required and at what cost. TACIR also published the *Tennessee County Data Book* (1989), which contains socioeconomic, fiscal, and infrastructure data.

Functional Studies

The New Jersey Commission on County and Municipal Government (formerly the County and Municipal Government Study Commission) has produced the largest number of county research reports of any state ACIR, beginning in the late 1960s. *The Delivery of Human Services within New Jersey* (1990), *Corrections Policy for the '90s* (1989), *Services for the Elderly: Current and Future Needs* (1988), and *Solid Waste Management in New Jersey* (1987) are impressive monographs that thoroughly examine the issues for which counties are most hard-pressed in terms of service need.

The New Jersey studies are examples of state ACIR research at its best. Following the theme of an early report, *Creative Localism: A Prospectus* (1968), the commission systematically and comprehensively studied patterns of planning, financing, and performing governmental functions, with the aim of developing more effective approaches for municipalities and counties. These reports offer suggestions for statutory amendments and changes in administrative practices and policies. Each monograph is a well documented review of the problems within a particular policy area from both a national and a New Jersey perspective, backed by sound data analysis.

Structural Studies

The New Jersey commission's functional studies dovetail with its series of structural studies dealing with county government, joint services, consolidation, and municipal government forms. Similarly, the New York Legislative Commission on State-Local Relations (LCSLR) contracted with the Albany Law School of Union University to produce a 380-page monograph, *New York's State-Local Service Delivery System—Legal Framework and Services Provided* (1987).

Planning for the Future

The South Carolina ACIR (SCACIR) also has produced several county related publications. *Local Intergovernmental Cooperation—The State of the Art in South Carolina* (1987) reports findings from a mail survey of municipalities and counties. It offers good baseline information for state agencies in their efforts to promote cooperative ventures among local governments. (Ohio's SLGC did a similar study in 1988, *Cooperative Ventures: Strategy for the Future*.) SCACIR published *Intergovernmental Innovation in South Carolina*, a review of practices across the state, which includes an examination of Beaufort County's administrative reorganization process; its char-

tering and directing of agencies, boards, and commissions; and a targeted community outreach program. The report also reviews a "roving" public administrator program for five rural towns in three counties in a region of the state that has increased service demands and only part-time elected officials. The report also discusses the state's infrastructure planning project.

Roles and Relationships: South Carolina Government in the Year 2000 (1987) sets forth demographic and economic projections for various indicators. The data are tied to long-term issues and trends. The report looks at the aging population, changes in labor force composition, a new business climate for industrial growth, metropolitan area growth, infrastructure needs, the effects of fiscal shifts produced by the "new federalism," alternatives for government service provision, and environmental issues. Also included are recommendations for state, city, and county government action.

The South Carolina ACIR has published several follow-up reports that deal with the changes outlined in the earlier study. *Planning for South Carolina's Future* (1989), for example, calls for a more cohesive, coordinated, and extensive planning process for the state, regional, and local governments. *Local Government Consolidation in South Carolina: Promise Unfulfilled* (1988) is a literature review of consolidation efforts in the state and a review of how to enact consolidations. In effect, SCACIR's research agenda offers policy leaders a method for dealing with growth and development.

Conclusion

Several state ACIRs have developed a research niche. This review demonstrates how county governments in some states are served by that research. Other documents not mentioned in this review have been produced that relate to counties. While no attempt is made in this review to be comprehensive, the publications mentioned are representative of those available.

Beverly Cigler is professor of Public Policy and Administration at Penn State Harrisburg. This article was made possible in part by a grant from the Center for Rural Pennsylvania, a Legislative Agency of the Pennsylvania General Assembly.

Notes

¹ For overviews of the roles, responsibilities, and capabilities of state ACIRs, see: Deborah D. Roberts, "Carving Out Their Niche: State Advisory Commissions on Intergovernmental Relations," *Public Administration Review* 49 (November/December 1989): 576-580; and Andree E. Reeves, "State ACIRs: Elements of Success," *Intergovernmental Perspective* 17 (Summer 1991): 12-13. See also U.S. Advisory Commission on Intergovernmental Relations (ACIR), *State-Local Relations Organizations: The ACIR Counterparts* (Washington, DC, 1990) and *Directory of State-Local Relations Organizations: The ACIR Counterparts* (Washington, DC, 1990) for the names and background information on each state ACIR.

² See "Counties," *Intergovernmental Perspective* 17 (Winter 1991): entire issue.

³ See also ACIR, *Local Revenue Diversification: Rural Economies* (Washington, DC, 1990).



Significant Features of Fiscal Federalism

1992 Edition

Volume I

Budget Processes and Tax Systems

In the 1992 Edition

- ▶ Federal and State Budget Processes
- ▶ Expanded Federal Tax Section
- ▶ Property Tax Rates
- ▶ Property Tax Relief Programs
- ▶ Property Classifications
- ▶ Sales Tax Exemptions on Services
- ▶ Corporate Income Apportionment

Significant Features of Fiscal Federalism, 1992 Edition, Volume I, is ACIR's convenient source of up-to-date comparative data on federal, state, and local taxes and budget processes.

Significant Features of Fiscal Federalism is for policymakers, fiscal analysts, and other public finance practitioners, educators, and all citizens interested in the government finance system.

Significant Features of Fiscal Federalism includes federal individual income tax rates; state and local individual income tax rates updated through November 1991; detailed information on standard and itemized deductions, exemptions, and exclusions to income for federal and state income taxes; tax rate and base information on social security and unemployment insurance; general sales tax rates and exemptions; federal and state tax rates for cigarettes, alcoholic beverages, and gasoline; average effective property tax rates for each state; state severance taxes; estate, inheritance, and gift taxes; state and local property transfer taxes; and automobile fees and taxes.

M-180 1992 \$20

(see page 42 for order form)

Publications of the Advisory Commission on Intergovernmental Relations

(not advertised elsewhere in this publication)

Interjurisdictional Tax and Policy Competition: Good or Bad for the Federal System?, M-177, 1991, 80 pp.	\$10.00
State-Local Relations Organizations: The ACIR Counterparts, A-117, 72 pp.	\$10.00
The Structure of State Aid to Elementary and Secondary Education, M-175, 1991, 72 pp.	\$10.00
Representative Expenditures: Addressing the Neglected Dimension of Fiscal Capacity, M-174, 1991, 132 pp.	\$20.00
Intergovernmental Regulation of Telecommunications, A-115, 1990, 48 pp.	\$10
State and Local Initiatives on Productivity, Technology, and Innovation: Enhancing a National Resource for International Competitiveness, A-114, 1990, 174 pp.	\$25.00
Mandates: Cases in State-Local Relations, M-173, 1990, 60 pp.	\$10.00
State Constitutional Law: Cases and Materials with 1990-91 Supplement, M-159S, 1990, 528 pp.	\$30.00
Supplement Only, M-172, 1990, 56 pp.	\$7.00
A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1989, M-167, 1989, 40 pp.	\$10.00
State Constitutions in the Federal System: Selected Issues and Opportunities for State Initiatives, A-113, 1989, 128 pp.	\$15.00
Residential Community Associations: Questions and Answers for Public Officials, M-166, 1989, 40 pp.	\$5.00
Residential Community Associations: Private Governments in the Intergovernmental System? A-112, 1989, 128 pp.	\$10.00
Disability Rights Mandates: Federal and State Compliance with Employment Protections and Architectural Barrier Removal, A-111, 1989, 136 pp.	\$10.00
Hearings on Constitutional Reform of Federalism: Statements by State and Local Government Association Representatives, M-164, 1989, 60 pp.	\$5.00
Assisting the Homeless: State and Local Responses in an Era of Limited Resources, M-161, 1988, 160 pp.	\$10.00
Devolution of Federal Aid Highway Programs: Cases in State-Local Relations and Issues in State Law, M-160, 1988, 60 pp.	\$5.00
Metropolitan Organization: The St. Louis Case, M-158, 1988, 176 pp.	\$10.00

**ACIR PUBLICATION
AND DISKETTE ORDER FORM**

Mark your selections on this form and return

WITH CHECK OR MONEY ORDER to:

ACIR Publications: 800 K Street, NW, South Building, Suite 450, Washington, DC 20575

ALL ORDERS MUST BE PREPAID

Report	Quantity	Price	Amount	Report	Quantity	Price	Amount
M-181	_____	\$10	_____	A-118	_____	\$15	_____
M-180	_____	\$20	_____	A-117	_____	\$10	_____
M-179	_____	\$10	_____	A-115	_____	\$10	_____
M-178	_____	\$15	_____	A-114	_____	\$25	_____
M-177	_____	\$10	_____	A-113	_____	\$15	_____
M-175	_____	\$10	_____	A-112	_____	\$10	_____
M-174	_____	\$20	_____	A-111	_____	\$10	_____
M-173	_____	\$10	_____	SR-11	_____	\$10	_____
M-172	_____	\$7	_____	SR-9	_____	\$5	_____
M-167	_____	\$10	_____	S-20	_____	\$10	_____
M-166	_____	\$5	_____				
M-164	_____	\$5	_____				
M-161	_____	\$10	_____	State-Local Finance Diskettes:			
M-160	_____	\$5	_____	S&L Set	_____	\$295	_____
M-159S	_____	\$30	_____	83-89	_____		_____
M-158	_____	\$10	_____	S&L 89	_____	\$110	_____
		\$5	_____	S&L 88	_____	\$75	_____
RTS & RRS Diskette:				S&L 87	_____	\$50	_____
1988	_____	\$20	_____	State 83-86	_____	\$25 each	_____
				Total Enclosed	_____		_____

Name _____
(please type or print)
Organization/Company _____
Address _____
City, State, Zip _____

Governing Diversity: The International Experience

Bruce D. McDowell

The world around us is exploding with a recognition of tremendous diversities among peoples and their aspirations. This upsurge is being expressed in political movements leading to the restructuring of governments all around the globe. As these changes occur, many nations are looking to the United States as the preeminent model of a government that accommodates great diversity within a stable structure.

The purposes of this article are to: (1) review some of the major shifts in governmental authority that are taking place throughout the world, (2) set the shifts in the context of the traditional forms of government, (3) note some practical problems of governance with which all governments must wrestle, (4) assess where the present trends in restructuring governments may be taking us, and (5) examine how useful the American experience can be to other nations.

Governmental Reforms

Two major types of governmental reforms seem to be taking place at once: decentralization of authority within nations and the creation of associations among nations to facilitate trade and commerce and to satisfy other needs. Both types of reforms open up new opportunities for accommodating diversity.

Decentralization Examples. In 1988, the Advisory Commission on Intergovernmental Relations (ACIR) co-sponsored a two-day conference with The International Council of Scientific Unions, the journal of *Government and Policy*, the London School of Economics, and the Center for Urban and Regional Studies at Virginia Polytechnic Institute and State University. The conference was designed to examine decentralization experiences in a number of countries, including the United States, the United Kingdom, France, Germany, Italy, Spain, Portugal, and New Zealand. In each of these countries, there were examples of governmental powers or responsibilities being decentralized to regional (provincial or state) or local governments, and in some cases into the private sector and public enterprises. In brief:

- The U.S. experience over the 1980s showed considerable reduction in federal responsibilities for a number of domestic functions of government, leaving them to be picked up, at least in part, by the states or local governments, and putting pressure on to revise state and local taxes.
- The U.K. examples examined efforts to increase economic development activities by local governments, decentralize the ownership of public housing units, and provide a more self-sufficient tax base for the local governments.
- The French cases examined experiences with local government reforms in the 1980s that established direct election of local governments; gave these governments taxing powers and decentralization grants; reinvigorated democratic politics, expanded local influence in regional economic development; decentralized certain functions, such as high school construction and maintenance, to regional units; and reduced the central government's role accordingly.
- The German paper assessed the effects on the economic development of regions caused by fiscal transfers made by the central government for equity purposes.
- The Italian paper examined the mismatch between autonomous local and regional decision-making and the central financing mechanisms used to pay the bills.

- The Spanish cases concentrated on the mismatch between efforts to decentralize political authority and the retention of a highly centralized system of public finance and redistribution of revenues.
- The paper on Portugal dealt with the issue of too little fiscal autonomy for local governments.
- The New Zealand paper examined a process in which the central government, in consultation with local governments, was attempting to reform local and regional governmental boundaries by promising enhanced powers (decentralization) once these reforms were achieved.

Since the 1988 conference, many other instances of decentralization have occurred. For example:

- A new constitution is being written in South Africa to establish democratic governments for all people. A major feature of the new system is to be a series of regional governments designed to minimize the number of different language groups within each region, and to provide the basis for equalizing public service expenditures.
- The eastern block of Europe has broken apart, and some of the nations appear to be further subdividing by secession or civil war into still smaller nations based on ethnic factors.
- The USSR has broken apart into 15 independent nations.
- Former eastern block nations such as Poland and Hungary have elected new democratic local governments for the first time in 50 years and given them significant authority and responsibilities.
- Nepal recently established democratically elected local governments and is presently determining the scope of their authority.

All of these nations, and many others, have sent delegations of officials to the United States to study and observe American state and local governments. Many of these delegations meet with the ACIR staff to get an overview of the American federal system and intergovernmental arrangements before going on to visit individual states and localities. The ACIR briefings stress the diversity that the delegations are likely to observe because of the differences among the 50 state constitutions and the responsibility of the states to provide for the establishment of local governments and to set the ground rules under which they operate. The profile we present of over 83,000 overlapping local governments in the United States, each with its own revenue-raising and policymaking authority describes a greater diversity of governments than most of these visitors had imagined possible. For some, it is incomprehensible. For others, it opens new possibilities.

Countervailing Centralization. At the same time that nationally imposed solutions to local problems are being recognized as barriers to sensible situational policymaking and to satisfying local needs in culturally sensitive ways, national boundaries also are being recognized as barriers to

free trade, the free movement of workers, and the satisfaction of individual and business needs. Perhaps the foremost example of this realization is the strong movement toward an economically unified Europe. This realism also dictates that national security goals and healthy national economies be achieved internationally. So, as nations seek to decentralize some of their functions to regional and local governments, they simultaneously are seeking to associate themselves with multinational groups.

- Poland, Hungary, and Czechoslovakia, recently released from the eastern block, want to join the European Community.
- Most of the newly independent nations that broke away from the USSR have joined the Commonwealth of Independent States.
- The United States, having developed a free trade agreement with Canada, is working on a similar agreement with Mexico, causing speculation that a North American Community similar to the European Community may be in the making.

Admittedly, these are relatively limited arrangements—not new nations. Their existence, however, demonstrates a pragmatism about governmental institutions that appears necessary to meet the rapidly changing needs of modern democratic societies where the needs of the people, not just the needs of governments, have to be met.

Traditional Forms of Government

For many centuries, the nation (or “the State”) has been the basic unit of government throughout the world. The nation, in this sense, is sovereign. Its power, whether exercised by a king, a dictator, or a democratic government, is the final authority. There is none higher, except by appeal to moral authority or superior force.

Most national governments have been and still are unitary. That is, there is a single source of authority in the nation. If there is a constitutional basis for the government, there is a single constitution. Subordinate units of government in a unitary nation are just that—subordinate. Provincial and local officials often are appointed by the central government, and they are responsible directly to the central government rather than to their own populations. When a unitary government decentralizes, it makes the rules, and it can modify those rules any time it pleases.

Federal governments, like the United States, by contrast, are relatively new in historical terms, having been around for only about 200 years. Their distinctive characteristic is that they consist of multiple sources of governing authority—that is, multiple constitutions. The component governments—the states in the United States—have their own realms of authority and sources of revenue under their own constitutions. Their leaders are separately elected by their own citizens, and are answerable to their citizens rather than to the central government. Thus, federal governments are not so much decentralized as they are constructed of independent components.

Although there are regulatory and financial relationships between the governments in a federal nation that may blur their respective roles, the component governments have legal standing to challenge the national government when it

oversteps the line between constitutionally established national authority and that reserved to the states.

In short, the purpose of a federal nation is to preserve as much diversity, freedom, and autonomy as possible, consistent with demonstrated needs for national conformity and action. As a result, the states of the United States frequently are referred to as "laboratories" of democracy.

Nevertheless, the national government in a federal nation has real power, supreme within its own sphere of activity and backed up with independent financing so that it does not rely on its component governments for its survival or effectiveness. The United States tried a weaker form of confederal government for a few years before the present constitution was written and found that the national government could not be effective.

Key Issues in Sharing Power

In order to share power within a nation, four key tasks need to be accomplished. These tasks are:

- Establishing or recognizing the participating component governments and their boundaries;
- Allocating responsibilities among the component governments;
- Aligning financial arrangements appropriate to the service responsibilities of governments and the need for equity among taxpayers; and
- Attending to the intergovernmental relationships necessary to enable the component governments to work together.

The papers presented at the 1988 conference on decentralization address each of these tasks to some extent. Their emphasis, however, is on allocating responsibilities and aligning finances. The full proceedings of the conference have been published elsewhere, and are well worth reading.¹

It becomes apparent in reading these papers that each country is at a different stage of decentralization and is giving greater attention to some of the tasks than to others. These tasks are difficult to finish because the needs keep changing, demanding further readjustments. Balancing boundaries, responsibilities, finances, and intergovernmental relationships is a dynamic process that will occupy governments for many years to come.

A Clear Trend

In a perceptive introduction to the conference proceedings, Robert J. Bennett presents a framework for looking at the reforms set forth in the conference papers. This framework has two dimensions: (1) a continuum of governmental power ranging from total centralization to total localization, and (2) a continuum of resource allocation responsibilities ranging from totally governmental to totally dependent on private markets. With a simple graphic representation, he shows that these nations and a few others with which he was familiar are all tending to move toward the center of the two ranges. That is, no matter which end of the continuum they start from, they are rejecting the extremes of total domination by governments or private markets, and the extremes of total centralization or decentralization in government.

(continued on page 47)

1988 State Fiscal Capacity and Effort

ACIR developed the Representative Tax System (RTS) and the Representative Revenue System (RRS) to improve on available measures of state fiscal capacity and effort. **These measures show state and local government capacity to collect tax as well as nontax revenue.** With *1988 State Fiscal Capacity and Effort*, ACIR—in conjunction with Price Waterhouse—continues its tradition of providing information on the relative economic well-being and fiscal performance of the states.

□ Why use the RTS and RRS?

They measure governments' *potential* abilities to raise revenues relative to a national average

They are *comprehensive*, measuring tax and nontax sources

They are the *only* indicators that measure fiscal capacity on a revenue-by-revenue basis

They capture states' opportunities for *tax exportation* by estimating actual tax and nontax revenue bases and applying average tax rates

□ 1988 State Fiscal Capacity and Effort—

Contains tables and graphs on RTS and RRS bases, arranged both by revenue base and by state

Discusses recent changes in states' fiscal capacities

Compares RTS and RRS with other capacity measures

Provides details on the methodology

Includes historical data

M-170 1990 \$20

1988 RTS and RRS Disk

The disk contains the set of text and revenue bases used in the book, along with programs (Lotus 1-2-3) creating RTS and RRS spreadsheets. Accompanying documentation explains the contents, options, and commands. The disk is intended to be used with the book.

1990 \$20

(see page 42 for order form)

Books, etc.

Economic Development

ACHIEVING ECONOMIC DEVELOPMENT SUCCESS: *Tools that Work*. International City/County Management Association, 777 N. Capitol Street, NE, Suite 500, Washington, DC 20002-4201, 1991. 156 pp. \$32 (\$4.30/handling). Item No. 40468.

In a time of declining revenues and intergovernmental aid, some local governments have succeeded in bringing new jobs and investments to their communities. Based on survey responses from 122 local governments, ICMA examined how they assessed their economic situation and developed strategies. The report covers enhancement of revenue sources, business attraction and retention (including small and minority businesses), downtown development, industrial development, the service sector, and neighborhoods. Case studies describe land use decisions, financing, marketing, and assessment projects.

Federalism

BARGAINING UNDER FEDERALISM: *Contemporary New York*. By Sarah F. Liebschutz. State University of New York Press, State University Plaza, Albany, NY 12246, 1991. xiii, 237 pp. \$49.50 (hardcover). \$16.95 (paper).

Federal-state intergovernmental relations are dynamic, characterized by interactions between mutually dependent governments—coexisting bargainers. The purpose of this book is to examine bargaining in the federal system from the perspective of a single state, New York. Case studies are presented that portray the state as both an influencer of and a reactor to federal policies in the 1970s and 1980s. Cases of influence include efforts to secure loan guarantees for New York City in 1975 and 1978, and to retain state and local tax deductions in the *Tax Reform Act of 1986*. Cases of reaction involve New York's responses to the Reagan budget cuts of 1981 and to the siting of a Superconducting Supercollider near Rochester. Each case examines the stakes for the state, its position in terms of federal spending, channels of formal and informal influence and com-

parisons with other states, the effect of federal laws and regulations on the state, how the state can resist a "bad bargain," and how the federal government can induce compliance.

Finance

THE CHANGING FACE OF FISCAL FEDERALISM. Edited by Thomas R. Swartz and John E. Peck. M.E. Sharpe, Inc., 80 Business Park Drive, Armonk, NY 10504, 1990. x, 181 pp. \$39.95 (cloth). \$16.95 (paper).

How we share responsibility for basic governmental functions between federal, state, and local governments has changed dramatically in the last ten years. What caused this change? How have federal, state, and local policies changed? What is likely to happen in the future? Who are the winners and losers in this new system of government finance? These are some of the questions considered by six government finance scholars in this book. They have placed the issues in historical context, examined political and philosophical foundations, analyzed the adjustment process in detail, and looked into the future. Following an overview by Swartz and Peck are chapters on the history of deregulation by John Shannon, federalism and urban policy by Richard Child Hill, trends and interstate variations in federalism by Roy W. Bahl, state finances by Steven D. Gold, big city finances by Helen F. Ladd, and economics and reform by Edward M. Gramlich.

LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK. Florida Advisory Council on Intergovernmental Relations, House Office Building, Tallahassee, FL 32399-1300, 1991. 213 pp.

The handbook is a budgeting and planning reference on several revenue sources shared by the state with municipalities and counties. It includes constitutional officer salaries, population estimates and projections, and inflation indexes. Each chapter contains a history of legal provisions; administrative procedures; and an explanation of revenue authorization, eligibility requirements, and limitations on revenue use. There

also are estimates for 1991-92 for major revenue sources and programs, and an outline of criteria for evaluating state shared revenue programs.

REPORT ON THE COMPARATIVE REVENUE CAPACITY, REVENUE EFFORT, AND FISCAL STRESS OF VIRGINIA'S COUNTIES AND CITIES 1988/89. Virginia Local Government Commission, 8th Street Office Building, 7th Floor, Richmond, VA 23219, 1991. 146 pp. Mimeo.

This report is the third in a series of analyses of the comparative fiscal condition of Virginia's cities and counties. The commission uses ACIR's Representative Tax System (RTS) methodology, isolating six bases intended to measure, directly or indirectly, aspects of private-sector resources that local governments can tap. On average, in 1988-89, counties had greater revenue raising potential than cities (\$760.07 and \$738.68 per capita). Local fiscal capacity varied markedly by region, with the highest in Northern Virginia, followed by the Northern Valley, Northern Piedmont, Southside, Southern Piedmont-Valley Industrial Zone, and Southwest. The typical local fiscal capacity in Northern Virginia was at least 1.5 times stronger than in every other region. Revenue capacity also varied according to size of jurisdiction.

FEDERAL DOMESTIC OUTLAYS 1983-1990: *A Data Book*. By Kenneth N. Bickers and Robert M. Stein. M. E. Sharpe, Inc., 80 Business Park Drive, Armonk, NY 10504, 1991. 308 pp. \$45.

Questions of fairness and equity are always at the heart of discussions about the distribution of public benefits and burdens. The stakes are particularly high in times of fiscal retrenchment, when competition intensifies and increased benefits for some jurisdictions come at the expense of others. Under these conditions, data about the distribution of federal dollars becomes essential. This volume attempts to provide such information for the 435 congressional districts, the states, and the major regions of the United States for fiscal years 1983-1990. The data are based on the Federal Assistance

Awards Data System (FAADS). The authors give an overview of the history of reporting federal domestic outlays, "which roughly parallels, but lags behind, changes in national domestic policy," and which makes trying to do historical studies nearly impossible. The book contains historical graphs for each recipient category, separate tables for each year for each category by congressional district, graphs for functional policy categories by region, and functional outlays by congressional district. The appendixes list the programs included in each recipient category and each function, and the states included in each region.

Local Government

A COMPREHENSIVE REVIEW OF LOCAL GOVERNMENT SERVICE DELIVERY IN FLORIDA: *Service Scope, Intensity, and Dominance*. Florida Advisory Council on Intergovernmental Relations, House Office Building, Tallahassee, FL 32399-1300, 1991. 103 pp.

This report presents a comprehensive examination of service delivery responsibilities between and among Florida's counties, municipalities, and special districts. After a discussion of policy forums dealing with local service delivery and an overview of other research, the report is divided into two phases. Phase I has four sections, three of which analyze the scope of services and the level of financing, with comparisons between 1983 and 1988, for each type of local government. The fourth section compares the types of government. Phase II contains five sections and attempts to compile a statewide perspective on the interrelationships of service provision by comparing the percentages of total statewide expenditures for each type of local government.

Regional Governance

SUBSTATE REGIONAL GOVERNANCE: *Evolution and Manifestations throughout the United States and Florida*. Florida Advisory Council on Intergovernmental Relations, House Office Building, Tallahassee, FL 32399-1300, 1991. xxiv, 312 pp.

This study, begun in 1990, stemmed from the Council's examination of intergovernmental coordination in local planning and its research on special districts and local service delivery (see above). Regional governance experiments have been undertaken in many states during the last 15 years as local governments

face growth management and service delivery issues with dwindling tax revenues. The scope of the report is broad, including federal, state, and local influences on regional governance. The report also contains sections on general observations about substate regional governance, structural arrangements, Florida's regional experience, and regional governance in other states (California, New York, South Carolina, and Texas).

Regulation

AFTER DIVESTITURE: *The Political Economy of State Telecommunications Regulation*. By Paul E. Teske. State University of New York Press, State University Plaza, Albany, NY 12246, 1990. xv, 162 pp. \$49.40 (hardcover). \$16.95 (paper).

Many scholars have analyzed federal telecommunications policy decisions in the 1980s. Few have tried to explain choices made by state regulators—those closer to the consumers—faced with deregulating telecommunications services after the AT&T divestiture. Although the divestiture partially resolved some national public policy issues that had been debated for 25 years, it created several new policy problems for all 50 state regulatory agencies. How should states price and who should be allowed to provide intrastate telecommunications? Which services should be deregulated? Teske analyzes state regulatory decisionmaking, taking a political economy approach that explains how interest groups and institutional factors have shaped different policies and regulatory institutions, which have important effects on pricing and competition. The book combines empirical analysis with eight case studies and examines the impact of changes in price structures on small businesses, residential customers, rural residents, and other users of telecommunications services. State policy recommendations are also included.

State Government

SUGGESTED STATE LEGISLATION 1992. Council of State Governments, P. O. Box 11910, Lexington, KY 40578-1910, 1991. xvi, 176 pp. \$30.

In this 51st annual compilation of draft legislation, the Council has included a section on mandates to provide an overview of federal provisions requiring state legislative or regulatory action and/or additional expenditures,

as well as mandates preempting state policies. The note covers 1989-90, and includes provisions of the *Omnibus Budget and Reconciliation Act* (Medicaid, Medicare, Social Security, child care, and coastal zone management); the *Clean Air Act* (motor vehicle inspection/maintenance, solid waste incinerator emissions, and permit programs); the *Americans with Disabilities Act*; the *Crime Control Act*; and other legislation dealing with vocational education, student right to know and campus security, drug free schools and communities, hazardous materials transportation, driver's license revocation, nutrition labeling, cash management, and federal financial institutions. The Council plans to include such information sections in future editions of this book.

Governing Diversity (continued from page 45)

Relevance of the American Experience

In Bennett's analysis, the United States shows up in the middle of the range between centralization and decentralization of government, but farther toward private markets and away from reliance on government than any of the other nations. Thus, when other nations look to the United States as a model for reforming their own governments, we need to be conscious of their starting point. Many of the conditions that the United States takes for granted may not be within reach of other nations in the near term. The United States and other nations all can benefit from comparative studies such as those presented in Bennett's book. Each nation needs to find its own comfort zone within Bennett's framework in due course. We should not expect every country to mimic the United States.

The message of this decentralization conference is that the U.S. states are not the only laboratories of democracy. There are many others that we can learn from if we look beyond our own national borders.

Bruce D. McDowell is director of Government Policy Research at ACIR.

Note

¹ Robert J. Bennett, ed., *Decentralization, Local Governments, and Markets: Towards a Post Welfare Agenda* (New York: Oxford University Press, 1990).

**Members of the
U.S. Advisory Commission on Intergovernmental Relations**

(February 1992)

Private Citizens

Daniel J. Elazar, Philadelphia, Pennsylvania
Robert B. Hawkins, Jr., *Chairman*, San Francisco,
California
Mary Ellen Joyce, Arlington, Virginia

Members of the U.S. Senate

Daniel K. Akaka, Hawaii
Dave Durenberger, Minnesota
Charles S. Robb, Virginia

Members of the U.S. House of Representatives

Donald M. Payne, New Jersey
Craig Thomas, Wyoming
Ted Weiss, New York

Officers of the Executive Branch, U.S. Government

Debra Rae Anderson, Deputy Assistant to the President,
Director of Intergovernmental Affairs
Samuel K. Skinner, Chief of Staff, The White House
Vacancy

Governors

John Ashcroft, Missouri
George A. Sinner, North Dakota
Stan Stephens, Montana
Vacancy

Mayors

Victor H. Ashe, Knoxville, Tennessee
Robert M. Isaac, Colorado Springs, Colorado
Joseph A. Leafe, Norfolk, Virginia
Vacancy

Members of State Legislatures

David E. Nething, North Dakota Senate
Samuel B. Nunez, Jr., President, Louisiana Senate
Ted L. Strickland, Colorado Senate

Elected County Officials

Ann Klinger, Merced County, California
Board of Supervisors
D. Michael Stewart, Salt Lake County, Utah,
County Commission
Vacancy

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, DC 20575

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

BULK RATE
U.S. POSTAGE
PAID
PERMIT 827
WASHINGTON, DC