

PERSPECTIVE

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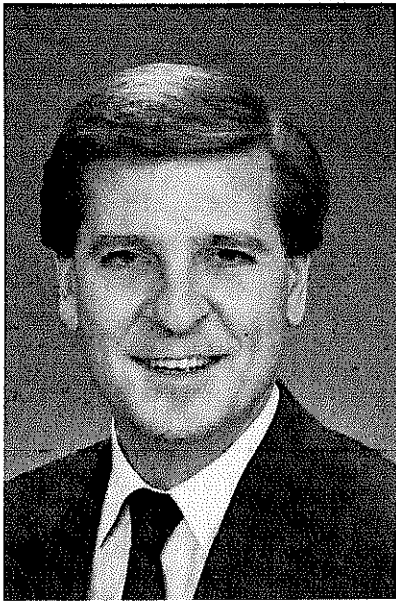
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MAY 12 1993

A View from the Commission



Austin, Texas is a vibrant, progressive community that prides itself on a beautiful environment, well educated population, lively music scene and great quality of life. Yet, too many of our children do not enjoy the benefits our community has to offer. One out of every five children in Austin (more than 32,000) lives in poverty, and one out of every four lives in a household headed by a single parent. The drop-out rate for high school students is 24 percent for all students and significantly higher for Hispanics (38 percent) and African-Americans (27 percent). In 1990, Austin teenagers gave birth to 542 babies. All of these statistics foreshadow a growing problem.

A 1990 gang shooting in downtown Austin shocked the community out of complacency and into action. A Mayor's Task Force on Gangs, Drugs and Crime was formed to address the increase in youth violence. In its report, *Code Blue: Partnerships for Reclaiming Our Community*, a key task force finding was that the neglect of our children and youth was creating a breeding ground for violence. The community could no longer ignore the tremendous cost of

failing to support all of our children.

City leaders recognized the need to invest in our children and youth. City staff developed an action plan to create "Opportunities for Youth." This effort has been a top priority of the Austin City Council for the past two years; on January 7, 1993, we voted to make "Opportunities for Youth" the number one priority for next year as well. In FY 1991-92, an additional \$1.1 million was budgeted to invest in services for children and youth. In FY 1992-93, the city's total commitment to "Opportunities for Youth" is \$20.7 million, which includes \$2.2 million additional dollars. But the problems of children and youth extend beyond the scope of city resources to solve. Action and involvement by the entire community and all units of government are required to solve the critical and complex problems faced by children and their families.

On May 6, 1992, in an intergovernmental and community partnership, the Travis County judge, school board president and I announced an unprecedented effort to develop a strategic plan to reverse the decline of our disadvantaged neighborhoods. A task group met and formulated an evolving plan, "The Austin Project: An Investment Plan for the Young." The key principles of the Austin Project include: (1) continuity of community investment from prenatal care to entry into the workforce; (2) priority for preventive investment; and (3) partnership among all elements of the Austin community in the planning and execution of projects. The focus for investment is in the early years, beginning with access to early prenatal health care and education, parenting education, early childhood services, Head Start, and well-child health care.

As the community moves from planning to action, it becomes increasingly evident that federal, state, and local partnerships are needed if we are

to reach our goals. Without a comprehensive, coordinated strategy, federal, state, and local governments often work at cross-purposes. The most effective role of each government and their linkages need to be defined if we are to improve the system of support for children and families. The current proliferation of categorical programs, each with different goals, target groups, and eligibility requirements, raises barriers to treating the whole child effectively. As a nation, we must develop a comprehensive investment strategy to reclaim our communities and support the optimal development of children. Each child is a precious resource to be nurtured and encouraged. We cannot afford to lose one child.

Perhaps we should look to the Germans or the Japanese or the French or the Swedes. All of these global competitors have found it to be in their nations' best interest to invest in children and families through a variety of means, including generous paid parental leave and subsidized early childhood programs. We are a nation at risk if we do not follow their lead and create opportunities for our children and youth to grow and develop to their potential.

Bruce M. Todd
Mayor
Austin, Texas

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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.

Chairman's View



It is now time for me to leave. The last 11 years at ACIR have been rewarding—making many life-long friends and gaining a much deeper understanding of our federal system. I have also been impressed at how fast partisan issues fade when the members of ACIR start to think about rebuilding the federal system. Although I will be leaving ACIR, I plan to be quite active in efforts to reform the federal system.

In this, my last Chairman's column, I want to address two issues that are critical to the much needed reform of the federal system: the politics of intergovernmental relations and people as key producers of public wealth.

Federalism as a System of Politics

Preemption and overregulation of state and local governments are fast becoming the most significant features of our federal system. Many governors, mayors, and other elected officials are finding it difficult and frustrating to govern, when federal mandates and regulations increasingly restrict their ability to do so. Many are starting to feel like administrative agents of the federal service delivery system.

At our most recent meeting, we heard compelling testimony from three local officials concerning the devastating impact of environmental regulations on their ability to govern and to set priorities to solve their most pressing environmental problems, and about the serious economic consequences these regulations have on other local services.

It seems to me that we have developed a consensus on the problem as well as on the fact that something must be done. For the last 25 years, ACIR

and every administration have recommended block grants, revenue sharing, greater coordination, and respect for state and local autonomy. While we all have been trying to reform the federal system, to retain a well balanced set of powers for the federal, state, and local governments, a much different game has been going on: the preemption game.

A recent ACIR study documents the scope and depth of this game. Since the founding of the nation, the U.S. Congress has passed 439 laws explicitly preempting state and local authority. In the last 23 years, the Congress has passed 53 percent of all laws preempting state and local authority. They have been busy. They have been responding to the now famous Washington special interest groups. They have been bipartisan in their desire and actions regarding preemption. We now know that federalism means little to special interest groups that want special privileges, even if they diminish state or local authority.

What we are fast losing is one of the greatest resources that has ever graced the face of the earth: independent state and local governments, which not only generate a great deal of this nation's political and economic wealth but have done so as independent partners with the federal government. They have served the nation well. We simply cannot afford to lose this resource. To save it, though, is going to require that state and local officials see intergovernmental relations as a political system that must be reformed.

To start this process, we must ask what kind of political system we want. Do we want to perfect the managerial and bureaucratic state, or do we want to rebuild federalism with its promise of diverse self-governing and entrepreneurial communities connected to independent state and local governments? My own sense is that we simply have reached the end of the bureaucratic state. This state has increasing difficulty even operating, and is driven by accident and force. Americans are demanding that they once again have a significant voice and recognition of their rights to control their institutions.

People First

President Bill Clinton has developed an excellent model for reforming the federal system, namely, putting people first. It is clear that this metaphor struck a chord with citizens who want government that is responsive to their desires and needs. It is also clear that Mr. Clinton, given his experience as governor of Arkansas, sees the need for reform. Any reform must simply take people as the key building block.

It is also my sense that the federal system is in for a sustained period of reform. Part of this is going to take place at the grass roots of America. The last election merely ratified what a number of us have suspected for a long time; Americans want and are going to take back control of their political institutions. To me, this reform movement centers around a question that I have been asking myself for the last several years: does federalism have a soul?

The federalism we deal with at ACIR is one of laws, fiscal flows, who wins and who loses, and how government can solve problems. While important, it is often dry, discussed in the language of planners and economists, and has very little to do with issues of governance. It has no soul.

The question of whether federalism has a soul goes to the animating principles of federalism. None of us should forget that the federal structure crafted at Philadelphia was designed to enhance the self-governing and entrepreneurial way of life so that citizens, men and women, through reflection and choice, could choose good government rather than depending on accident and force. That is the life blood of federalism. It is the soul of federalism. It is the ultimate personification of "people first."

For the last two years, I have been working with four groups of women who want to manage their own housing projects, through HUD's Project Hope. What has become clear to me is that before they can manage their projects they must be able to govern them. It is in their ability to govern their communities that they develop the consensus to

solve problems and forge the community through which to solve them. Their rights must be recognized, and their capabilities then developed, so they can be a self-governing entity.

This experience has led me to see that what is truly public about our federal system is diverse communities of citizens governing their lives. It is through such experiences that "publicness" flourishes, problems are solved, and legitimacy in the federal system is sustained, nurtured, and extended.

I am now convinced that what makes government housing genuinely public housing is that the rights of citizens in these projects are recognized so that they can become self-governing and entrepreneurial. The highest form of public administration is that which nurtures the capacity of men and women for self-governance. We simply must rebuild our notion of citizenship as an active one, where citizens can craft their local institutions and develop their capacities by running these institutions.

People as key producers of public goods and services are critical to productive public schools, the criminal justice system, and to such national problems as health care and economic growth. To even think about reforming the federal system without reconnecting it to citizens is to increase the likelihood that reform will only beget more centralization and more mandates, and ensure that accident and force will be the guiding principles of our federal system.

The challenge that ACIR faces in the future is to again connect federalism and intergovernmental relations to people. Once this connection is again made, federalism will indeed have a soul. It will also allow us to start thinking about solving problems with some chance of success.

The Clinton administration faces a number of exciting challenges. The federal system does need reform. Administrative reform will not do the trick. It is time for fundamental reform that rebuilds the political foundations of our state and local governments so they have broad areas of freedom to allow citizens to solve their own problems. In effect, state and local governments are no different from tenants in housing projects or small businesses. They, too, must have significant freedom to create political and economic wealth.

The challenge is clear. The time is right. The question we must address is whether we have the political vision and will to accomplish what is right. Real reform of the federal system is an issue far beyond the boundaries of partisanship. It is of fundamental interest to all Americans.

Robert B. Hawkins, Jr.



Significant Features of Fiscal Federalism

1993 Edition

Volume I

Budget Processes and Tax Systems

In the 1993 Edition

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

Significant Features of Fiscal Federalism, 1993 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 1992; 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-185 1993 \$20

(see page 39 for order form)

On the ACIR Agenda

The last meeting of the Advisory Commission on Intergovernmental Relations was held in Washington, DC, December 17-18, 1992. Following are highlights from the agenda and Commission actions.

Geographic Data Project

ACIR has been asked by the U.S. Geological Survey to work with national associations representing state and local governments to help develop a state and local partnership with the Federal Geographic Data Committee (FGDC). FGDC represents 14 major federal departments and agencies working together to coordinate mapping and other geographic data activities.

Doyle Frederick, associate director U.S. Geological Survey and chairman, FGDC, and Nancy Tosta, FGDC staff director, were invited to discuss this new project with the Commission.

State Regulation of Insurance

The Commission approved the findings and recommendations of the report on *State Solvency Regulation of Property-Casualty and Life Insurance Companies*. The recommendations call for limited federal intervention in state regulation of the insurance industry; state accreditation under the National Association of Insurance Commissioners accreditation program; increases in the capacity of state guaranty funds; and state consideration of interstate compacts to ensure uniform liquidation and guaranty fund proceedings.

Environmental Requirements for Local Governments

The U.S. Environmental Protection Agency (EPA) convened a group of local officials and other interested parties this fall to discuss the environmental requirements imposed by EPA on local governments. The group was asked to identify and recommend

measures to improve the implementation of environmental protection programs, while reducing burdens on local governments. Local government members of the panel were invited to discuss the group's activities and its recommendations.

The panelists were City Administrator Robert Mulready, Lewiston, Maine (chairman of the finance subcommittee); Assistant Health Commissioner Michael Pompili, Columbus, Ohio (member of the data subcommittee); and Mayor Bill Westbrook, Jackson, Wyoming (chairman of the flexibility subcommittee).

Criminal Justice Report

The Commission approved the findings and recommendations of the report on *The Role of General Government Elected Officials in Criminal Justice*. Patrick V. Murphy, director of the Police Policy Board, U.S. Conference of Mayors and current chairman of the Criminal Justice Coordinating Council of Montgomery County, Maryland, gave the Commission some insight into governmental interrelationships in the criminal justice system. Mr. Murphy stressed the importance of the role of community organizations in reducing crime and poverty.

Child Care in the Federal System

The Commission considered the findings of *Child Care in the Federal System: A Policy Report*. The report focuses on the need for (1) greater consistency among public programs, (2) improved accessibility and quality of child care programs, (3) better linkages between child care programs and other children's programs, (4) more coherent approaches to regulating child care facilities, and (5) increased financial support for the children of low-income families.

ACIR Setting New Work Agenda

Commissioner Ann Klinger, who chairs the Work Agenda Committee, has been soliciting suggestions for the 1993-1996 work program. Participants were asked to comment in three areas: (1) substantive research, (2) ongoing projects/products; and (3) services. The committee will submit a refined proposal at the March 1993 meeting.

Transition Team Visits ACIR

During December 1992, a presidential transition team visited ACIR. The team included Dietra L. Ford of the transition's Government Operations Cluster; former ACIR Commission Member Lynn G. Cutler (a county representative from Blackhawk County, Iowa, appointed in 1977); Lance Simmens, a staff member from the U.S. Conference of Mayors, who has been a liaison with ACIR for several years; and Arthur Navarro from California. Two other former members of ACIR have been tapped by the President for his Cabinet. Former South Carolina Governor Richard W. Riley (who served as a private citizen member of ACIR from 1977 to 1979, and as a gubernatorial member beginning in 1979) has been named Secretary of Education, and former Arizona Governor Bruce Babbitt (appointed to ACIR in 1978) has been named Secretary of the Interior.

ACIR Joins Building Futures Council

ACIR has accepted liaison membership in the largely private sector Building Futures Council in support of its infrastructure studies. This council promotes excellence in the design, construction, maintenance, and management of public and private



Photo by Alan Hart, Smithsonian Institution, courtesy of the Woodrow Wilson International Center.

The Commission reconvened its June 11, 1992, meeting at an evening dialogue on "Federalism: Problems and Prospects of a Constitutional Value," co-sponsored by ACIR and the Woodrow Wilson International Center for Scholars. The featured speakers were Justice Sandra Day O'Connor of the United States Supreme Court and U.S. Senator Charles S. Robb, with commentary by Mayor Victor H. Ashe of Knoxville. About 70 people attended the event, which included dinner and a lively discussion of federalism issues.

buildings and other structures. Several other federal agencies maintain liaison with BFC.

Former Commissioner F. Clifton White Dies

Former ACIR member F. Clifton White, whom historian Theodore White called "a technician of politics—one of the finest in America," died at his home in Greenwich, CT, on January 9. Mr. White served on ACIR from 1976 to 1978.

ACIR Staff Changes

Seth B. Benjamin has joined the staff as a senior analyst in the Government Policy Research section. He previously worked as a senior research associate with the State of New Jersey Commission on County and Municipal Government.

Charles D. Griffiths has joined the staff as a senior analyst in the Government Policy Research section. He is the former executive director of the Pennsylvania Intergovernmental Council.

Marcia A. Howard, formerly deputy director at the National Association of State Budget Officers, has joined the staff as a senior analyst in the Government Finance Research section.

D. William Graham, a senior analyst, has taken a position with the U.S. Department of Education.

Sharon A. Lawrence, a senior analyst, is now with the National Association of Counties.

State ACIRs

- The Iowa Advisory Commission on Intergovernmental Relations, reestablished after closing more than a year ago, held its first meeting this summer. The 21-member commission, representing state, county, city, school board, and regional council officials, as well as both houses of the legislature, is studying tax increment financing for urban areas and tax abatement policy for residential development.
- The Wisconsin Council on State-Local Relations, established by the state budget bill of 1991, held its first meeting October 1992. The 14-member council, representing state and local governments, is setting its agenda and looks forward to strengthening the state partnership with local government.

Three long-standing state ACIR's went out of business:

- The State of New Jersey Commission on County and Municipal Government did not receive any appropriation this year. Although still a statutory entity, operations have ceased, and the staff has been disbanded.
- The Pennsylvania Intergovernmental Council, a nonprofit corporation developed to study and administer intergovernmental affairs in Pennsylvania, has ceased operation.
- The Michigan Commission on Intergovernmental Relations became inactive as a result of the sunset provision in its enabling legislation.

1993

Commission Meetings

Dates for the next two Commission meetings have been scheduled tentatively: Thursday, March 25-Friday, March 26, 1993; Thursday, June 10-Friday, June 11, 1993

State Solvency Regulation of Property-Casualty and Life Insurance Companies

The increase in insurance company failures during the past several years has generated concerns about the adequacy of state regulation of the insurance industry and calls for federal intervention and preemption of state regulation. The Commission believes that states can remedy the problems in state regulation, that the federal government should help facilitate better state regulation, and that the federal role in regulating depository institutions does not inspire confidence in the ability of the federal government to do a better job regulating the insurance industry than the state governments. Among the Commission's recommendations are that the federal government not preempt state regulation of insurance; states consider options to increase the capacity of their guaranty funds, and states consider entering interstate compacts for liquidation and guaranty funds proceedings.

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State Solvency Regulation
of Property-Casualty
and Life Insurance Companies

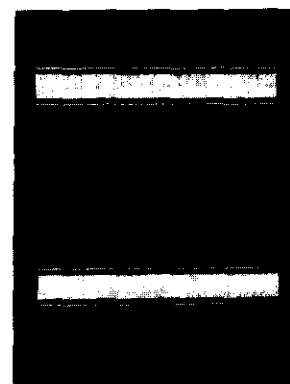
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Intergovernmental Decisionmaking for Environmental Protection and Public Works

This study identifies conflicts between proposed state and local public works projects and the federal environmental decisionmaking process. The two goals of protecting the environment and providing adequate infrastructure are compatible in theory, but often do not mesh well under existing policies. As the population and economy grow, the nation needs new highways, airports, dams, wastewater treatment plants, and solid waste facilities. At the same time, the United States is committed to meeting increasingly rigorous environmental goals. Federal laws and review processes have helped reduce the adverse environmental effects of public works projects. Yet, Americans' lifestyle choices—how we live, consume, farm, travel, and produce—continue to threaten the health of the environment. ACIR makes several recommendations for integrating administration and implementation of federal environmental protection laws.

A-122 1992 \$10



(see page 39 for order form)

ACIR in 1992: The Year in Brief

Rebuilding the Nation's Infrastructure and Protecting the Environment

Federal Infrastructure Strategy. For the second year, ACIR assisted the U.S. Army Corps of Engineers in developing a federal infrastructure strategy. The Commission recommended 11 ways in which the federal, state, and local governments can cooperate more effectively to improve the nation's infrastructure. This work continues, focusing on performance-based investment budgeting, improving benefit-cost analysis, reducing deferred maintenance, streamlining environmental decisionmaking, reducing federal regulation of state and local governments; and diversifying revenue sources for financing infrastructure.

In ACIR's 1992 poll, the public rated roads and bridges, water supply, and solid waste facilities slightly better than in 1988 and again preferred user fees and dedicated taxes to finance additional infrastructure investments.

Streamlining environmental decisionmaking for public works was encouraged by ACIR in *Intergovernmental Decisionmaking for Environmental Protection and Public Works*.

Water Governance. A Senior Advisory Group on Federal-State-Local Cooperation in Water Governance, convened by ACIR, recommended sorting out the roles of the federal, state, local, and tribal governments, and using more successful means of dealing with interstate water issues. This was a follow-up to ACIR's 1991 report *Coordinating Water Resources in the Federal System: The Groundwater-Surface Water Connection*.

Drought Planning. The Commission continued providing advice to the Corps of Engineers on the institutional, political, and public involvement aspects of the National Drought Plan. ACIR is helping with specific issues in two river basins, and is preparing instructional materials for the Corps' forthcoming drought planning manual.

GIS. The Commission is assisting the U.S. Geological Survey to develop a state and local partnership with the Federal Geographic Data Committee to enhance cooper-

ation and save money in installing new geographic information technologies.

Other infrastructure activities included:

- Assisting the federal, state, and local governments in implementing the *Intermodal Surface Transportation Efficiency Act of 1991* (ISTEA).
- Assisting the Infrastructure Sub-Council of the Competitiveness Policy Council in developing materials for CPC's second annual report.
- Providing information to the Infrastructure Investment Commission.
- Assisting the Federal Highway Administration in preparing a report to the Congress on the "level of effort" factor used in allocating grant funds.
- Assisting EPA to establish a clearinghouse of technical information for state and local governments.

Repairing the Nation's Social Fabric

Medicaid imposes substantial costs on state and local governments. The Commission's report calls for increased state/local policymaking and program flexibility, a respite in federal imposition of increased burdens, and an overhaul of the health care system.

Criminal Justice. ACIR adopted and will publish in 1993 a comprehensive study of the role of general government elected officials in criminal justice. The report recommends action to get those officials more involved to establish a better balance between crime prevention and law enforcement; between enforcement, adjudication, and corrections; and between local, state, and federal roles.

Child Care. Research on the growing role of government in providing and regulating child care has found inconsistencies among the multiple federal-aid programs and the diverse federal, state, and local regulations.

Strengthening the Federal System

Federal Regulation of State and Local Governments. In *Federal Statutory Preemption of State and Local Authority*,

the Commission published a 200-year inventory of federal preemption statutes, more than half of which were enacted in the past two decades. ACIR-supported bills to slow this trend have been introduced in both houses of Congress. The Commission is following up with an examination of unfunded federal mandates.

ACIR also cosponsored an evening dialogue on federalism with the Woodrow Wilson Center for International Scholars. The main speakers were Justice Sandra Day O'Connor, Senator Charles S. Robb, and Mayor Victor H. Ashe.

A Commission report on federal regulation of state and local governments was adopted and will be published in 1993. It found that the congressional fiscal notes process has not slowed the enactment of new fiscal and regulatory burdens. Likewise, the Federalism Executive Order (E.O. 12612) has not slowed the rush of federal executive departments and agencies to develop new regulations and legislative proposals. The report recommends that these burden-reducing tools be used more effectively in the future.

The Commission's 1992 public opinion poll found that:

- The public recognizes that some federal preemptions are appropriate, while others are not.
- Most Americans believe either that the federal government has too much power (39 percent) or should use its power more vigorously (41 percent).
- The federal government is perceived to give citizens the least for their money, compared with state and local governments.
- Trust and confidence in the federal government have dropped more than for state and local governments since 1987.

Regulation of Insurance. The Commission issued a report that recommends that the federal government limit its intervention in state regulation of insurance companies, while the states take steps to improve their regulatory performance, including entering into interstate compacts.

Grant Reform. The Commission published its biennial report *Characteristics of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1991*, showing an all-time high of 557 federal grant programs. Medicaid accounts for about 30 percent of all federal grant dollars.

National Guard. The Commission adopted and will publish in 1993 a report on the National Guard. The report recommends that a National Guard member be added to the Joint Chiefs of Staff to give the states greater input into the Pentagon planning processes where the fate of their units is decided.

Shoring Up Local Governments. A 1978 inventory of state laws in all 50 states that govern local government structure and administration has been updated and will be published in 1993. There are now tighter restrictions on local financial management and auditing, and more state-mandated local budget procedures and purchasing standards. Numerous changes also were made by states in local collective bargaining, employee benefits, and train-

ing requirements; fewer changes were made in local elections, forms of government, and boundaries.

Alternative Means of Delivering Local Services. A study of local police, fire, roads, and education services in metropolitan Allegheny County (Pittsburgh) found that many small local governments team up to provide services in cost-effective ways. A comparison of this case with the earlier St. Louis County study is being prepared.

Local Boundary Commissions that review proposals for altering local boundaries operate in 12 states. ACIR found that most of these organizations are small and work mostly on annexation cases and mediation of interjurisdictional conflicts.

State ACIRs. During 1992, three state ACIRs were lost to state budget cuts, another was reestablished, and a new one was created. At the end of 1992, 25 states had such organizations.

Balancing Public Finances

Significant Features of Fiscal Federalism. ACIR published its popular 1992 two-volume compendium of basic federal, state, and local finance data. ACIR's 1992 public opinion poll found that the local property tax and the federal income tax were in a dead heat as least fair. State sales and income taxes fared better. Due to the interest generated by *Quill Corp v. North Dakota*, ACIR also updated its estimates of the revenue potential from state and local taxation of interstate mail order sales for 1990-1992. States could have collected as much as \$3.9 billion additional revenue in 1992.

Promoting Democracy Abroad

Foreign Visitors. ACIR continued regular briefings for large numbers of foreign visitors seeking to learn about American federalism.

Freedom Support Act. ACIR and the major national associations of state and local officials have proposed federal support for a program of exchange visits between Russian and American officials to promote democracy in Russia. The Congress cited this proposal in the conference report on *Freedom Support Act of 1992*.

Global. With ACIR encouragement, Nigeria has set up a National Council on Inter-Governmental Relations. ACIR hosted the director-general and sent materials to help establish a research library at the new council. ACIR also participated in a review of local government administration in Ukraine and a conference on economic integration in Australia.

A New Work Program for ACIR

During 1992, a special committee of ACIR commission members met with federal, state, local, university, and other officials and groups to find out how the Commission can serve its constituents better. One result was to begin developing a new work program with a greater emphasis on assistance in legislative and rulemaking processes. Specific suggestions for new research studies and services to constituents have been solicited. Development of the work program is under way.

The ADA: Expanding Mandates for Disability Rights

Stephen L. Percy

In 1990, after much political struggle, legislative debates, and controversies about administrative regulations, President George Bush signed the *Americans with Disabilities Act* (ADA).¹ The President declared that, "With today's *Americans with Disabilities Act*, every man, woman, and child with a disability can now pass through once closed doors into a bright new era of equality, independence and freedom. . . . Today's legislation brings us closer to that day when no Americans will ever again be deprived of their basic guarantee of life, liberty, and the pursuit of happiness."²

The ADA was the culmination of a long process to end discrimination and increase public awareness of the difficulties faced by disabled persons as they have sought to find employment, use public services, get an education, communicate with others, enter public buildings, and use transportation systems.³ The process began with the *Architectural Barriers Act of 1968*, which required that new and remodeled federal government buildings be made accessible to persons with physical impairments. It continued with Section 504 of the *Rehabilitation Act of 1973* (Section 504) which prohibited recipients of federal funds from discriminating on the basis of handicap. Sections 501 and 503 of the same act required federal agencies and federal contractors to take affirmative action in hiring persons with disabilities. The *Education of All Handicapped Children Act of 1975* required that school systems design and execute educational programs to meet the needs of disabled students.

ACIR's 1989 report on disability rights mandates described the evolution of the earlier laws, identified the federal regulatory mandates included in them, and examined the effectiveness of their implementation.⁴ This article explores the mandates contained in ADA and compares them with those created by the earlier federal laws.

Pre-ADA Mandates: The Foundations

ADA proposes a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The act invokes the sweep of congressional authority, including the powers to enforce the Fourteenth Amendment and regulate commerce.

Many of the mandates are not new, but represent the statutory codification of policies created by administrative regulations designed to implement earlier laws, especially Section 504. For example, the ADA definition of disability is based on the definition specified in the *Rehabilitation Act Amendments of 1974*⁵ and stipulated in the administrative regulations for implementing Section 504. According to this definition, protections are extended to any individual who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such impairment, or is regarded as having such an impairment. Other mandates were similarly "lifted" from earlier federal policies. With regard to employment, ADA requires that employers make *reasonable accommodations* to physical or mental limitations so as to hire otherwise qualified employees. Such accommodations are to be designed to make existing facilities readily accessible to and usable by individuals with disabilities. Such accommodations—which might include restructuring job duties, eliminating physical barriers in the work place, or providing specialized devices—are required only so long as they do not impose an *undue economic hardship* on the employer. The important principle of reasonable accommodation was initially outlined in Section 504 regulations.⁶

A similar pattern holds for public transportation, for which several ADA mandates parallel those specified in earlier federal laws and administrative regulations designed by Department of Transportation (DOT). For

example, ADA requires that vehicles used for public transit (including buses and fixed-route systems) be "readily accessible to and useable by individuals with disabilities." The law also stipulates that most public transit systems provide demand-responsive "paratransit services" that are sufficient to provide disabled individuals with a level of service comparable to that available to nondisabled individuals. These approaches to public transit were designed, for the most part, as DOT officials crafted regulations to implement Section 504 and portions of the *Surface Transportation Assistance Act of 1982*.⁷

The important point to recognize in terms of these and several other ADA mandates is that those who wrote the 1990 law did not start from scratch. They carefully examined disability rights mandates and incorporated many of them into the new law. This was a wise and effective approach. First, substantial time and energy had been devoted to creating the earlier mandates. Second, the mandates emerged from struggles in which disabled persons pressed diligently for expansive protections and regulated parties fought to temper mandates, expand compliance deadlines, and minimize implementation costs. After several years of dispute and debate, both sides came to accept the mandates that emerged as a compromise. To start anew might open the door for renewal of those debates.

Third, many of the earlier disability rights mandates—most notably reasonable accommodation in employment—represented a *creative balancing* of the interests of individuals with disabilities and the various persons and organizations regulated by the act. The balancing is evident in provisions which first stipulate a strong *mandate* (e.g., required accommodation in employment, ready accessibility in public transit, paratransit services) and then specify conditions which *temper compliance* with the mandate (e.g., undue economic hardship). Such balancing enhanced a sense of workable compromise in the regulations and reduced perceptions of regulatory intransigence.

Expanding Disability Rights Mandates

Other ADA mandates substantially expand the reach of federally protected disability rights. The law extends regulatory mandates into the private sector, stipulates rights and protections related to communications, and includes the Congress in its coverage.

Private Sector Included in Mandates

Employment Protections. The fundamental weakness of earlier federal disability rights protections was that most nondiscrimination provisions applied only to recipients of federal financial assistance, federal government agencies, and federal contractors. ADA largely remedied this situation and substantially expanded disability rights mandates.

Title I prohibits employers from discriminating against a "qualified individual with a disability" with regard to job application procedures, the hiring or advancement of employees, job training or compensation. A "qualified person with a disability" means any disabled person who, with or without reasonable accommodation, can perform the essential functions of employment. ADA

expands protections into the private sector by defining an employer as a person or entity engaged in industry affecting commerce who has 15 or more employees (although for the first two years after effective date of the act, only employers with 25 or more employees are covered).

ADA moved the federal government in the direction taken earlier by most state governments: mandating protections for people with disabilities in both the private and public spheres. As of the late 1980s, 46 states had laws providing employment protections to persons with disabilities in at least some private sector operations.⁸

Access to Public Accommodations. Title III of ADA creates a new federal mandate regarding access to a wide range of public services, facilities, and accommodations. The law states that, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of accommodation by any person who owns, leases, or operates a place of public accommodation." The definition of "public accommodation" is conceptualized broadly in the law and encompasses most private sector establishments, including hotels and motels, banks, business locations, restaurants, bars, theaters, concert halls, service facilities (laundromats, banks, travel agencies, health care providers), parks, places of education, and recreational centers.

Operators of public accommodations are (1) prohibited from denying access or participation to disabled persons, (2) required to make reasonable modifications in policies, practices, and procedures to afford goods services, privileges, and opportunities to persons with disabilities, and (3) mandated to make "readily achievable" modifications (i.e., "easily accomplished and able to be carried out without much difficulty or expense") to architectural and communications barriers that impede the access of disabled individuals. ADA exempts from the public accommodations mandates private organizations and clubs exempted under Title II of the *Civil Rights Act of 1964* and religious organizations.

The public accommodations title strengthens the federal accessibility mandate substantially, so that it parallels the strongest mandates in state laws. As of the late 1980s, 32 states had laws requiring barrier removal or accessibility modifications in at least some privately owned and operated buildings.⁹ Prior to ADA, federal architectural accessibility mandates applied only to buildings owned or funded by the federal government, and program accessibility (specified as part of the administrative regulations for Section 504) pertained to federal agencies and recipients of federal funds.

Telecommunications Mandate

The law amends the *Communications Act of 1934* to require common carriers of telephone services to provide, no later than three years after date of ADA enactment, telephone relay services usable by persons with hearing or speech impairments. This would include TDD (Telecommunications Device for the Deaf) and other related devices. This new mandate expands disability rights into

an area that many advocates claimed was ignored in earlier public policies.

ADA and the Congress

In its report on disability rights mandates, ACIR noted that, "Congress itself has been exempt from both the employment and architectural barrier requirements that it places on federal agencies and on state and local governments. Some observers see this exemption as a double standard that promotes cynicism about the mandates in many of the agencies charged with compliance responsibilities."¹⁰ The Commission recommended that "the Congress serve as a model of leadership by applying to itself logically applicable mandates similar to those placed on federal and state agencies."¹¹

In ADA, the Congress removed this double standard, although not without substantial debate during the House-Senate conference on the bill.¹² The Senate version contained the following language: "Notwithstanding any other provisions of this act or law, the provisions of this act shall apply in their entirety to the Senate, House, and all the instrumentalities of Congress, or either House thereof." This sweeping provision raised constitutional questions, including the separation of powers. The approach taken in the House of Representatives version was to apply the rights and protections of ADA to the Congress but to empower the chief officials of each instrumentality of Congress to establish remedies and procedures for these rights.

The final House-Senate conference version, included commitments to and procedures concerning nondiscrimination. Senate coverage references Rule XLII, which states the no member, officer, or employee of the Senate shall discriminate in employment on the basis of several criteria, including "state of physical handicap." The House coverage references preexisting House Resolutions that outline mandates for nondiscrimination in employment. For matters other than employment, both Houses charge the Architect of the Capitol to establish remedies and procedures for complying with other mandates specified in the ADA. A private right of action to bring a lawsuit was ultimately dropped during conference committee deliberations.

Enforcement

As with the case of most civil rights policies, the power of ADA mandates is strengthened by provisions for strong enforcement mechanisms. ADA references provisions of the *Civil Rights Act of 1964* as relevant to enforcement. For example, ADA extends to disability the remedies and procedures set forth regarding nondiscrimination in employment in the *Civil Rights Act* including injunctive relief and back pay. Similarly, sections of the *Civil Rights Act* are referenced as relevant for enforcement of mandates concerning public accommodations and public services.

These enforcement "teeth" give individuals with disabilities greater avenues to pursue possible claims of discrimination. More detailed administrative enforcement mechanisms are possible, as is a private right of

action to bring lawsuits against discriminating parties, public and private.

State and Local Government Coverage

Federal disability rights mandates are nothing new to state and local governments. As recipients of federal financial assistance, these units have been covered by such laws as Section 504 for some time. (These mandates are not removed or preempted. Except as otherwise noted, nothing in the act shall be construed to apply a lesser standard than applied under Title V of the *Rehabilitation Act of 1973* or the administrative regulations issued pursuant to the act).

Employment-related mandates for state and local governments will change little because the ADA reasonable accommodation provision closely mirrors earlier regulations. The public transit mandates also parallel earlier 504 mandates, although these were frequently challenged and occasionally modified in the process of DOT rulemaking. An interesting feature of ADA, included in its "miscellaneous provisions," is the stipulation that no state will be immune under the eleventh amendment from any action of federal or state court for violation of the act. In any action against a state for violation of the law, the remedies available are specified as the same as those for a violation by any public or private entity other than the state.

Title II stipulates that no qualified individual with a disability shall for reason of such disability be excluded from participation in or denied the benefits of services, programs, and activities of public entities, including those provided by state and local governments. While several federal, state, and local laws and policies previously prohibited such discrimination, this component of ADA symbolically emphasizes the mandate that public entities do not discriminate in their operations and service programs on the basis of physical or mental disability.

Challenges for Implementation

Effective dates for compliance with ADA regulatory mandates passed recently. It is too soon to measure regulatory compliance or assess the impact of mandates on public and private entities, enforcement agencies, or individuals with disabilities. It is clear, however, that implementation of ADA will remain a challenge for sometime.

One challenge will result from the decision to retain some ambiguity concerning mandate compliance. Recognizing the diversity of disabling conditions and the disparate public and private contexts in which discrimination can take place, those charged with drafting disability rights policies have long contended that rigid specification of regulations would be impractical and ineffective. Policymakers recognized the advantage of providing regulatory flexibility so that individualized accommodations could be crafted to meet specific problems, needs, and contexts.

Some see this not as an advantage but as an impediment to enforcement. Some analysts contend that this ambiguity may confuse public and private sector entities as they seek to understand and implement the regulatory mandates. It also

has been argued that ambiguity about definitions of disability and the extent of accommodations mandated by the law will substantially increase the costs of implementation.¹³ The challenge for those responsible for implementing ADA, therefore, is to determine if the latitude given for policy implementation will be used to create effective accommodations or instead will create confusion, conflict, and implementation delays.

A second challenge will be to resolve conflicts over meaning and implementation through compromise and collaboration rather than resorting to adversarial relations and judicial remedies. The writers of ADA foresaw this challenge when they included the provision that, where appropriate and to the extent authorized by law, use alternative means of dispute resolution is encouraged.

A third challenge will be for those charged with enforcement to inform all the parties affected by the law of their responsibilities in what has been termed the "last civil rights movement."¹⁴ The reach of the law is very wide and for the first time includes a host of private sector parties under the rubric of federal disability rights mandates. Even after compliance deadlines have passed, it is clear that many parties, particularly private sector establishments, have yet to understand and comply with mandates relevant to employment and public accommodations. More effective communications need to highlight mandates, suggest workable strategies for compliance, and describe the economic and social advantages of increasing the opportunities of individuals with disabilities. As Justin Dart, chairman of the President's Committee on Employment of People with Disabilities, has argued, "The ADA is only the beginning. It is not a solution. Rather, it is an essential foundation on which solutions will be constructed."¹⁵ Effective communications concerning ADA can be expected to enhance understanding the law's mandates and effective strategies to guide the construction of workable accommodations.

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Notes

¹ P.L. 101-366, July 26, 1990 (104 Stat. 327). Many components of ADA are described by a variety of experts in Jane West, ed., *The Americans with Disabilities Act: From Policy to Practice* (New York: Milbank Memorial Fund, 1991).

² Statement by President George Bush in signing the *Americans with Disabilities Act of 1990*, July 26, 1990.

³ Several recent books have documented the enactment and implementation of disability rights laws that predate the ADA. These include Stephen L. Percy, *Disability, Civil Rights and Public Policy: The Politics of Implementation* (Tuscaloosa: University of Alabama Press, 1989); Edward D. Berkowitz, *Disabled Policy: America's Programs for the Handicapped* (New York: Cambridge University Press, 1987); Robert A. Katzmann, *Institutional Disability: The Saga of Transportation Policy for the Disabled* (Washington, DC: The Brookings Institution, 1986); and Richard Scotch, *From Goodwill to Civil Rights: Transform-*

ing Disability Policy (Philadelphia: Temple University Press, 1984).

⁴ U.S. Advisory Commission on Intergovernmental Relations (ACIR), *Disability Rights Mandates: Federal and State Compliance with Employment Protections and Architectural Barrier Removal* (Washington, DC, 1989).

⁵ P.L. 93-516.

⁶ 42 *Federal Register* 22680.

⁷ The struggle to design standards for disability rights in the context of public transit has been thoroughly described in Percy, *Disability, Civil Rights and Public Policy*, and Katzmann, *Institutional Disability*.

⁸ ACIR, *Disability Rights Mandates*, p. 43. Other sources that have catalogued the disability rights provisions of state laws include M. Ann Wolfe, *Disabled Persons: State Laws Concerning Accessibility and Discrimination* (Washington, DC: Library of Congress, Congressional Research Service, 1989); and Charles D. Goldman, *Disability Rights Guide: Practical Solutions to Problems Affecting People with Disabilities* (Lincoln, Nebraska: Media Publishing, 1987).

⁹ ACIR, *Disability Rights Mandates*, p. 46.

¹⁰ *Ibid.*, p. 2.

¹¹ *Ibid.*, p. 5.

¹² Nancy Lee Jones, *The Americans with Disabilities Act: An Overview of Major Provisions* (Washington, DC: Library of Congress, Congressional Research Service, 1990).

¹³ See, for example, Carolyn L. Weaver, "Disabilities Act Cripples through Ambiguity," *On the Issues* (Washington, DC: American Enterprise Institute for Public Policy Research, 1991).

¹⁴ Diane Driedger, *The Last Civil Rights Movement* (New York: St. Martin's Press, 1989).

¹⁵ Justin Dart, "ADA: Landmark Declaration of Equality," *Worklife* 3 (Fall 1990); p. 1.

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.

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State-Local Relations: A Need for Reinvention?

Beverly A. Cigler

State and local government revitalization is a major topic of discussion, debate, and action in the 1990s. Most of what is being said and devised is framed around the idea of “reinventing” state and local governments.¹ This process tends to occur for each government, with relatively little explicit consideration of “reinventing state-local relations.” In a recent review of state reorganization, productivity, and management initiatives, for example, it was found that state-local issues were usually not integrated into the overall framework for discussion and action, but were dealt with in a relatively fragmented, unsystematic fashion.² Local officials continue to perceive that states treat their local governments less as “intergovernmental partners” and more as “special interest groups.”³

The following overview of state-local relations issues that are undergoing change in the early 1990s highlights several emerging relationships that generally receive less scrutiny than do money and mandate issues. The author draws from several sources: interviews with the executive directors of state associations of counties and state advisory commissions on intergovernmental relations, and with officials in state departments of commerce, economic development, and community affairs; and supplementary printed materials provided by those interviewed.⁴ Interviews were conducted by telephone between April 1990 and September 1992.

Categories of State-Local Interaction

State interactions with local governments fall into four broad areas: mandates (e.g., regulations or court orders); inducements (e.g., provision of incentives); capacity building (e.g., provision of technical assistance); and system changing (e.g., assumption of functional responsibilities, elimination of local governmental units).⁵ Within each category, the states pursue activities targeted to change the behavior and actions of local governments. Each change sought generally requires some combination of approaches.

Mandates

State mandates command local action. Unfunded legislative mandates are perhaps the greatest single source of friction between the states and local governments. Recent new mandates are heavily on the environment, health policy, and employee pensions. Similarly, court decisions, such as those related to school finance systems or the constitutionality of certain taxes, are important to state-local relations.

Finding the funds to pay for mandates is related to the larger “sorting out” questions about state-local relations. Which government should do what—and which should pay? Few states, with the exception of New Jersey which assumed the major poverty-related program costs of local governments, have made major changes on these questions in the last few years. These more global issues fall into the system-changing category, discussed below. The rise of judicial federalism has changed the system of state-local relations in that the courts as well as the legislatures and the executive branch are now key shapers of local actions.

Inducements

Local concern with mandates is fueled partly by the perception that they are examples of excessive state intervention into local affairs. A key issue since the mid-1970s lies in the cumulative financial burden that state mandates impose on city and county governments. In recent years, state policy remedies have included a number of inducements to comply with state mandates.

A bundle of state legislative options—program monitoring, fiscal notes, sunset and sunrise programs—involve increasing levels of legislative scrutiny aimed at reducing the negative financial effects of mandates for localities. These procedural solutions rely on improving legislative decisionmaking. Successes continue to be mixed; the one clear trend is that more states are studying the mandate question.⁶

Still another option for dealing with mandates is reimbursement, that is, the legislature provides funds or

funding sources to pay for the cost of new mandates. A trend in recent years has been state enactment of laws that provide local governments with some means for recovering mandate costs, either through appropriations, taxes, or fees. Reimbursement and recovery schemes vary in design, and it is unclear whether state-local relations is moving toward significant alteration. Reimbursement mechanisms are, in effect, an inducement for local officials to achieve compliance with mandates that they might agree to in terms of "good intentions" but still consider as an infringement of home rule.

Another type of state inducement is gaining in use: the awarding of greater points in a grant competition to governments that agree to some "desired" behavior (e.g., intergovernmental cooperation). For example, there might be a greater likelihood of receiving a grant for recycling if several communities cooperate in the grant proposal than if each applies alone. Pennsylvania combines this inducement with its technical assistance programs for local governments. Several communities can receive an intergovernmental grant that provides for a circuit-riding manager or financial officer. This not only induces intergovernmental cooperation, it also builds the overall capacity of the cooperating units for more effective and efficient governance.

A number of innovations in financing may also be categorized as inducements for local action. Examples include targeted revolving funds and bond banks to finance infrastructure—construction, capital improvements, and emergency needs. For example, issuing bonds to a pool of local governments can erase differences among local government credit ratings.

A final inducement relies on the need for negotiation and mediation among diverse groups and governments within metropolitan areas. This strategy generally must be tied to some technical assistance to conflicting groups (i.e., some capacity-building activity). The acceleration in the use of mediation techniques is especially important because it may reduce the demand for the governmental restructuring options categorized below as system changing. If successful, the negotiation/mediation strategies induced by the states to facilitate local dispute resolution would, themselves, be system changing because calls for massive restructuring would likely decrease.

Capacity Building

Capacity building involves a range of state activities geared toward increasing local governments' managerial and fiscal abilities, as well as their political will to make difficult governance decisions. Providing revenue flexibility to local governments, for example, is a way to induce compliance with mandates and, more broadly, to build the overall fiscal capacity needed for governance. Various local government training workshops and technical assistance provision also build overall managerial capacity.

Revenue Flexibility. A local government's fiscal flexibility depends on the appropriateness, variety, and productivity of its revenue sources. Flexibility results from having authority over sources of significant revenue potential that can be varied over the years in response to changing demands for services and new circumstances. Flexibility

is diminished when local governments must rely on the extensive use of earmarked sources—whether taxes, charges, or special assessments—and tightly drawn tax bases.

States have three broad options for increasing the revenue flexibility of cities and counties: changing the level or pattern of intergovernmental assistance; altering local tax options; and/or encouraging or mandating a fundamental restructuring of the system of local governance. Trends in the first two categories are outlined here because they fall within the capacity-building category of state activities. The third option is discussed under system changing.

In the 1980s, cities and counties became more reliant on state intergovernmental assistance, primarily derived from state shared-revenue programs. In the 1990s, however, many state revenue structures are themselves weak. In the short run, this is a result of the recession, but primarily it is the effect of increases in Medicaid, corrections spending, and rising school enrollments.

It is unlikely that hard-pressed states will devote significantly greater resources to cities and counties.⁷ States are reexamining their patterns of aid and making attempts to provide more targeted assistance. This involves changing distribution formulas and/or the conditions of assistance, as well as enhanced monitoring of state aid. As mentioned earlier, should sorting-out issues be seriously addressed, it would be expected that states would assume greater responsibility for poverty-related programs.

Increased local taxing authority through statutory constitutional provision offers the prospect for achieving local revenue flexibility. A key trend is the enactment of local option sales taxes, especially for counties. However, these taxes are generally earmarked for specific purposes and require voter approval, limiting the goal of flexibility.

The trend toward local option taxes and other revenue diversifications is not likely to reinvent state-local relations. Most states continue to specify which jurisdictions can levy a tax, what the taxes can be used for, and how the levies must occur. Although some states that have increased local governments' responsibilities via new mandates have also passed new revenue diversification measures, this is not always the case.

There are some compelling state interests in setting limiting conditions on local governments (e.g., concern for administrative feasibility, horizontal equity and protection of taxpayer interests). The states are working on many issues of local tax reform; however, local governments may be left to grapple with how any increased revenue flexibility will fare in a political climate that equates tax reform with tax raising. The issues of most concern are to state-local revenue system equity (including intergenerational equity), balance, diversity, and adequacy of revenue flows from currently authorized sources. States and local governments would like to modernize and improve existing systems. In addition to the patterns associated with currently authorized revenue sources, other issues, such as the administration of the property tax (including exemptions and circuit breakers) and the specific needs of school districts and general local governments are on the state-local agenda.

A general thrust for tax reform appears to be toward a broader base and lower, less intrusive rates. The major

battleground for broadening the sales tax base and the property tax base is the states.⁸ County option sales taxes shift policy away from the property tax but do not shift responsibility for raising revenues away from local officials. However, if states assume increased responsibility for particular programs from their counties (e.g., courts, indigent health care, and cash welfare assistance), revenue raising responsibilities will follow. Similarly, states and local governments will be anxious to follow Clinton administration policies that will affect their deferred capital expenditures across all categories of public works and their underinvestments in the human infrastructure.

Technical Assistance. Revenue flexibility may be achieved in many ways. Another significant trend in the state-local financial picture is the use of charges or fees. Without technical assistance, however, local governments may not utilize this or other options wisely. Small counties and cities, for example, often do not possess the managerial expertise to develop a sound user fee policy. Too often, these localities look to the county or city next door to decide what to charge, rather than performing a rate-setting analysis. Fiscal retrenchment, as well as opportunities for creative financing and alternative service delivery, are processes for which small local governments, especially, need capacity-building assistance. Local officials need basic information on available options and "how to do it" strategies.

The states began to respond in the 1980s with a combination of inducements and capacity building. States have broadened local investment possibilities (e.g., easing barriers to bond issuance), provided training and technical assistance in financial management and revenue administration across an array of good management practices, and sanctioned various forms of creative financing. Such assistance includes helping local officials appoint more capable governing board members to public authorities that provide sewer, housing, transportation, and other services requiring sound financial management practices.

Perhaps the most widely applicable assistance to local officials are the many "schools" for newly elected officials provided by departments of community affairs or state universities. Some states combine this activity with a state mandate. The Georgia Municipal Association and the University of Georgia, for example, coordinate the extensive mandatory training required by state law for newly elected mayors, city council members, and county commissioners. Georgia's program mandates a number of topics, such as government law and personal liability, financial management and budgeting, personnel administration, planning and zoning, and achieving excellence in local government. Elective topics include ethics, capital improvement programs, public speaking, and economic development.

Within the broad category of capacity-building strategies, local training seminars go well beyond the traditional command and control management skills. Leadership development is the goal, with instruction on "constitutional literacy" and an array of political skills, including feasibility and implementation strategies. New officials are offered a balance of content and process skills because their roles require both generalist and specialist strengths.

The range and number of local capacity-building activities engaged in by the states highlights the dilemma between concern with ensuring that localities have adequate discretionary authority and the ability to fully exercise that discretion. For example, most local governments have not chosen home rule options when they are available, and it is unclear whether home rule governments fully exercise the discretion allowed to them.

Local governments differ greatly in terms of need and fiscal, institutional, and managerial capacity. More than 90 percent of municipal and township governments serve populations of less than 10,000; more than 80 percent serve less than 5,000 people each. More than 75 percent of county governments serve less than 50,000. Nearly one-third of the U.S. population lives in rural areas, accounting for approximately two-thirds of all government units.

There is little information about whether inadequacies in local government performance are the result of a lack of structural authority, finances, or effort (i.e., political will or managerial ability). It appears that the states are attempting to build local capacity in all areas without first describing and measuring local government performance. As such, their task is to build the capacity of every local government for every responsibility, although the most attention is directed toward finance and land use. Only a few states—Florida and Virginia are examples—have seriously discussed the development of new classification systems for their local units, based on financial, managerial, and structural capacity related to size, density, and existing resources.

System Changing

It can be argued that the greatest likelihood for reinventing state-local relations lies in structuring local government. Doing so generally requires state action. Three approaches have received increased attention in recent years.

First, the relationships between and among jurisdictions and their revenue bases within a region are being studied and sometimes altered. Annexation is one example, but the continued proliferation of special districts and public authorities is the most obvious example of this change. While the latter entities serve, in part, to propagate the earmarking of funds mentioned earlier, some arrangements provide for base pooling while also responding to interjurisdictional issues.

Second, there is a renewed interest in tax-base sharing among those concerned with prospects for regional cooperation to counteract destructive interjurisdictional competition. Several forms of tax-base sharing are being scrutinized in a number of states, although few are advocating the plan adopted for the Twin Cities metropolitan area in 1971. Ohio's initiatives—which place the county in a pivotal role—are attracting particular interest.⁹ The renewal of interest in this alternative appears to be related to seeking creative economic development approaches for meeting infrastructure, environment, and other service needs.

Third, other types of system-changing approaches alter jurisdictional responsibilities in some way. There has been major interest and activity in many states to promote a transfer of powers among governments. Among the

most system changing of these activities are state growth policies that combine mandates, inducements, and capacity-building efforts to enhance the local planning process. The assumption of poverty-related responsibilities has already been discussed. In some urban areas, counties now have the same responsibilities usually associated with municipal government. City-county consolidations are still another option.

Beginning in the 1970s, many states began to make it difficult for communities to use incorporation as a method for dealing with growth, providing urban services, or meeting citizen demands for self-determination. But, in the 1990s, there are still examples of incorporations used for narrow reasons, such as some recent Pennsylvania cases in which developers sought to create their own communities.

Some forms of privatization fall within the system-changing category, as do intergovernmental agreements. These are the most frequently occurring and written about activities in the system-changing category, and are not discussed in any detail here. New York State stands out as having the most systematic and comprehensive study of options dealing broadly with these topics.¹⁰ Regional governments and councils of governments also are discussed widely and are not included here.

Conclusion

This article is not intended to advocate any of the approaches discussed, but to highlight the difficulties of "reinventing" government. The American system holds state and local governments responsible as centers of policy generation and service delivery, but few areas are the sole province of one type of government (e.g., municipality, county, special district). Ad hoc state government policies, fashioned without genuine understanding of the fundamental distinctions among and between local (e.g., general vs. special district; city vs. county) governments will likely lead to piecemeal "solutions" to the problems of local governance.

System-changing approaches without the benefit of a coherent state policy that helps guide the relationships between and among local governments will likely fail to "reinvent" either local government or state-local relations. Without a systematic attempt to develop a clear sense of roles played by the various local governments and the states, efforts to change financing schemes, government structure, or responsibilities will be fraught with problems. Similarly, good will developed across governments may be threatened. Care must be taken when designing policies and tools for state-local and local-local relations, based on full understanding of the target groups, their interactions and performance, and the costs of change.

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

Notes

¹David Osborne and Ted Gaebler, *Reinventing Government* (Reading, Massachusetts: Addison Wesley, 1992).

²Beverly A. Cigler, "Professionalizing the States in the 1990s," *International Journal of Public Administration* (forthcoming).

³Beverly A. Cigler, "The County-State Connection," *Public Administration Review* (forthcoming).

⁴Interested readers may contact the author for additional information and reports based on this research.

⁵Typology developed from: Richard F. Elmore, "Instruments and Strategy in Public Policy," *Policy Studies Review* 7 (Autumn 1987): 174-186.

⁶States that have produced recent studies of mandates include Utah (October 1991) and Oklahoma (March 1992).

⁷Steven D. Gold, "The Federal Role in State Fiscal Stress," *Publius: The Journal of Federalism* 22 (Summer 1992): 33-47.

⁸Frederick D. Stocker, ed., *A Look at State and Local Tax Policies: Past Trends and Future Prospects* (Cambridge, Massachusetts: The Lincoln Land Institute, March 1991).

⁹Beverly Cigler, "State ACIRs and County Research," *Intergovernmental Perspective* 18 (Winter 1992): 39-41.

¹⁰State of New York, Governor's Blue Ribbon Commission on Consolidation of Local Governments, Interim Report (Albany, November 1991).

Local Boundary Commissions: Status and Roles in Forming, Adjusting, and Dissolving Local Government Boundaries

To determine the status of the boundary review commissions (BRC) that operate in 12 states, ACIR interviewed staff members and conducted a survey of state associations of municipalities, townships, and counties. Eight states established BRCs between 1959 and 1969 (Alaska, California, Michigan, Minnesota, Nevada, New Mexico, Oregon, and Washington). The other BRCs are in Iowa (1972), Utah (1979), Virginia (1980), and St. Louis County, Missouri (1989). The commissions exercise decisionmaking or advisory authority over the establishment, consolidation, annexation, and dissolution of units of local government, within the framework of state constitutional and legislative provisions. For the most part, the commissions are small and have limited funding. Annexation and mediation of interjurisdictional boundary conflicts top the BRC agendas. Some commissions have developed new techniques for resolving disputes and negotiating agreements for service delivery and tax sharing. Despite 30 years of experience with BRCs, no comprehensive evaluation of their work or effectiveness could be found.

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(see page 39 for order form)

Resolving Interstate Water Conflicts: The Compact Approach

William B. Lord
and Douglas S. Kenney

Water conflicts are difficult to resolve because water does not hold still for labeling or fencing, and the amount of water varies greatly from place to place and from time to time in uncertain ways. Water conflicts are resolved in accordance with the water laws of the 50 states, federal water development and protection laws and programs, and U.S. Supreme Court rulings.

Riparian Doctrine, the basis for water laws in the eastern states, evolved from the English Common Law. As such, it is suited for an environment where the peculiar problems arising from the fugitive and variable characteristics of the water resource are not critical (flooding excepted), and where water scarcity has not become a major source of conflict. Water rights are not well defined and water transfers are not easy. Prevailing notions of equity are that riparians should share the burden of adversity equally.

The western states' Doctrine of Prior Appropriation was adapted in the last century from the first-come-first-served rules of the Gold Rush mining camps. It dealt well with the water problems in an arid environment. This doctrine was consistent with the social equity norms of the gold seekers, but not with the norms now widely shared throughout society.

The equity problems of the first-come-first-served doctrine have been avoided in the western United States largely by federal augmentation of water supplies. The efficiency of this approach has been criticized by economists, and it has become increasingly less available for technical, environmental, and economic reasons. Thus, as water has become more scarce, the means of resolving water conflicts have shrunk.

Frequent conflicts between states since the earliest days of the republic have given rise to court cases, legislation, and interstate compacts.

Conflicts over the use of interstate waters have spawned a variety of interstate compacts. To illustrate the differences, we examine the Delaware River Compact in the east and the Colorado River Compact in the west. Both compacts evolved during the same era and both allocate water among the states of the river basin. Beyond this there are few similarities.

The Delaware River Compact

Interstate conflict over water in the Delaware River dates back at least to the early years of this century. New York City sought to divert Delaware River water out of the basin to meet its growing needs. The downstream states, particularly New Jersey and Pennsylvania, objected because they feared that their own water supplies might be reduced. Withdrawals by New York could harm the downstream states at no cost to itself, but withdrawals by the downstream states would not affect New York. It was not a fair fight.

There were two attempts in the 1920s to resolve the conflict by negotiating an interstate compact. Only concessions by New York could ease the predicament of the downstream states, but New York had nothing to gain

EDITOR'S NOTE: As a result of intensive study of water resources issues over the past two years, the Commission has identified governance issues as the most critical part of solving the nation's water problems. In doing so, it has highlighted the need for thinking creatively and acting boldly to, among other things, coordinate the water resources in interstate basins. In *Coordinating Water Resources in the Federal System The Groundwater-Surface Water Connection*, the Commission recommends creation of "interstate regional mechanisms, including joint federal-interstate compacts. . . ." This concept

was reinforced in follow-up work by the Commission's Senior Advisory Group on Federal-State-Local Cooperation in Water Governance. The above article describes how such coordination has been approached in two distinct basins—the Delaware River Basin in the east, and the Colorado River Basin in the west. The views expressed are those of the authors, and do not necessarily represent the views of the Commission. This article is adapted from a chapter in the forthcoming book *Resolution of Water Quantity/Quality Conflicts*, edited by Ariel Dinar and Edna Loehman.

by offering concessions. The bargaining process could not succeed. New York City broke off negotiations and announced plans to divert water unilaterally.

New Jersey promptly brought suit. In effect, the basin states turned to the judiciary to remedy their perceived problem. This elevated the issue to a higher institutional level where New York would no longer have veto power. However, this change of venue deprived not only New York but all of the basin states of decisionmaking power by placing that power in the hands of the U.S. Supreme Court.

In 1931, the court decided the case by substituting a new doctrine of equitable apportionment for the common law riparian doctrine. The court confirmed New York's right to divert water out of the Delaware basin to meet its needs, but established a maximum diversion rate and required reservoir releases sufficient to maintain a specified minimum flow to the downstream states. The allocation and release formula proved to be technically inadequate, causing the basin states to question their strategy of entrusting their fates to the courts.

By 1940, the basin states returned to the bargaining table, using the well-defined rights set down by the 1931 ruling. They found again that, as long as the bargaining was limited by one state's gain being another state's loss, the interstate relationship was essentially adversarial. Continued costly, yet inconclusive, negotiations seemed inevitable. A common interest had to be found in which all could come out ahead.

Through the Interstate Commission on the Delaware River Basin, and spurred by a severe drought in 1949, the basin states tried again to negotiate a compact. Still lacking adequate hydrological information and means to expand the supply, this attempt failed in 1951. New York returned to the Supreme Court, which, in 1954, granted the requested increase in its basic water allotment and again attempted to solve the information problem with a new release rule, the so-called Montague formula.

This event created a fear among the downstream states, particularly Pennsylvania, that any court allocation was a temporary one, which New York might be able to alter in its favor. New York, too, could no longer count on its rights granted by the court. This fear further reinforced basin-wide dissatisfaction with the strategy of relying on the court.

The Montague formula failed to satisfy the basin states, just as its predecessor had, because it failed to exploit the full flexibility inherent in the hydrologic system. There was a better way to manage the limited flow of the river, under drought conditions, but neither the court nor the basin states had found it. Better technical analysis was needed. In 1961, the basin states and the cities of New York and Philadelphia proposed to the Congress the creation of the Delaware River Basin Commission (DRBC).

A comprehensive planning study by the U.S. Army Corps of Engineers in the late 1950s had demonstrated the value of technical expertise in analyzing the hydrology of the river basin, and a concurrent Syracuse University study proposed the institutional changes needed to supplant the Supreme Court's decree with agreements among the basin states. These foundations brought

agreement quickly. The DRBC was authorized in the 1961 Delaware River Basin Compact and soon was providing the necessary technical expertise.

The Delaware Compact accepted the equity rule devised by the Supreme Court, and fixed the court's 1954 apportionment of the river's waters in normal times. It also recognized the inadequacy of the Montague release formula for coping with drought. In its place, the compact incorporated emergency powers provisions which opened the door to a negotiated settlement in a drought situation, using the Montague formula to force a bargain. The compact also renounced the rights of all parties to return to the Supreme Court for a reconsideration of the 1954 allocation.

The emergency powers provisions of the 1961 compact opened a way for the contending parties to escape the Montague formula, but they did not replace it right away. The drought that began in the early 1960s became so severe by 1965 that New York City acted unilaterally, in defiance of the 1954 court decree. It also tested the emergency powers provisions of the compact.

The DRBC adopted release rules that were a real-time response to conditions and extended its regulatory scope to include not just releases from New York's reservoirs but also the operating rules of a number of public and privately-owned water control facilities in the upper basin plus demand management policies in New York City. These actions, plus cessation of the drought the following year, ended the shortage. Still, the poorly defined character of the emergency powers rules, the inability to act before the onset of an emergency, the breakdown of court-sanctioned water allocations, and the incompletely solved information problem, remained troublesome.

Within a decade, DRBC faced another crisis when its long-term solution to the drought problem, the massive Tocks Island dam project, did not survive economic and environmental scrutiny. The commission reopened fundamental issues of regional water management and began to develop a new plan with updated augmentation and regulatory provisions.

The DRBC took immediate action to initiate a detailed long-term study to provide the hydrologic data base that might solve the information problem. The commitment problem, however, was more difficult because the commission did not include New York City, the major player that had to be committed to the water allocation rules. Consequently, an ad hoc group composed of the signatories to the 1954 Consent Decree (the basin states and New York City) was convened in 1978 to develop a "good faith agreement."

The inclusion of New York City in the good faith agreement team finally appears to have solved the commitment problem. The preliminary results of the hydrologic study, which became available during the good faith negotiations just as another drought struck in the early 1980s, enabled DRBC to fashion the best strategy yet devised, and led to adoption by DRBC of the Good Faith Agreement in 1983. That agreement, which includes both augmentation and comprehensive regulatory elements, plus the flexibility to adapt in an ad hoc manner to extreme

events, has produced a note of optimism after nearly a century of regional discord, contention, and failed policies.

The Colorado River Basin

The Colorado River drains parts of Arizona, California, Colorado, Mexico, Nevada, New Mexico, Utah, and Wyoming. The basic apportionment of the river among the seven basin states occurred in the 1920s. The states of the upper basin, especially Colorado, pushed for this agreement because they feared that the rapidly developing lower basin might use all of the water before the upper basin states began to grow. The "first in time, first in right" principle of the West's prior appropriation doctrine provided little protection for late-developing states. The states of the lower basin, especially California, were receptive to negotiating an apportionment because this would clear the way for federally funded river development. The Congress approved the start of negotiations in 1921.

As in the Delaware basin, the states in the Colorado River basin initially attempted to apportion the river through bargaining, using the interstate compact process requiring unanimity. And, as in the Delaware, this process failed. The seven basin states were able to negotiate a compact in 1922 that was thought to divide the river's flow equally between the upper and lower basins, but the Arizona legislature refused to ratify the Colorado River Compact, fearing that it did not provide the state with a fair share. Instead of returning to the bargaining table, the other states decided to take the conflict to the Congress. Congress passed a provision in the 1928 *Boulder Canyon Project Act* that allowed the compact to take effect with approval from six of the seven states. This act also authorized the construction of the Boulder (Hoover) dam and the "All-American" canal, which delivers water to irrigators in California's Imperial Valley.

Almost immediately, Arizona sued California for using Arizona's water. The court initially rejected Arizona's claims, and the other states proceeded with river development while a frustrated Arizona watched from the sidelines. This litigation continued until 1963, when the Supreme Court finally ruled that the lower basin apportionment proposed in the 1928 law was binding.

The 1940s brought many changes to the Colorado River basin. In 1944, Arizona ratified the Compact, conceding failure in trying to fight the 1922 apportionment of the river. Also in 1944, the United States resolved a long-standing dispute with Mexico by signing a treaty entitling Mexico to 1.5 MAF*/year of the river's flow.

In the upper basin, which was attempting to secure a larger percentage of the reclamation budget for river development, an additional compact was negotiated in 1948 by Colorado, New Mexico, Utah, and Wyoming. This new agreement created an upper basin compact commission and opened the way for the *Colorado River Storage Project Act of 1956*, which authorized several developments, including the Glen Canyon dam, the upper basin

equivalent to the massive Hoover dam. As it had in the 1920s, the federal government refused to proceed with development projects until the interstate water apportionment issue was resolved.

The Supreme Court's 1963 decision in *Arizona v. California* completed the full apportionment of the waters of the Colorado River among the United States and Mexico, the upper and lower basin, and within the states of each basin. These apportionments had been made possible by federal dams that substantially augmented the supply of water.

By the 1960s, another effort was well under way to attract additional reclamation funds. In this case, Arizona was seeking congressional authorization and funding for the Central Arizona Project (CAP), which would deliver approximately 1.5 MAF/year of Colorado River water to cities and farms in central Arizona. The CAP was authorized in the 1968 *Colorado River Basin Project Act*. Congressional approval was withheld until Arizona agreed that the CAP's water right would be junior to California's full 4.4 MAF entitlement. This agreement provided California with some much-needed drought protection, while the upper basin states received authorization for several local projects, and environmental interests were assured that the Federal Bureau of Reclamation would not build dams in the Grand Canyon.

These and the other agreements constituting the "Law of the River" for Colorado were fashioned using interstate negotiations, with decisions legitimized and funded by the federal government. This technique has collapsed in recent decades as the era of dam building has waned due to financial stringency, environmental protests, and lack of additional good dam sites. Without the federal government to broker and finance interstate agreements, the region has lost a highly effective (if costly) mechanism for conflict resolution.

Water demands continue to increase in the Colorado River basin, and the potential for shortages continues to rise. Averting future shortages by increased river development is no longer a viable option in the basin because the river is overallocated and highly developed. A new era has begun in which wise and creative interstate water management must replace the building of new dams. Whether the institutions forged in the basin over the past seven decades are up to the task remains to be seen.

The new mechanism being advocated to address the water supply problems of the basin is interstate water marketing. This mechanism is not addressed in the compact or elsewhere in the Law of the River, and it is consistently hampered by the upper basin states' fear that if they agree to lease water to a downstream state, they are acknowledging that they do not need all the water to which they have rights. Under western water law, parties that do not exercise their water rights lose them. It is doubtful that the Supreme Court would apply this principle to the interstate compact, but the Congress might be persuaded to increase the apportionment of water-short and population-rich California. The threat of judicial and/or congressional manipulation of the allocation rules is real enough

*MAF—Million acre-feet.

to discourage many upper basin interests from considering otherwise viable interstate water marketing proposals.

Conclusions

Although neither the Delaware River Compact nor the Colorado River Compact and associated institutions may be said to have satisfactorily resolved all of the resource allocation problems with which it has had to contend, the institutions developed in the Delaware Basin have done better than those of the Colorado Basin.

Equity Problems

The states of both basins faced equity problems from the very beginning. In the Delaware basin, New York's apparent position that need makes right could not be reconciled with the downstream states' position that shortages and sacrifices should be proportional. The states were unable to resolve this problem by acting together because of the need for unanimity. This equity problem could be resolved only by taking the issue to the U.S. Supreme Court. The court's assertion of the Doctrine of Equitable Apportionment was handed down and the states could not contest it. This solved the equity problem.

A similar disagreement occurred in the Colorado basin, with the lower basin states holding for the priority principle and the upper basin states, which stood to lose from its strict application, protesting. But the Supreme Court was not called to rule on the issue in the Colorado, leaving the basin states to chart their own course. The 1922 compact is a compromise between priority and equitable apportionment. The lower basin's allocation has priority over the upper basin, but each gets equal shares of the river's flow in normal years. The upper basin compact of 1948 calls for proportional sharing in dry years within that basin. Plans to facilitate additional upper basin withdrawals through distributive policies have not succeeded, and upper basin withdrawals remain only about half those of the lower basin. The resulting allocation is inefficient and inflexible, and it leaves the equity problem unresolved.

Why was the equity problem resolved in the Delaware basin while it remains unresolved in the Colorado basin? It may be due at least partially to the inconsistency of the underlying aggregation rule with the ethical norms of American society. The proportional sharing notion is broadly consistent with prevailing norms, and the adoption of this aggregation rule by the Supreme Court in enunciating the Doctrine of Equitable Apportionment affirmed and was in accord with those basic social values. Priority, on the other hand, apportions sacrifice unequally. The western Doctrine of Prior Appropriation, while it has provided secure water rights in an uncertain environment, is not in accord with prevailing ethical norms. Thus, any water allocation based on this doctrine will suffer from underlying instability.

Commitment Problems

Both basins faced commitment problems early on. In the Delaware, it was New York State, and particularly New York City, that had to be effectively committed to

limiting its withdrawals in time of drought. This commitment appears to have been achieved by admitting New York City to the bargaining process and giving it a greater expectation of meeting future needs than through reliance on rulings by the Supreme Court. The basin states, through the Delaware River Basin Commission, were able to solve the difficult information problem. With this solution in prospect, New York made the necessary commitment to determine its withdrawals cooperatively with the other basin states and to forswear return to the court.

The Colorado basin states also have faced commitment problems. The earliest and most obvious, the perceived need on the part of the four upper basin states to limit lower basin rights, was resolved by the 1922 Colorado River Compact and the 1928 *Boulder Canyon Project Act*. California's commitment to limiting its rights was achieved through a distributive political action which gave the state the Hoover Dam and other facilities it required to regulate the flows of the lower river and to realize its diversion plans.

The unwillingness of Arizona to ratify the 1922 compact, another commitment problem, was resolved in 1944. Arizona's capitulation was due to its perception that it was locked out of the distributive water supply augmentation game if it remained obdurate.

A less obvious but even more fundamental commitment problem is unsolved. The upper basin states remain apprehensive that California and its lower basin neighbors are not irrevocably committed to the 1922 compact apportionment, and that they may successfully petition either the Congress or the Supreme Court to recognize and legitimize lower basin withdrawals in excess of their 7.5 MAF entitlement. The upper basin states believe they are vulnerable to such a prospective change so long as they are not capable of diverting and putting to beneficial use all of the river water in excess of the compact and treaty entitlements of the lower basin states and Mexico. They believed that the build-out of the upper basin projects authorized in the 1968 *Colorado River Basin Project Act* would safeguard them against such a contingency, but that build-out has never occurred and seems unlikely ever to occur. The distributive means for solving this commitment problem are no longer available. Consequently, upper basin states refuse to negotiate even temporary transfers to the lower basin.

Why has the unavailability of a distributive solution been such an obstacle to solving the commitment problem in the Colorado basin when a similar event, the failure of the Tocks Island project, produced no such paralysis in the Delaware basin? We hypothesize that the priority notion that underlies western water law has elevated upper basin anxieties out of all proportion to what should be the case. Similarly, California, the lower basin "gorilla," was unconcerned with scarcity until the advent of CAP and the recent California drought. There has been too little appreciation of a common problem and too much fixation on being first to claim the resource.

Information Problems

Information problems are endemic to allocating the highly variable flows of rivers. Discovering optimal

management strategies to increase benefits and offer possibilities for positive-sum conflict resolution often requires sophisticated hydrologic, engineering, economic, and institutional analyses. Such analyses are not performed easily or inexpensively.

Information problems owing to hydrologic uncertainty and system complexity plagued both the Delaware and Colorado River basins. The Supreme Court's inability to solve the information problem was one of the reasons why it was not permitted to continue as manager of the Delaware River. Instead, the Delaware River Basin Compact created a compact commission to produce authoritative and unbiased information, and to conduct sophisticated analyses. The rules to be invoked in future droughts, embodied in the 1983 Good Faith Agreement, rely heavily on the commission staff.

The 1922 Colorado River Compact did not create a compact commission, and thus created no staff organization that could provide authoritative and unbiased information to all the parties. The 1948 Upper Colorado River Basin Compact did create a compact commission, but it has never been called on to play a major technical role. Rather, it has been a resource for the upper basin in its struggle against the lower basin. Internal upper basin problems have been completely overshadowed by upper basin-lower basin issues and by problems within the lower basin. Much of the technical analysis performed for the Colorado basin is performed by the federal Bureau of Reclamation, which manages the river. There is no doubt that the bureau possesses the technical capability to

provide the kind of information that the Delaware Commission staff provides, but it does not do so. Perhaps it is because the bureau, a traditional player in the iron triangle politics of distributive water supply augmentation, sees little opportunity for organizational growth, or even survival, as a planning agency rather than as a construction agency. Perhaps it is because the bureau is not authorized to play such a role, and its traditional clientele in the congressional committees and the water interest groups would not support such a change. Perhaps it is because the adversarial stance of the upper and lower basins discourages the utilization of an impartial planning agency. Most likely, it is a combination of all of these factors.

We hypothesize that the Colorado basin does not have its own technical organization because of the adversarial relationship between the upper and lower basins. This in turn, we suggest, is a consequence of the failure to solve the equity problem, something which the basin states are unlikely to accomplish on their own. Growing water scarcity in the lower basin and continued failure to develop the upper basin's entitlement may once again elevate the problem to a higher level, where the equity issue may be revisited and resolved, thus opening the door to interstate bargaining and the resolution of the remaining problems.

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Finance Data Diskettes

1990 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 113 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 or Symphony (can be used with other DOS compatible spreadsheets)	
Price:	\$115	FY90 (5.25" diskette)
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	\$ 60	FY88
	\$ 25 each	FY8387

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

State Government Tax Revenue Data, FY1980-90. This diskette makes the state tax portion of the state-local government finance series available six months earlier than the full series. Eleven years of tax revenue data (1980-90) are included on a single diskette. The revenue fields are basically the same as for the state-local series. The state government tax diskette does not contain any information on local governments, nor does it contain any expenditure data.

Price: \$85 FY 1980-90 inclusive

(see page 39 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 \$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 \$15

**THE CHANGING
PUBLIC SECTOR**



(see page 39 for order form)

Private-Activity Bond Cap: Effects among the States

Daphne A. Kenyon

The *Tax Reform Act of 1986* placed a unified volume cap on the issuance of most private-activity debt by states and local governments. The cap appears to constrain bond issuance significantly in some states but imposes no effective limit for others.¹ This article presents the results of a 50-state survey of private-activity bond issues and the volume cap for 1991.²

Total issuance of private activity bonds subject to the volume cap for all states except Illinois was \$12.1 billion in 1991, down from \$13.6 billion in 1990.³ Eighteen states used at least 80 percent of their current-year volume cap in 1991, compared to 24 states for 1990 and 17 states for 1989. From these and other statistics, it appears that, in the aggregate, the volume cap was no more constraining in 1991 than it was in 1990.

Background

Private-activity bonds are tax-exempt bonds issued by state and local governments that, according to criteria in the Internal Revenue Code, provide substantial benefits to private entities. The bulk of private-activity bonds is issued to provide below-market financing for mortgages, industrial development, and nonprofit hospitals and colleges. The *Tax Reform Act* placed a number of important limits on the issuance of private-activity bonds, including the unified volume cap.

The unified volume cap limits the amount of particular types of private-activity bonds that each state may issue each year. The cap applies to bonds for mortgage revenue, student loans, small-issue industrial development (IDBs), multifamily rental housing, and certain environmental infrastructure projects. The most important type of private-activity bond *not* subject to the cap is debt issued for nonprofit organizations.

The unified volume cap works as follows. Each state may issue the greater of \$50 per capita or \$150 million in covered private-activity bonds per year. States with populations over 3 million obtain greater volume cap authority under the per capita version, whereas states with populations below 3 million obtain greater authority under the \$150 million cap option. (See Table 1 for states that face the \$150 million cap.)

Each state has its own means of allocating allowable volume cap authority among potential issuers. The allocations are divided among different purposes (e.g., housing, industrial development) and different issuers (e.g., state authorities, local governments). The initial allocation is usually not the same as the final use of the volume cap authority. If an entity that is granted volume cap authority is not able to make use of it by a certain date, such as September 1, the volume cap authority reverts to a general pool, and the state may grant the authority to another potential issuer. If the entire volume cap authority is not used in one year, it may be carried forward for up to three subsequent years by filing the proper form with IRS. The proposed use for the bond must be specified at the time the carryforward form is filed. States may not borrow from expected future volume cap authority allocations, nor may they sell unused allocations to other states.

Varying Effects among the States

As Table 1 indicates, the extent to which the states bumped up against their volume caps in 1989, 1990, and 1991 varied considerably. Texas used at least 98 percent of its volume cap in all three years, while New Mexico used none of its 1991 volume cap in 1991, and no more than 12 percent of its volume cap in any year.

Table 1
**Impact of Private-Activity Bond Volume Cap,
 by State**

	Percent of Volume Cap Used in			States with \$150 Million Cap
	1991	1990	1989	
Alabama	24	82	na	
Alaska	24	47	22	x
Arizona	92	84	79	
Arkansas	91	99	85	x
California	95	86	100	
Colorado	88	94	56	
Connecticut	85	87	84	
Delaware	5	0	33	x
Florida	86	88	96	
Georgia	62	96	100	
Hawaii	48	17	29	x
Idaho	1	6	21	x
Illinois	100	na	92	
Indiana	64	89	87	
Iowa	92	69	71	x
Kansas	96	98	86	x
Kentucky	87	63	64	
Louisiana	47	83	70	
Maine	0	92	25	
Maryland	65	54	56	
Massachusetts	67	87	56	
Michigan	94	99	79	
Minnesota	99	89	100	
Mississippi	15	47	57	x
Missouri	96	100	100	
Montana	47	0	43	x
Nebraska	42	31	12	x
Nevada	40	64	30	x
New Hampshire	79	55	100	x
New Jersey	41	30	57	
New Mexico	0	3	12	x
New York	17	49	67	
North Carolina	36	56	54	
North Dakota	0	11	74	x
Ohio	78	94	100	
Oklahoma	100	92	100	
Oregon	53	73	77	x
Pennsylvania	47	70	35	
Rhode Island	87	69	6	
South Carolina	92	95	84	
South Dakota	1	6	38	x
Tennessee	27	79	72	
Texas	100	100	98	
Utah	100	90	88	x
Vermont	37	34	35	x
Virginia	44	90	62	
Washington	69	97	62	
West Virginia	36	78	100	x
Wisconsin	81	89	83	
Wyoming	22	14	23	x

na—not available

Sources: 1989, 1990, and 1991 ACIR Private-Activity Bond Surveys.

Because of the difficulty of allocating and issuing all of one year's volume cap authority within that calendar year, there is some ambiguity regarding which states are constrained by their volume caps. Depending on the efficiency of the allocation mechanism, a state may be assumed to be constrained if it uses well under 100 percent of any year's cap.

We assumed that a state found the current-year volume cap constraining if it used at least 80 percent of the cap. According to this definition, the states that found the volume cap constraining in each of the three years were Arkansas, California, Connecticut, Florida, Kansas, Minnesota, Missouri, Oklahoma, South Carolina, Texas, Utah, and Wisconsin. All of these states, except Arkansas, Kansas, and Utah, fall into the group of more populous states subject to the \$50 per capita volume cap.

There also is ambiguity in determining which states are clearly not constrained by the volume cap. Consider, for example, a state subject to the \$150 million volume cap that desired to finance a large environmental project requiring a \$100 million bond issue. If the state postponed the \$100 million project at the same time that it issued \$75 million in other private-activity bonds, the state would be represented as using only 50 percent of the volume cap. It would look as if the volume cap did not constrain bond issuance, when in fact it forced the state to postpone or turn down the volume cap request for the larger project.

Assuming that having used 50 percent or less of the volume cap each year means states did not find the volume cap constraining, 10 states fell in that category: Alaska, Delaware, Hawaii, Idaho, Montana, Nebraska, New Mexico, South Dakota, Vermont, and Wyoming. These are all less populous states for which the \$150 million volume cap applies.

Aggregate Effects

Three statistics indicate that, in the aggregate, the volume cap was less constraining in 1991 than it was in 1990. First, total issuance of private-activity bonds subject to the volume cap for all states except Illinois was \$12.1 billion in 1990, down from \$13.6 billion in 1989. Second, 18 states used at least 80 percent of the current-year volume cap in 1991, which is down from 24 states for 1990. Finally, states used \$2.1 billion in carryforward authority from previous years in 1991, but carried forward \$4.9 billion in 1991 volume cap authority to be used in the future. In 1990, in contrast, carryforward authority used (\$4.1 billion) was only slightly greater than carryforwards saved for future use (\$3.8 billion).

It is somewhat surprising that the volume cap was not more constraining in 1991 than in previous years. Transition rules meant that the volume cap was higher in 1986 and 1987 than it is now, and carryforward provisions meant that this higher authority could be carried through 1990. For this reason, we expected more states to bump up against the volume cap in 1991. However, the national recession that began in July 1990 and continued through the first quarter of 1991 may have depressed bond volume generally, contributing to the lower aggregate effect of the volume cap in 1991.

(continued on page 33)

Alternative Means of Delivering Municipal Services: 1982-1988

Robert M. Stein

A pair of surveys carried out by the International City Management Association (ICMA) in 1982 and 1988 confirm that municipalities use a variety of different methods to serve their citizens. These methods involve both public and private institutions, and are used differently for different types of services.

The Use of Competition

The use of service contracts and other competitive means of providing government services is well documented.¹ These techniques may yield more efficient, effective, and equitable distribution of goods and services in certain cases.

Yet, some governments have been reluctant to incorporate competition into their service operations. The popular explanations include politics (e.g., opposition of public employee unions), lack of available markets and vendors (e.g., a rural community's isolation from urban markets), and healthy rather than stressed local economies.² The decision to employ competitive means of providing services seems to be related to the scope and content of a government's service responsibilities. Different goods and services present cities with different challenges. Consequently, different strategies are needed to overcome obstacles to the delivery of different goods and services.

Efficiency is not the only goal governments seek to maximize with the provision and production of services. The provision of some goods and services is itself a goal governments seek to achieve even though they may be inherently inefficient and inequitable, and may bestow disproportionate benefits on some individuals and disproportionate costs on others. These types of services are redistributive, suggesting that their provision by municipal governments may lead to the outmigration of productive labor and capital from the providing city.³ Cities, however, continue to provide many redistributive goods and services. Nonconventional methods of providing services enable governments to give citizens goods and services that might not otherwise be available, and to establish a closer link between benefits received and costs paid.

Data collected between 1982 and 1988 for a sample of U.S. cities, indicate that governments with greater and more varied service responsibilities, especially those responsible for redistributive goods and services, employ more competitive ways to arrange service.

The Modes of Service Arrangement

Table 1 identifies ten alternative institutional arrangements for delivering municipal services, and the municipal responsibility for planning, financing, producing, and distributing services for each alternative. In the more traditional alternatives the government directly produces and distributes the desired good or service; in the more innovative alternatives (labeled regulatory) government alters the relationship between a vendor (private or public) and the consumer to achieve a specific policy outcome. Empirically, the distinction between regulatory and traditional service modes is a function of the scope and content of municipal responsibility for different phases of service delivery. Traditional service modes have the government assuming responsibility for the planning and financing of the service activity; only responsibility for production is shared with or assigned to another entity. When governments adopt regulatory service modes, they assume only partial responsibility for planning and financing and assign responsibility for production and distribution to other governmental units or private vendors.

Table 1
**Alternative Institutional Arrangements
for Municipal Service Delivery**

Service Mode	Plan-ning	Finan-cing	Produc-ing	Distrib-uting
Traditional				
Direct	+	+	+	+
Contract	+	+	-	-
Joint Contract	+	+	+/-	+/-
Regulatory				
Voucher	+	+	-	-
Subsidy	+	+	-	-
Tax Incentives	+	+	-	-
Franchise	+/-	-	-	-
Volunteers	+	-	-	-
Self Help	+	-	-	-

Note: + Government has an active role.
- government does not have an active role.
+/- government has a limited role.

Source: Robert M. Stein, *Urban Alternatives: Public and Private Markets in the Provision of Local Services* (Pittsburgh: University of Pittsburgh Press, 1981).

Service Arrangement and Policy Attributes

The ten alternative modes of service arrangement vary in their suitability for each type of functional activity. The delivery of "collective goods" from which everyone benefits (such as public safety and pollution control) are most likely to be dominated by direct municipal arrangement. Their traits make them unattractive for a private vendor. Even contractual arrangements for the production of collective goods may be problematic because of the difficulty of unambiguously pricing the good or service. "Common pool resources" in which consumption by one user may diminish consumption by others (such as emergency medical services) are likely candidates for direct municipal service delivery unless governments convert them into "private goods" by excluding nonpaying persons. Vouchers, franchises and some contractual arrangements are common service modes for "toll" goods and services that have joint use but can be priced (such as libraries and cable TV). The municipal government awards an exclusive or limited license to a vendor(s) to sell the regulated good to individuals residing in the municipality. This enables those who undervalue the toll good to avoid its consumption and any contribution to the municipal delivery of the good.

"Private goods" from which persons are excluded if they do not pay (such as food, health care, and housing), are generally expected to be provided by private markets. They are unlikely candidates for a traditional mode of public service delivery. The exclusiveness of private goods and services often make a nondirect service mode a more suitable service arrangement. In the case of private and priceable goods, there are ample opportunities for consumers to pay individually for the delivery of the good

or service. Moreover, these financing mechanisms (e.g., user fees, vouchers, subsidies) can be finely tuned to a desired or tolerable level of income redistribution. Substituting a subsidy, voucher, franchise, or user fee for a collective tax allows municipal governments to closely match individual preferences for these goods or services with the recipient's willingness and ability to pay for the service.

Municipal governments that provide "private goods" (such as health, hospital, and welfare services) may use a nondirect service mode to curtail their responsibility for direct financing and lessen the nonequivalence between a collective tax for the service and its concentrated and exclusionary benefits. Conversely, a direct mode of service arrangement will be most appropriate for collective service responsibilities that do not exclude beneficiaries.

The key to municipal service arrangement is the proper match between benefits received and costs paid by each individual consumer, particularly for the public provision of private and toll goods. Identifying where inefficiencies occur can help to identify alternative institutional mechanisms for efficient and equitable service arrangements.⁴ Too many externalities created by municipal taxing and spending decisions may result in citizens and businesses leaving town. Consequently, cities actively pursue developmental policies (such as roads and highways) that increase their tax base and benefit the entire community, while they avoid redistributive policies (such as welfare, housing, health, and hospitals) that benefit dependent and nonproductive persons who draw resources away from productive citizens without providing commensurate benefits.

Survey Findings

In 1982 and 1988, the ICMA surveyed municipal governments to determine "what services cities provide and how these services are delivered to citizens." Respondents in each city were asked to identify from among 64 functional activities those their community provided. The respondent was further asked to identify the specific methods of delivering services for each functional responsibility. The choices include the nine modes of service delivery listed in Table 1 and a multiple category that includes functions arranged by two or more modes of service arrangement. Approximately one-third of the cities surveyed in 1982 and 1988 responded to both surveys (N=667).⁵ The analysis examines the distribution of service arrangements by policy category, and the change in the arrangement of service responsibilities by policy type. The latter analysis specifically identifies the mode of service arrangement used to assume new service responsibilities between 1982 and 1988.

Table 2 (page 29) reports the proportion of total municipal service responsibilities provided by each mode of service for the years 1982 and 1988. Since the size of a community is closely related to the scope of its functional repertoire, figures are reported for the entire sample and by population size.

The means with which municipal governments arrange for the delivery of services remained relatively stable between 1982 and 1988, changing, on average not more than 5 percent. There are some notable exceptions to this pattern, however. Cities over 250,000 population

Table 2
Scope of Service Modes by Population Size, 1982 and 1988
(in percent)

Mode	All Cases		< 10,000		Population				> 250,000	
	1982	1988	1982	1988	10-49,999	50-249,999	1982	1988	1982	1988
Scope	70.18	60.41	69.58	55.79	69.05	58.90	74.23	65.65	78.49	76.38
Direct	56.97	59.74	60.11	61.58	57.04	60.15	56.23	59.65	56.38	46.18
Contract	30.10	28.44	25.80	26.92	29.80	27.90	31.10	29.96	36.90	36.28
Franchise	2.17	2.17	1.81	1.10	2.11	1.98	2.60	2.92	1.49	3.94
Voucher	0.14	0.38	0.11	0.34	0.14	0.35	0.16	0.52	0.00	0.48
Subsidy	1.07	1.62	0.39	1.67	1.02	1.39	1.34	2.20	1.48	4.61
Volunteer	1.91	3.95	1.06	3.05	1.96	3.90	1.95	4.09	0.87	5.51
Self-Help	0.49	0.96	0.12	1.69	0.51	0.83	0.48	1.29	0.21	1.97
Tax Incentive	0.11	0.34	0.29	0.00	0.10	0.20	0.14	0.07	0.00	6.82
Multiple	5.09	1.49	7.86	2.41	5.09	1.51	4.70	1.19	4.80	1.91
Number of cities	604		17		451		123		13	

Source: International City Management Association, "Alternative Approaches for the Delivery of Public Services," a machine readable data file, 1982, 1988.

experienced a significant decline in the mean percentage of functions arranged directly by the municipal government, matched by significant increases in the incidence of tax incentive, subsidy, and volunteer modes of service. Now, 43 percent of municipal services are planned, financed, produced, or delivered with the active participation of an entity or entities other than the municipal government. A varied use of service delivery methods was found across all sizes of municipalities.

Direct service delivery remains the most prevalent form of municipal service arrangement. On average, municipal governments employed a direct mode of service arrangement for 57 percent of their functional responsibilities in 1982. This figure rose slightly in 1988 to 60 percent. The main alternative to a direct municipal service arrangement is the service contract. An average of 30.2 percent of all municipal service responsibilities were

either totally or partially contracted out to other governments, private firms, or neighborhood associations in 1982. This figure declined slightly to 28.4 percent in 1988. This pattern is observed in all cities, except those with populations over 250,000, where the proportion of services contracted remained unchanged at 36 percent.

The remaining alternative service modes rarely dominate the service methods of municipal governments. On average, they represent the method of service delivery for less than 15 percent of a city's functional responsibilities. The modest use of noncontracting modes of service arrangement, however, should not be taken as evidence that these modes of service arrangement have an insignificant effect on the character of municipal service arrangements or the scope and content of a city's services. These lesser used modes of service arrangement can produce substantial efficiency gains for municipal governments.⁶

Table 3
Percentage of Cities Using Service Modes by Policy Type, 1982 and 1988

	Private		Toll		Common Property		Collective	
	1982	1988	1982	1988	1982	1988	1982	1988
Responsible	56.1	44.6	52.9	50.8	80.7	58.4	79.9	69.6
Direct	33.6	43.3	47.7	55.0	50.0	71.4	59.1	53.1
Contract	50.3	36.9	33.7	21.7	32.7	15.4	31.2	33.0
Franchise	3.0	3.4	7.0	7.5	1.8	3.4	1.2	1.9
Subsidy	2.0	2.0	2.1	3.9	3.9	4.2	0.5	3.3
Voucher	1.4	5.4	3.6	7.6	5.9	5.9	1.6	3.8
Self Help	0.6	2.1	1.0	1.2	0.3	0.3	0.5	1.4
Tax Incentive	0.3	1.5	0.1	0.7	0.2	0.5	0.1	0.7
Multiple	6.7	1.3	4.4	1.3	6.4	0.5	5.4	1.9

Source: International City Management Association, "Alternative Approaches for the Delivery of Public Services," a machine readable data file, 1982, 1988.

Table 3 reports the mean proportion of cities employing each mode of service arrangement by private, toll, common pool, and collective goods and services. Delivery methods for collective goods and services were dominated in 1982 by a direct mode. Conversely, the arrangement of private goods and services is dominated by a nondirect mode of service arrangement, most often a contract. A direct service arrangement for toll and common pool goods and services occupies a middle position between collective and private goods and services.

In 1988 the proportion of services directly arranged increased for private, toll, and common pool goods and services and, declined slightly for collective goods and services. Conversely, the mean proportion of services arranged by contract dropped for private toll and common pool goods and services and increased slightly for collective goods and services. In spite of these changes, a direct mode of service continues to be the dominant mode of service arrangement for collective and toll goods and services, while *nondirect* modes of service, most often contracts, dominate the provision and production of private goods and services.

Table 4 reports the mean proportion of cities employing different modes of service arrangement for newly assumed functional responsibilities by policy category. On average, 50 percent of newly assumed collective goods and services were arranged directly by the municipal government. Among cities adopting responsibility for private goods and services, on average only a third were assumed with a direct mode of service arrangement. The assumption of *common pool* and toll goods and services occupy a middle ground between these two extremes. The assumption of responsibility for toll goods and services is

dominated by a *nondirect* mode of arrangement (41.8 percent), while the assumption of common pool goods and services is almost evenly divided between direct (48.6 percent) and *nondirect* modes of service delivery.

Conclusion

The character and functional distribution of alternative modes of service arrangement present a much different picture of municipal governance than is portrayed in many American government texts. Rather than a *unidimensional* mode of service provision and production dominated by the municipal government, service responsibility is facilitated through a large number of *nondirect* modes of service delivery. The *institutional arrangements* for service provision and production vary significantly across the different types of municipal functional responsibility. The service mode used is closely related to the character of the functional responsibility, showing that municipal governments possess and exercise significant discretion in their efforts to fulfill the service demands of their constituencies.

Alternative service modes help to mitigate the negative externalities associated with direct provision of redistributive services. Analysis of the ICMA surveys show that *nondirect* service modes increased the scope of municipal responsibility for redistributive services by 43 percent. The service modes adopted by cities with significant social service responsibilities suggest that decisionmakers in these cities are aware of the potential threat that redistributive services pose for their city's economic well-being.

Robert M. Stein is professor of political science, Rice University.

Table 4
Percentage of Cities
Adopting New Services
by Mode of Service Arrangement
and Policy Category
1982 and 1988

	Collective	Common	Toll	Private
Assumed 1982-88	5.3	5.7	7.2	5.8
Direct	50.8	48.6	41.8	33.1
Contract	38.7	34.4	25.0	42.9
Franchise	1.1	1.4	13.4	4.4
Subsidy	3.2	5.4	4.0	3.2
Voucher	0.7	1.3	0.5	0.8
Self Help	0.9	1.1	1.6	2.3
Tax Incentive	0.5	0.3	0.9	2.8
Multiple	0.8	0.5	1.4	1.5

Source: International City Management Association, "Alternative Approaches for the Delivery of Public Services," a machine readable data file, 1982, 1988.

Notes

¹E. S. Savas, *Privatization: The Key to Better Government* (Chatham: Chatham House, 1987). David Osborne and Ted Gaebler, *Reinventing Government* (New York: Addison Wesley, 1992).

²Robert M. Stein, *Urban Alternatives: Public and Private Markets in the Provision of Local Services* (Pittsburgh: University of Pittsburgh, 1990); David Morgan, M.W. Hirlinger, and R.E. England, "The Decision to Contract Out City Services: A Further Explanation," *Western Political Quarterly* 41 (1988):363-72; James Ferris, "The Decision to Contract Out," *Urban Affairs Quarterly* 22 (1988):289-311.

³Paul Peterson, *City Limits* (Chicago: University of Chicago Press, 1981).

⁴This discussion draws on Elinor Ostrom and Vincent Ostrom, "Public Goods and Public Choices," in E.S. Savas, ed., *Alternatives for Delivering Public Services* (Boulder: Westview, 1977), pp. 7-14.

⁵After excluding cases with missing data, the number of cities studied is 604.

⁶James Ferris, "The Use of Volunteers in Public Service Production: Some Demand and Supply Considerations," *Social Science Quarterly*. 69 (1988):3-23. Stein, *Urban Alternatives*, pp. 184-186.

Perspectives on Surface Transportation

Early in 1991, different House, Senate, and Administration bills to reauthorize the nation's surface transportation programs competed for passage by the Congress. As the bills went through the legislative process, the core highway and transit programs were combined with other forms of transportation, such as airports, waterways, and railroads. The final act, signed on December 18, 1991, is highly *intermodal*. It also stresses *efficiency* by requiring new forms of performance-based planning and management. Thus, instead of a simple reauthorization of the old highway and transit programs, a new act emerged, the *Intermodal Surface Transportation Efficiency Act of 1991* (ISTEA). It sets new standards for environmental sensitivity as well as efficiency.

As noted in an earlier *Intergovernmental Perspective* article (Winter 1992), this act presents many new intergovernmental challenges that involve new partners, boundaries for planning, planning processes, and processes for making politically binding project selections and funding allocations. The federal regulations to put the law into effect are being developed slowly, with great care and consultation. Meanwhile, money continues to be spent in most places under the old rules.

In the San Francisco metropolitan area, there is an initiative to get some of the new partnerships and processes required by ISTEA into action right away, without waiting for the federal regulations. This program is called Jump Start.

ACIR invited three key participants in the program to participate in a roundtable discussion at its September 18, 1992, meeting in San Francisco. In their remarks, the panelists explained how Jump Start has been used to bring a wide array of transportation agencies and others together to set new priorities that begin turning old programs in new directions. Edited excerpts from the remarks of the panel members follow.

Remarks of
LAWRENCE DAHMS
Executive Director

Metropolitan Transportation Commission

ISTEA puts the spotlight on metropolitan planning organizations (MPO). The Metropolitan Transportation Commission (MTC), for example, has launched a partnership to put freeway service patrols on the road, with tow trucks to clear away any incidents and get traffic moving. MTC owns the freeway call boxes. MTC also runs a pavement management program to make the most efficient use of limited maintenance funds. The commission advocates mobility in the context of other community values. ISTEA promotes all of these kinds of activities.

The Jump Start program pulled together 36 local, regional, state, and federal agencies in January 1992, immediately after the President signed the bill, to accelerate these activities and make best use of the incentives and new funding in ISTEA. The new act made it possible to overcome three deficiencies in our regional process: (1) there was no vision for the region; (2) there was not enough flexibility in our investment programs; and (3) the partners were oriented toward their own limited goals rather than toward integrating goals.

In convening the Jump Start partnership, MTC had the support of the federal highway administrator, the federal transit administrator, and the director of the state transportation agency.

This new partnership includes transportation and regulatory agencies—including air quality and development agencies like the Bay Conservation and Development Commission—the ports, and nine new congestion management agencies that represent nine counties and 100 cities. In addition, a blue-ribbon advisory council that represents the civic community, environmentalists, and the business community works hand-in-hand with the partnership.

At present, the Jump Start program consists of 21 difficult multiagency projects. Their success demonstrates that the partnership can work. Most are on-the-street projects, but there also are a few planning-type projects. One of the latter is to delineate our part of the new National Highway System being designated under ISTEA. Another is to set multimodal priorities between bicycles, freeways, transit, arterial streets, and the like—something a lot of people said could not be done, but we did it.

When the partnership was started, MTC thought it would be hard to keep people excited. Surprisingly, the quarterly meetings proved not to be enough. We are meeting more frequently, by popular demand, and the partners are adding bigger and more controversial projects to the list. So far, this experiment is working, and we think it might be a prototype for the nation.

ISTEA does two other things that are very important. First, it focuses the partnership on managing and operating and enhancing the existing system. If we cannot expand the system with new construction everywhere, what can we do? Can we fix some choke points with limited construction projects? Do we have to have an operating strategy to deal with that? Second, in the long term, ISTEA focuses on mobility goals, using many more options than in the existing system. It offers a rallying point for public support.

MTC is excited about ISTEA but concerned that some people are not as excited as we are. Therefore, the partnership feels a sense of urgency to make it work here and to work with others to make sure it works elsewhere.

Remarks of
STEPHEN WEIR

Chairman

Metropolitan Transportation Commission

MTC is the agent for the state and the federal government in this metropolitan area and is responsible for allocating well over a billion dollars a year. Directly, the commission allocates about \$400 million. Over the last 11 years, our support for transit has gone from about \$300 million to about \$1.1 billion in the Bay Area. The lion's share of that, about \$900 million, is coming from local sources.

MTC sets the capital priorities for transit in the Bay Area and acts as a scorekeeper for 100 cities, 9 counties, 23 larger transit operators, about 30 paratransit operators, and the 9 new congestion management agencies established by state law. This is not an easy task. There are some problems.

Four years ago, we found ourselves with 12 members of Congress in our very large and diverse region. The BART rapid rail transit system covers only three counties, because the other counties chose not to participate when the system was established in the 1960s. So, the original concept of a system circling the bay has not been realized, and the airport has no rail connection, even though it could be the greatest revenue-generating destination. An offer was made to San Mateo County to buy into the system so the airport connection could be made. But the congressional delegation split, as did local interests. MTC worked very hard to put

together an agreement to bring in San Mateo as part of an overall rail system expansion plan that seems to be holding together. Most of the funding has been put together, and the split in the congressional delegation has been bypassed. Now, still others want to be included.

Another problem we have been working on is the I-80 project. This interstate freeway, running east of the Bay and north through Alameda and Contra Costa counties is the most congested freeway in the Bay Area. Environmental interests blocked the state's proposal to add another lane and upgrade the interchanges. MTC came up with an HOV proposal that would provide an equal amount of additional capacity. The Sierra Club and Urban Ecology objected, demanding environmental mitigation, and they have taken MTC to court. This problem has not been solved.

MTC has been sued before. One case under the *Clean Air Act* in 1989 attacked our planning process, and it has just been settled. However, that suit may have encouraged others. The resistance to freeway widening is fierce. In fact, we probably will see the end of freeway widening in the Bay Area, and of double decking as well.

MTC has led in the acquisition of an abandoned rail right-of-way, but has not found anyone to use it. We are also exploring the possibility of a toll road in the East Bay.

The biggest problem is that is impossible to get a handle on traffic congestion and air quality without tying together the issues of transportation and land use. We've established single-purpose regional governments—for transportation, air quality, general planning, and protecting the bay from development—but they're not together, and land use regulation is strictly local. The state legislature nearly combined three of these regional entities this year, and the state business community, newspapers, and environmental groups all are calling for this. I think we're now going to see some kind of merging of regional functions. If the local governments cannot sit down together and recognize these problems and propose a solution, the state legislature will mandate one.

Remarks of
DIANE McKENNA

Member

Metropolitan Transportation Commission

As a former mayor, and now as a member of a county board of supervisors who serves on several regional bodies and on the new congestion management agency (CMA) in my county, I want to tell you how the ISTEA legislation worked for us, and how it fit into what we were attempting to do in Santa Clara County.

In 1990, the voters of California passed Proposition 111, which raised the gas tax for transportation projects and required the urbanized counties to prepare annual congestion management programs. Santa Clara County had been working in this direction for five years by bringing together a task force representing five cities and the county to link land use and transportation planning. The task force established growth management guidelines, housing goals, transportation plans, and capital improvement programs that all were following. The task force was transitioned into the congestion management agency.

The CMA's purpose is to reduce congestion through a combination of roadway and transit capital improvements, improved land use planning, trip reduction, and travel demand management programs. The CMA now has 15 member cities (they have to join or lose their gas tax revenue).

One problem with the CMA has been the lack of money for planning. ISTEA has solved that problem. Since congestion management is required by ISTEA, MTC set aside 3 percent of the STP (block grant) money from ISTEA for this purpose. ISTEA has strengthened MTC and CMA, as well as the link between them. The CMAs in all nine counties in the Bay Area are working with MTC to help set regionwide transportation priorities. The techniques learned at MTC are being used in local planning. We now are evaluating the merits of projects across the different modes of transportation and emphasizing cost-effectiveness in relieving congestion, maintaining existing facilities, and cleaning the air. This process helped make the best use of our share of the funds.

The process has worked well so far because a decision was made to assure a certain county of equity in funding. About 50 percent of the STP funds were set aside for the county guarantee. Projects eligible for this funding have to pass MTC screening criteria, but they don't have to go through the competitive regionwide scoring process. CMA has worked closely with MTC and become an integral part of its process. We can begin to see how that process might serve even larger goals like setting priorities for major regional projects and linking land use planning with transportation planning.

Private-Activity Bond Cap

(continued from page 26)

The Special Case of Mortgage Subsidy Bond and Small-Issue IDBs

On June 30, 1992, state and local government authority to issue mortgage subsidy bonds and small-issue IDBs expired. Two tax bills put forth by the Congress this year contained extensions of the authority to issue these types of private-activity bonds, but President George Bush vetoed both of them. It is unclear whether the Congress and the Clinton administration will craft another tax bill to revive state and local authority to issue these types of bonds.

For each of the last three years, mortgage subsidy bonds and small-issue IDBs have accounted for a large portion of private-activity bonds. Last year, 42 percent of private-activity bonds subject to the volume cap were mortgage subsidy bonds, and 9 percent were small-issue IDBs. In 1990, the respective percentages were 48 percent and 14 percent, and for 1989, they were 37 and 21 percent. As long as states are unable to issue these traditionally high-volume bonds, total private-activity bond volume is likely to be depressed and the volume caps are unlikely to be binding.

It is likely that mortgage subsidy and small-issue IDBs will be revived eventually. Both have expired and been resurrected before (mortgage subsidy bonds in 1983-84 and 1990, and small-issue IDBs in 1990).⁴ Future effects of the private-activity bond volume cap will be greatly influenced by reauthorization of these types of bonds and by the eventual upturn in the economy.

Daphne A. Kenyon is professor of economics, Simmons College.

Notes

¹ Maureen O'Kicki provided very helpful research assistance on this project.

² For 1990 results, see Daphne A. Kenyon and Dennis Zimmerman, "Private Activity bonds and the Volume Cap in 1990," *Intergovernmental Perspective* 17 (Summer 1991): 35-37. For the 1989 survey, see U.S. Advisory Commission on Intergovernmental Relations, *The Volume Cap for Tax-Exempt Private-Activity Bonds* (Washington, DC, 1990); and Dennis Zimmerman, *The Private Use of Tax Exempt Bonds* (Washington, DC: The Urban Institute Press, 1991).

³ Unless otherwise noted, the data described below will omit Illinois. Illinois has a particularly complex volume cap and allocation system that makes data gathering difficult and makes Illinois data noncomparable to other state data.

⁴ Information on past sunsets and reauthorizations of mortgage subsidy and small-issue IDBs was obtained from Joan Pryde, *Muniweek*.

Medicaid:

Intergovernmental Trends and Options

Medicaid is increasing in cost and decreasing in effectiveness in many areas. Medicaid spending nearly tripled between 1980 and 1990 (from \$24.8 billion to \$71.3 billion), and the expenditures are projected to continue to rise sharply. The report identifies major trends in Medicaid and presents recommendations intended to restore the program's original goals and design by (1) increasing state and local roles in Medicaid policymaking; (2) increasing state and local program flexibility; (3) adopting interim modifications to Medicaid and implementing comprehensive health care reform by 1994; (4) transferring local Medicaid administration and financing to the states; (5) transferring the cost of long-term care to the federal government under Medicare, and (6) improving the targeting of federal Medicaid funds. The recommendations are intended to slow the growth of Medicaid expenditures for the states, allow the states to serve the health care needs of their populations better, and bring more accountability, balance, and certainty to Medicaid service delivery and financing.

A-119 1992 \$10

(see page 39 for order form)

**Characteristics of Federal Grant-in-Aid Programs
to State and Local Governments:
Grants Funded FY 1991**

During the past 25 years, federal grants-in-aid to state and local governments have changed dramatically in type, number, dollar amount, and other characteristics. This is ACIR's sixth report on the system since 1975. The number of categorical grant programs grew from 422 in 1975 to 534 in 1981, dropped to 392 in 1984, and rose to an all-time high of 543 in 1991. The number of block grants grew to 14 by 1991. In general, about 75 percent of all grant aid is distributed by formulas, and over 25 years at least 70 percent of the money in the system has been distributed through categorical programs. Medicaid, the largest formula program, accounts for about 30 percent of all grant outlays.

M-182 1992 \$10

Characteristics
of Federal Grant-in-Aid Programs
to State and Local Governments:
Grants Funded FY 1991



10-18

**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 \$15



(see page 39 for order form)

North Dakota: Building a Consensus on the Future

Bruce Levi and Larry Spears

The North Dakota Consensus Council was founded in 1990 by a partnership of private and public leaders as a forum to bring leaders and citizens together in developing pragmatic, long-lasting consensus agreements on issues of government structure and policy. Using consensus-building processes, the council works to supplement the public policy process. The Council's staff provides research assistance, drafts proposed legislation and other documents to implement consensus agreements, and helps citizens and leaders monitor the results. Emphasis is on implementation, but the Council does not engage in lobbying.

Supplementing the Public Policy Process

Assistance in forming the partnership came from the Northwest Area Foundation. The Otto Bremer Foundation and the Dayton Hudson Corporation helped finance the early undertaking, and The William and Flora Hewlett Foundation later joined the effort to support and assess the transferability of this experience to other jurisdictions.

The following premises were the basis for the formation of the Council:

- *Supplemental consensus processes for assisting public decisionmaking are necessary* to prepare for the future effectiveness of the structure and services of public life.
- *Public and private leaders can establish these consensus processes with permanence and continuity* if they are brought together for a sustained period of discussion to reflect on their common task.
- *A trusteeship of the consensus process among leaders is possible* to establish a long-term, cooperative approach to assist in the development of public agreements among diverse, important interests. This trusteeship is focused on the process for consensus building, not on the resulting consensus.
- *Common, latent agreement exists* in the diverse viewpoints of leaders and citizens on many basic issues of government structure and policy. These agreements can be "built" and articulated, using consensus-building processes.
- *Consensus building requires resources* in time; an atmosphere conducive for both leaders and citizens to play with new or half-formed ideas; representation of diverse viewpoints; staff assistance to provide accurate reflection of leader and citizen views, nonpartisan analysis, and related document preparation; and skilled leadership facilitation.
- *Principled and practical agreements make lasting consensus.* Too often, people work together in committees to identify solutions, but they never see their agreements implemented. Consensus on a major issue of government structure or policy consists of agreement not only on principle, but also on practical vehicles for implementation.
- *Cumulative agreements create a critical mass of consensus thinking that generates a positive public and political atmosphere* that releases creative energy to address new problems, thereby contributing markedly to the public environment for self-government.

The Council's board of directors reflects a wide range of viewpoints among the leadership of the state. All branches of state government and the private sector are represented. Board members include the president of the Greater North Dakota Association (the statewide chamber of commerce), the executive vice president of the North Dakota Association of Rural Electric Cooperatives (the largest statewide rural membership organization),

the president of the North Dakota AFL/CIO, a Republican state representative, a Democratic state senator, a representative of the state's judicial system, and the governor. The board is self-perpetuating, except for the gubernatorial seat, which is *ex officio*.

The board's trusteeship role is essential and unique. The role of the board is to protect the creativity and energy of the consensus-building process. The agreements in principle and the implementing mechanisms are not submitted to the board for approval or disapproval. The individual members are then free to take individual or constituency positions on any agreements. As a result, specific agreements do not divide the board. Nor does the diversity among the board members distort the consensus processes. The board's role as trustee lends legitimacy to the Council's consensus processes in the eyes of the public and other leaders. This role is an example of public self-discipline and commitment, which can be a model for other institutions struggling to encourage creativity and consensus building in public decisionmaking.

Practice in Consensus Building

The Council identified six fundamental issues of government structure for statewide consensus building: public education; local government; higher education; and the judicial, legislative, and executive branches of state government.

To date, the council has undertaken full or partial consensus processes in public education, the judicial and legislative branches of state government, and local government.

Public Education

Starting out with traditional notions of "blue-ribbon" coalition building, participants proved willing to experiment with facilitated consultations and new approaches to citizen participation, resulting in 1990 in a significant consensus on a new basic direction for public education.

The goal was ensuring that North Dakota's youth, in a largely rural state, complete high school with the knowledge and skills they need for life and work in the 21st century. The consensus strategy included:

- Improving education quality through emphasis on student performance standards, participatory school decisionmaking, interdisciplinary curriculum, a broad array of instructional practices, and professional staff development;
- Improving education structure through cooperative use of new technologies; the conformance of geographical boundaries for delivery of supplemental education services, leading to the establishment of regional education resource centers; the development of cooperative arrangements between school districts and other government and community services; an extension of teacher-student contact time and teacher contract days; and further study to

determine the most effective and efficient organization for combined administration of the state's elementary, secondary, and higher education system; and

- Improving education finance through an increase each year in the state's share of support for public elementary and secondary education, and greater equity and stability in state aid to school districts.

A legislative implementation plan was identified for the decade beginning in 1991. The 1991 Legislative Assembly approved legislation that prepares the way for the formulation of statewide student performance standards and assessment methods, and the development of local participatory decisionmaking processes in school districts. These are significant first steps in implementing the consensus.

The Judicial Branch

The council's judicial branch program followed a different model, tailored to a timely opportunity. In 1976, the judicial system and the Legislative Assembly began implementing a new judicial article of the North Dakota Constitution calling for a "unified judicial system." Those efforts produced a new county court system, a flexible court of appeals, and state funding for district courts. However, the remaining major issue of structure in the judicial branch was the mechanism for developing a single trial court of general jurisdiction to replace the two-tier system of district and county courts.

The opportunity was presented in a political atmosphere filled with advocates for reducing the number of judges, and an impasse within the judicial system regarding the mechanism for combining the courts. An interim legislative committee recommended a bill to the 1991 Legislative Assembly, notwithstanding that the legislation had been repudiated by the major stakeholders.

The council initiated a consensus-building process in October 1990 to meet this challenge before the 1991 legislative session. A written "request for comment" process was used. Based on previous discussions, documents reflecting possible consensus premises, criteria for legislation, and implementation chronology were distributed widely within the legal system, and to county and state government officials and others. Based on the responses, revisions were made in the proposed documents to reflect an emerging consensus.

The council staff developed a draft bill, which was circulated with the supporting documents for additional discussion and comment. Based on the responses, a revised set of documents and a new draft bill reflecting the basic consensus among the parties were published for review by all parties and for action by the legislative leadership.

The resulting bill was approved by the 1991 legislature. It establishes a single trial court of general jurisdiction in 1995, and reduces the number of judgeships over the decade ending January 1, 2001.

The Legislative Branch

The council initiated a legislative branch program in the fall of 1991. The 1990 census and the resulting redistricting of the legislature provided an opportunity to begin consensus building. The council focused attention on the larger issues of the nature of the political environment and the structure and process of representative decisionmaking. The participants had substantial experience as legislators, executive branch officials, and lobbyists (they were selected on the basis that they did not anticipate future legislative service).

This leaders' forum is the initial component of a phased approach to broad public participation in developing consensus on the future direction of the legislative branch. The leaders, in consultation with staff of the National Conference of State Legislatures, will provide the "grist" for the consensus mill by deliberating on a vision for the legislative branch, identifying its current strengths and weaknesses, and articulating emerging agreement on ways to strengthen the legislative environment.

Local Government

A consensus-building model for rethinking the role of local government and its structure was organized in September 1990 among representatives of the North Dakota League of Cities, the North Dakota Association of Counties, the North Dakota Township Officers Association, the North Dakota Recreation and Park Association, the governor's office, and the leadership of the legislature. This negotiation is chaired by a team of two facilitators from the University of North Dakota Conflict Resolution Center.

The local government negotiation has focused on the desired kinds, number, and size of units of local government; service function allocations between local governments and the state; local revenues and expenditures; and future intergovernmental activity. These are the most intractable structural issues in local government.

An early phase of the negotiation developed draft vision and mission statements, followed by a series of community meetings. The resulting consensus was published and appropriate implementation mechanisms developed that were reviewed again in community meetings for review by the 1993 Legislative Assembly.

The negotiation tentatively adopted the concept of local government "Blueprints" and the "Tool Chest," which are metaphors for the optional future images of local government and the statutory tools available. This concept was tested in a second series of community meetings in the fall of 1992. The tools are premised on the principles of local choice and citizen consent: local choice in initiating cooperation and change, in recognition of the diversity, yet substantial similarity, in public needs, economic reality, and other circumstances of communities; and citizen consent in creating opportunities for citizens to vote on a change in the decisionmaking structure of local government.

Citizen Participation

The Council has established a partnership with the North Dakota State University Extension Service to host community meetings on consensus subjects. The extension service contributes a major networking service, and the council provides the forum for developing the emerging consensus and the public leaders for the community conversation.

The community meetings held in conjunction with the local government negotiation were structured as nonadversarial conversations among local citizens two or three negotiation leaders. The council staff takes detailed notes of the discussion for review by the full negotiation group and for summary analysis and distribution to all citizens who participate in the meetings.

Intergenerational communication is essential at each meeting. A "Student Panel on Behalf of the Future," comprised primarily of local high school students, provides youth perspectives on what the adults talk about, as well as their own views about underlying values and hopes for their communities and the state. The presence of the students provides a positive atmosphere in which the adults are dissuaded from expressing negative attitudes toward the political process and leaders. In a cultural environment that offers few forums for intergenerational conversations on public issues, the adults are genuinely interested in hearing what the students have to say.

Implementation

Consensus building is implementation. Talk is not cheap. And talk alone is not sufficient for consensus or implementation. Talk of principle is tested by talk of implementation. The deeper the talk about implementation, the stronger the consensus on the principles.

The council has undertaken to narrow the traditional gap between study reports and implementation by developing the basis for constitutional, statutory, and administrative actions that focus on program outcomes. Each consensus process is expected to produce specific, practical results.

Implications for the Future

The North Dakota Consensus Council is trying to make progress with practical results. The true test of an infrastructure for consensus building will come over time.

The only way to prosper and function in today's world of greater demands on limited public dollars, increasingly complex issues, and the fragmentation of the electorate is to have a clear vision of long-term direction. An institutionalized process of public policy consensus building can assist representative democracy in providing this vision, and make it possible for people with different views and interests to walk the same path in finding mutually acceptable responses to public issues.

Bruce Levi is counsel and Larry Spears is executive director of the North Dakota Consensus Council, Inc.

Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues

Federal preemptions of state and local authority have increased significantly since the late 1960s. Of 439 significant preemption statutes enacted by the Congress since 1789, more than 53 percent (233) have been enacted only since 1969. To assess the impact of federal preemption and perceptions regarding various approaches, ACIR surveyed state elected officials, agency heads, and the 26 state ACIRs. There was a consensus that there is too much federal preemption and that the Congress delegates too much authority to federal administrators. Nevertheless, many respondents acknowledge the need for federal preemption under certain circumstances.

In general, state officials rated highly (1) standard partial preemption, (2) a federal statutory provision stipulating that a state law is valid unless there is a direct and positive conflict with a federal law, and (3) congressional permission for states to act where no federal standard is in effect.

With this report, the Commission reaffirms its earlier recommendation that federal preemption, while necessary in a federal system, ought to be minimized and used only as necessary to secure the effective implementation of national policy adopted pursuant to the Constitution."

A-121 1992 \$10



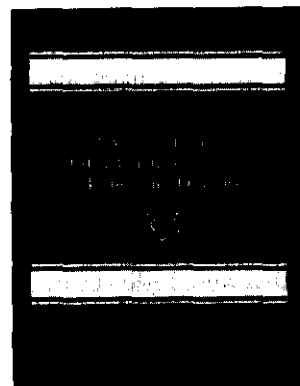
Toward a Federal Infrastructure Strategy: Issues and Options

Toward a Federal Infrastructure Strategy documents the progress of an interagency initiative to develop a federal infrastructure strategy through a partnership including the Department of the Army, the Environmental Protection Agency, the Department of Energy, other federal agencies, state and local governments, and the private sector. Emphasis was placed on planning, design, finance, construction, operation, and maintenance.

The Advisory Commission on Intergovernmental Relations convened a series of workshops for representatives from more than 25 congressional and other federal agencies and departments, and more than 70 organizations representing state and local governments, public works providers, and related research, advocacy, professional, and user groups.

Based on the consultations, a broad consensus emerged around five infrastructure issues that should be addressed by the federal government: (1) rationales for federal investment, (2) regulations, (3) technology, (4) financing, and (5) management.

A-120 1992 \$8



(see page 39 for order form)

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