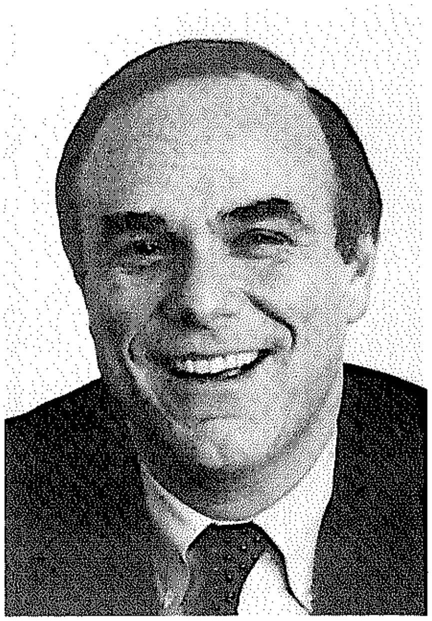
Intergovernmental
PERSPECTIVE
Fall 1993-Winter 1994, Vol. 20, No. 1

Public Works Strategies

Advisory Commission on Intergovernmental Relations

A View from the Commission



The relationship between the federal government and state and local governments needs to be repaired. ACIR provides the means to develop the necessary intergovernmental understanding and cooperation. The infrastructure project highlighted in this issue of *Intergovernmental Perspective* emphasizes the continuing need for ACIR.

There is nothing more important than energizing a new national initiative on infrastructure investment. The state of infrastructure in many of our cities, towns, and states is shocking. For more than a decade, one major national report after another has called for action, but we are still waiting to start. Now is the time to act. I am optimistic that we can get the ball rolling because several supportive initiatives are coming together. President Clinton is committed to investing in our future, and infrastructure is a big part of that plan.

The National Economic Council in the White House has a work group on infrastructure investment that worked alongside the ACIR task forces that put together the National Conference on High Performance Infrastructure. The National Performance Review also used the same kind of government performance concepts found throughout the ACIR report. Furthermore, the *Government Performance and Results Act of 1993* will start the momentum for results-oriented and performance-based federal program management.

At OMB, I hope we will see the development of a federal investment budget. In local and state government, we distinguish capital improvement budgets from current expense budgets. We do that for a good reason: investments for the future will return many benefits over long periods of time.

The federal budget is different from a city budget, but that is no reason to ignore the long-term benefits of federal investments. They should be singled out in the budget, justified by sound investment analysis and examined carefully for the implications of not making those investments.

In government, our greatest failing is that we worry about this year, this legislative session, this budget. The federal government has done that for too long. We will be at a tremendous disadvantage in global economic competition if we do not modernize the federal budget process. In other nations, infrastructure improvement is planned on a regular basis, for the long term.

The challenge is to restore confidence in public works programs and in government itself. The people must, once again, know that government is working for them effectively, efficiently, and fairly. That is what the four-point strategy considered at the National Conference on High Performance Infrastructure aims to do. With this strategy, nothing but the highest quality, most thoroughly justified public works projects would be funded, and facilities would be well maintained because maintenance is as important as the original capital investment. Environmental and other necessary regulations would be administered effectively and efficiently, and we would not spend beyond our means.

I want to thank the U.S. Army Corps of Engineers, which brought ACIR into this process, underwrote the cost, and helped in many other ways. Well over 100 federal, state, local, and private organizations were involved in meetings that produced consensus on many points. The final report is based on the day-to-day experiences of professionals involved directly with these issues.

The report suggests (1) leadership by the President and the Congress to set the tone for a governmentwide initiative; (2) guidance for infrastructure agencies developed in cooperation with these agencies to achieve consistent application of sound investment and regulatory practices; and (3) strong support for federal, state, and local infrastructure agencies to help them absorb the many new ways of doing business outlined in the report.

This is an excellent blueprint for the public works action that America needs to take, beginning now.

Edward G. Rendell
Mayor of Philadelphia

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PERSPECTIVE

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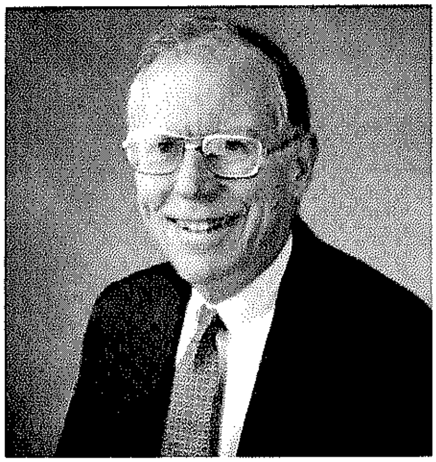
Chairman's View



In accepting the Chairmanship of ACIR, I did so with the conviction that the Commission has an important, indeed, a unique role in making our system of government work better. My interest in ACIR stems from my years of service in state government, where I regarded ACIR as a invaluable source of support. I have continued to regard it as a vital element in our political process.

I was also motivated by the assurance the President gave me in making this appointment that he is fully committed to strengthening ACIR to help it carry out its responsibilities. After all, no other agency is officially charged with the duty of bringing to the table leaders from our federal, state, and local governments. The President manifested his interest by meeting with the Commission at its December 1 session and personally expressing his support.

As he pointed out, however, it is not enough just to provide a forum for discussing public policies and programs. Many other organizations and institutions already fill that role, and perform it well. While a very important function, the exchange of ideas and information alone is not enough.

Frequently overlooked but specifically expressed in the legislation that established ACIR in 1959 is its duty as an instrument of public policy. It is empowered to "recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government." That is a considerable grant of authority.

Because the Commission is able to engage the participation and perspectives of representatives from across the governmental spectrum without regard to partisan or parochial interest, ACIR has the luxury of bringing to the process a broader and more coordinated view of policies than is possible through representatives of particular units or levels of government acting alone.

To perform this task properly will require the building of a credibility and effectiveness based on the continuing high quality of the Commission's research, a clear vision of how our federal system ought to perform, and a willingness to expend the energy and develop the relationships necessary to advance the policies best calculated to serve the nation and its constituent communities.

There is a widespread feeling in the body politic that there has not been enough of this kind of unifying activity going on in our political system. There is a perception among many of our citizens that too many units of government seem to operate totally independently of each, other with an indifference to the impact of their policies on others. This is particularly reflected in the disenchantment that results from the handing down of various mandates from higher levels of government to corresponding lower ones, often accompanied by requirements for increased spending but unaccompanied by sources of funding.

There is also the unhappiness brought about by the insensitive and inflexible cookie-cutter prescriptions that are applied uniformly to all states and political units and that preempt and negate the resourcefulness of local leadership. There is concern about too much concentration of authority at the highest levels but, at the same time, too much duplication and too many gatekeepers at the lower levels.

Without taking ourselves too seriously, but with a firm understanding of our responsibility to bring about constructive change in our complex federal system and to make that system work as well as it can, the Commission is optimistic that it can make a significant difference.

There is incredibly talented leadership represented on the Commission. Its bipartisan composition and geographical diversity are able to raise it above narrow self-serving interests. The combined experience in government service of its members provides a rare and valuable reservoir of wise counsel. We look forward to working closely with the President, the Congress, the states, cities, and counties to the end that our system of government will be strengthened and our citizens better served.

William F. Winter

President Clinton Meets with ACIR

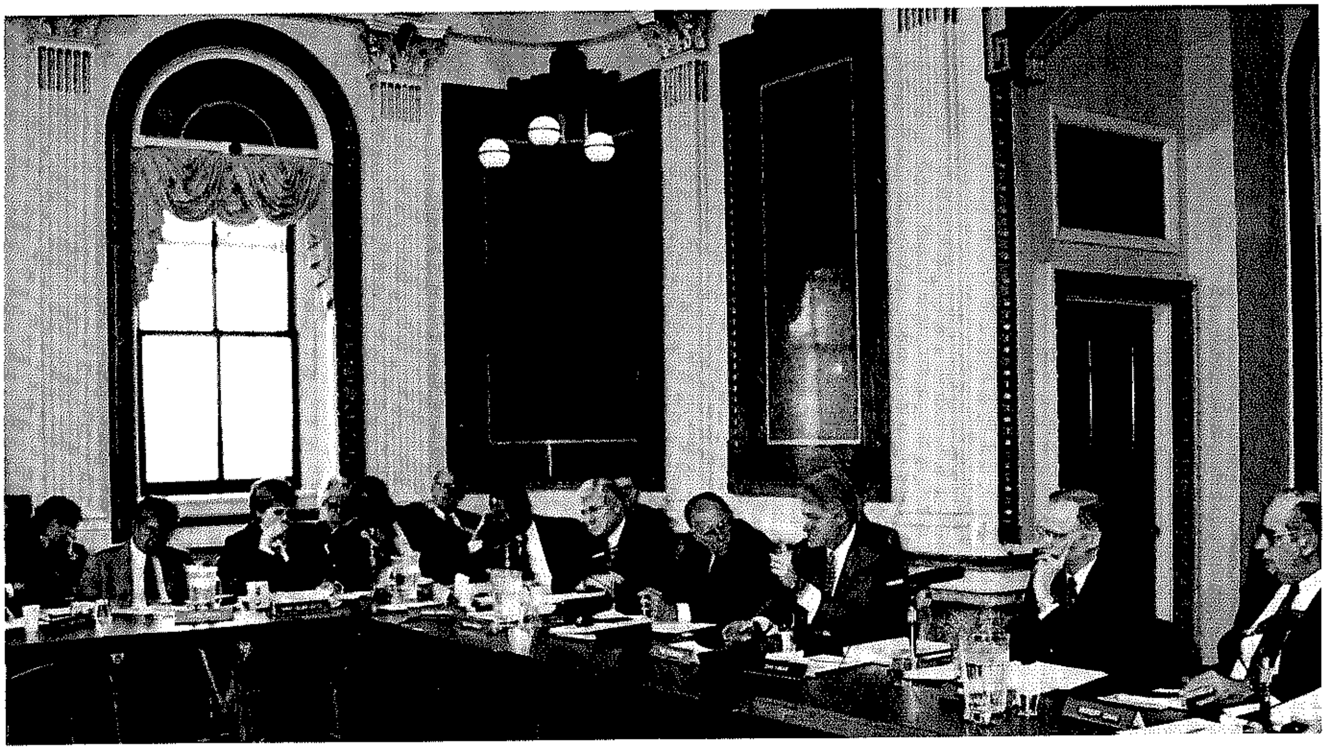
On December 1, 1993, President Bill Clinton met with the Commission at its quarterly meeting in the Old Executive Office Building in Washington, DC. The President expressed his support for ACIR, saying, "I very much believe in the potential of this group, both because of all the individuals on it and because of the way it's constituted, with representatives from the federal, state, and local governments, and with both Democrats and Republicans here."

The President continued:

> One of the biggest problems . . . in this country today is that everybody knows that there are a lot of things that the government has to be involved in at some level. But there is a great skepticism about the ability of government to do its job, particularly here in Washington—a skepticism not without foundation, I might add. . . .
>
> Because I served a dozen years as a governor and worked on these federalism issues from another perspective . . . I think I've got a pretty good sense about . . . the potential . . . of [ACIR] to try to help us in our efforts to redefine what we should be doing here in Washington, and how we can be working with [state and local governments] better. . . .
>
> I'm very serious about these issues, and . . . I want to pursue them vigorously, thoroughly, and consistently, and with the appropriate level of visibility.

In closing, President Clinton said, "I want to work with you. I want to help to make sure that you have both consistent support and the appropriate level of visibility. So please send a message out to the country that we are trying to work through these things and give the American people a government that they can not only believe in, but also trust."

Governor William F. Winter, ACIR Chairman, assured the President that "the talent represented around this table is available to you on a totally bipartisan basis. . . . We accept your challenge, and we shall do our very best to live up to your expectations. We'll be calling on you to continue to lend your support to our efforts, and we invite your suggestions, your ideas. Hopefully, out of this process, we can strengthen the government of this country at all levels."



President Clinton addresses ACIR at its December meeting. Commission members pictured are Daniel K. Akaka, Mary Ellen Joyce, Art Hamilton, Donald Payne, James P. Moran, William F. Winter, Richard W. Riley, and Robert M. Isaac. White House Photo.

New Commission Members

President Clinton has appointed 11 new members to the Advisory Commission on Intergovernmental Relations. Each Commissioner will serve a two-year term.

Carol M. Browner is Administrator of the U.S. Environmental Protection Agency. She previously was director of the Florida Department of Environmental Regulation. She also has been general counsel for the Florida House of Representatives Government Operations Committee, chief legislative aide for environmental issues to Sen. Lawton Chiles, and legislative director for Sen. Al Gore, Jr.

Arne H. Carlson is Governor of Minnesota. He was the State Auditor from 1978-1990. He also has been majority leader of the Minneapolis City Council and a member of the Minnesota House of Representatives.

Howard Dean is Governor of Vermont. He formerly was Lieutenant Governor. He is vice chairman of the National Governors' Association and chairman of the New England Governors' Conference. He has served as co-chair of NGA's Health Care Task Force, and is a member of the National Education Goals Panel.

Marcia L. Hale is Assistant to the President and Director of Intergovernmental Affairs. She was political director of the Democratic Congressional Campaign Committee, director of South Carolina Governor Richard Riley's Washington office, and a consultant to the Democratic Senatorial Campaign Committee. She also has managed campaigns, was a congressional legislative assistant, and was executive director of Voters for Choice.

Art Hamilton is Minority Leader of the Arizona House of Representatives. He is immediate past president of the National Conference of State Legislatures and a member of the Executive Committee. He is vice chair of the Democratic Legislative Leaders Association. He also is a member of the State Legislative Leaders Foundation and the Intergovernmental Policy Advisory Committee on Trade (Office of the U.S. Trade Representative).

Appropriation Update

In October, the Congress approved and the President signed a $1 million appropriation for ACIR for FY 1994.

This major cut from 1993 (more than 40 percent) required ACIR to reduce the size of its staff and offices, including closing the library. The Commission will, however, make every effort to maintain key functions and services, and to rebuild for FY 1995.

The Commission is grateful for the tremendous support from individuals, governments officials, and associations and organizations around the country.

Michael O. Leavitt is Governor of Utah. He is vice chairman of the Western Governors' Association, and a member of the National Governors' Association health care working group, and the National Education Goals Panel. He also has served as a member of the Utah State Board of Regents.

Bob Miller is Governor of Nevada. He also was Lieutenant Governor. He is chairman of the Western Governors' Association and of the National Governors' Association Committee on Natural Resources. He is NGA's lead governor on infrastructure. He formerly was a member of the President's Task Force on Victims of Crime, Clark County District Attorney, and Las Vegas Township Justice of the Peace.

Gloria Molina is a Los Angeles County Supervisor. She has been a member of the California State Assembly and the Los Angeles City Council. She is a member of the board of the Los Angeles County Transportation Commission, National Association of Latino Elected Officials, Mexican American Legal Defense and Education Fund, and the National Hispanic Leadership Agenda. She was a deputy for presidential personnel in the Carter White House and deputy director of the San Francisco Department of Health and Human Services.

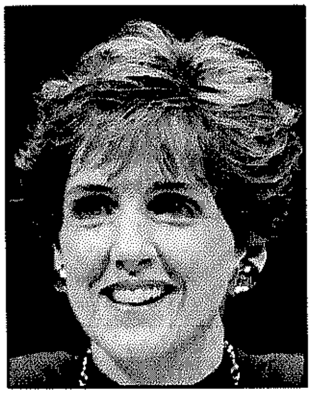
Richard W. Riley is U.S. Secretary of Education. He is former Governor of South Carolina. He has served on the National Assessment Governing Board, the Carnegie Foundation Task Force on Meeting the Needs of Young Children, and the Duke Endowment. He also was an Institute Fellow at the John F. Kennedy School of Government, Harvard University, and a senior partner with the law firm of Nelson, Mullins, Riley & Scarborough. He was a member of ACIR both as a private citizen and as Governor of South Carolina.

John H. Stroger, Jr., is a Cook County Commissioner. He is immediate past president of the National Association of Counties and a member of the Executive Committee. He is former chairman of NACo's Health and Education Steering Committee and the Chicago Bar Association's Local Government Committee, and a former board member of the Chicago Metropolitan Health Care Council.

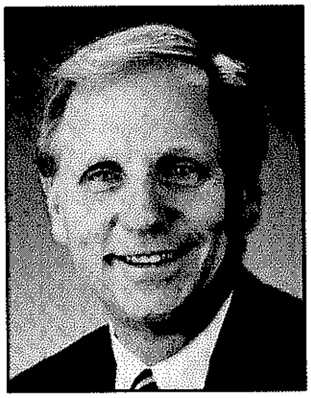
William F. Winter (ACIR Chairman), is senior partner in Watkins Ludlam & Stennis. He was Governor of Mississippi from 1980-1984. He is chairman of the Commission on the Future of the South and the National Commission on the State and Local Public Service, and president of the board of the Mississippi Department of Archives and History. He formerly served as chairman of the Southern Regional Education Board, Southern Growth Policies Board, and Appalachian Regional Commission.

Thomas S. Foley, Speaker of the U.S. House of Representatives, appointed one commission member:

James P. Moran is a Member of the U.S. House of Representatives from Virginia. He is a member of the Appropriations Committee and co-chair of the Federal Government Service Task Force. He formerly was Mayor, Vice Mayor, and a member of the City Council of Alexandria, Virginia. He has been chairman of the Northern Virginia Transportation Commission, the Regional Drug Summit, and the Economic Development and Land Use Policy Committee of the Metropolitan Washington Council of Governments.



Carol M. Browner



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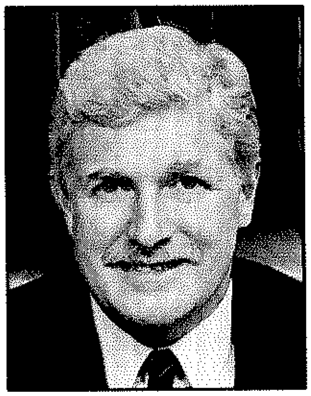
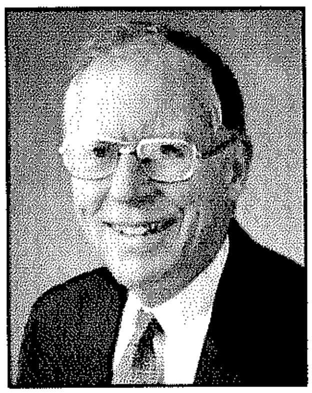


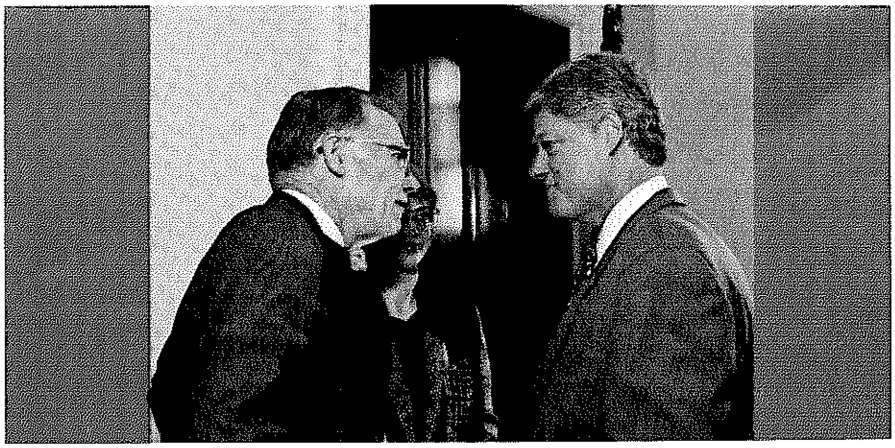
James P. Moran

Richard W. Riley

John H. Stroger, Jr.



William F. Winter



President Clinton, Governor Winter, and Carolyn Lukensmeyer at ACIR meeting. White House photo.

Also on the Agenda

The National Performance Review (NPR). Carolyn Lukensmeyer, former Deputy Director of NPR, briefed the Commission on plans for implementing the intergovernmental recommendations in the NPR report. She said, "The questions now are what ought to be the role of the federal government and how ought it be paid for? And how do we truly redefine roles between federal, state, and local government?"

Ms. Lukensmeyer noted the President's unfunded mandates executive order, the community empowerment executive order, and a possible national summit on the definition of federalism.

She pointed out that this redefinition "cannot be done by Congress alone. There has to be a mandate that comes back to Washington from the other levels of government and . . . from the people of this country. . . . The President . . . is deeply committed to this happening." She also noted that while clear, short-term successes are needed, this is a "culture change" that will entail an eight-to-ten year process.

The Future of ACIR. Commission members discussed various strategies to raise ACIR's visibility, to maintain and/or increase funding levels, and to market the Commission's work. The development of the Commission's new work agenda also was discussed. An agenda committee was approved to initiate ideas for a short-term project and to begin work on the three-year program.

Tourism Tax Report. The Commission approved publication of a new information report on the taxation of travel and tourism by states and local governments. The report will be available in the Spring.

Chairman Winter announced that John Kincaid, ACIR's Executive Director, plans to return to university teaching in 1994. The Chairman informed the Commission, therefore, that he would appoint a search committee to recruit a new executive director.

Chairman Appoints ACIR Committees

Agenda Committee. Governor Winter has appointed the following members of the Commission to serve on this committee: Edward G. Rendell (Chairman), Paul Bud Burke, Dave Durenberger, Mary Ellen Joyce, Michael O. Leavitt, Donald M. Payne, Richard W. Riley, and John H. Stroger, Jr.

Search Committee. Governor Winter has appointed the following members of the Commission to serve on this committee: Victor H. Ashe (Chairman), Art Hamilton, Marcia L. Hale, James P. Moran, and Barbara Sheen Todd.

ACIR at First OIRA Conference

ACIR was represented by John Kincaid, Executive Director, and Bruce McDowell, Director of Government Policy Research, at the Clinton Administration's first conference on the federal government's regulatory partnership with state, local, and tribal governments.

The conference was convened on December 6, 1993, by OMB's Office of Information and Regulatory Affairs (OIRA) under the auspices of Executive Order 12866 on Regulatory Planning and Review. This order is intended to reduce federal regulatory requirements and provide state, local, and tribal governments with greater access to rulemaking. It also calls for quarterly meetings to address regulatory concerns.

Kincaid reaffirmed ACIR's analyses and positions on these issues, as documented most recently in *Federal Regulation of State and Local Governments* (July 1993) and *Federal Statutory Preemption of State and Local Authority* (September 1992).

He also highlighted the importance of Executive Order 12875 on Enhancing the Intergovernmental Partnership, which directs agencies to reduce unfunded mandates and increase flexibility for state and local compliance. The order also provides for "regular and meaningful consultation and collaboration" by federal agencies with state, local, and tribal governments in the development of regulatory proposals "containing significant unfunded mandates."

The executive order was issued the day before the major national associations of state and local governments sponsored National Unfunded Mandates (NUM) Day on October 27, 1993.

The Congress has begun to hold hearings on mandates, and some 30 mandate-relief bills have been introduced in this session, compared to about 20 in the last Congress.

At the OIRA conference, Kincaid outlined ten points of possible state, local, and tribal influence on the regulatory process, highlighted major principles of regulatory review, and identified potential flash points in the regulatory process created by the executive orders.

"We established a federal system," he concluded, "to accommodate the right of diverse individuals and communities to make their own fundamental choices about public and private life, not to have regulators inside the Beltway make all those choices for us. Putting people first, therefore, means putting the places where they live and make decisions about their life together first as well."

NPR Endorses Stronger ACIR

Vice President Al Gore's report on the National Performance Review, *From Red Tape to Results: Creating a Government that Works Better and Costs Less*, recommends that ACIR be strengthened to assume greater "responsibility for continuous improvement in federal, state, and local partnership and intergovernmental service delivery."

The report reveals that much of what the federal government wants to achieve depends on effective intergovernmental service delivery. Major recommendations that require successful intergovernmental relations, and that have received attention from ACIR in the past, include:

- Grant consolidation;
- Simplification of federal grant administration;
- Relief from federal regulations and mandates;
- Greater use of negotiated rulemaking and alternative dispute resolution;
- National growth and development policies;
- Use of multistate regions;
- Economic justification for public investments (including procedures to discourage pork barrel spending for highways and mass transit);
- More effective means of achieving environmental protection goals (e.g., market-based incentives);
- Ecosystem management;
- Environmental cost accounting;
- Greater use of risk analysis;
- Science-based regulation;
- Development of a stronger national spatial data infrastructure;
- A new mission for the Bureau of Reclamation in helping to govern the nation's water; and
- Involving state and local governments more in foreign trade issues.

STATE ACIR NEWS

Governor John Engler has announced that, by executive order, he will reestablish the **Michigan Advisory Commission on Intergovernmental Relations,** which was allowed to sunset in 1992. The reactivated commission will examine state mandates to local governments and recommend those that should be eliminated. The state ACIR also is expected to help work out the details of the state's education funding program.

The **South Carolina Advisory Commission on Intergovernmental Relations** has published a new *Catalog of State Mandates to South Carolina Local Governments* (P.O. Box 12395, Columbia, SC 29211, (803) 737-1705). This is a cumulative listing of all mandates identified from the first edition in 1987 through 1992. In addition to mandates that either require or prevent localities from undertaking specific activities, the catalog includes passthrough mandates from the federal government. The report is divided into functional categories, legislative mandates, agency or administrative mandates, and executive orders. The functional categories are community development, courts and corrections, education, elections, environmental resources, government finance, government operation/administration, insurance, law enforcement and protection, public health and safety, public improvement and facilities, social services and welfare, taxation, and transportation.

Utah's Advisory Council on Intergovernmental Relations (UACIR) recently published *Federal Regulations and Mandates in Utah* (116 State Capitol, Salt Lake City, UT 84114, (801) 538-1556). The report identifies particularly onerous mandates, offers recommendations on general mandate policy and on specific regulations and mandates, and catalogs mandates that state and local officials strongly feel need revision or elimination. The data came from a survey of local governments, which reported more than 200 separate mandates and regulations. The mandate classifications and their percentage of the total were: business and labor, 13.8; community development, 5.4; education, 10; environment, 14.6; general government, 2.3; health, 11.5; human services, 17; natural resources, 10.8; transportation, public safety, and corrections, 14.6.

ACIR REAPPOINTMENTS

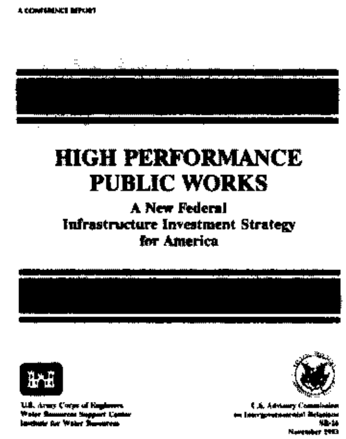
Representatives Donald M. Payne of New Jersey and Steven H. Schiff of New Mexico have been reappointed to two-year terms on the Commission.

UACIR also issued *AOG Study: Survey Results and Review of Utah's Seven Associations of Governments*. The associations of governments provide many services to local governments. The study assesses AOG services, how well they are provided, and how effectively AOGs meet the needs of local governments and their many customers. It is pointed out that multicounty districts were established to realize the benefits of economies of scale and provide a framework to conduct regional planning and implement state and federal policies consistently. All of these objectives have not been met, but it is hoped that this will improve with new support from the Governor's Office of Planning and Budget and some structural and program adjustments.

North Carolina's Local Government Partnership Council (Office of Intergovernmental Relations, 116 W. Jones Street, Suite 5106, Raleigh, NC 27603-8003, (919) 733-7232) is undertaking a study of substate districts. The interest comes from state and local government concerns about areawide economic development programs. **If you can provide information about this subject from your state, please contact Sara Stuckey.**

The US ACIR has updated and expanded its *Directory of Intergovernmental Contacts* (800 K Street, NW, Suite 450 South Lobby, Washington, DC 20575, (202) 653-5540). In addition to information about the structures and programs of the state ACIRs, the directory includes intergovernmental contacts in the federal executive and legislative branches, plus contacts for many of the national associations representing state and local governments.

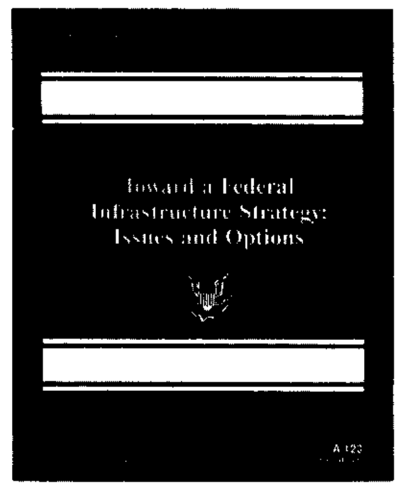
High Performance Public Works: A New Federal Infrastructure Investment Strategy for America



In this report, ACIR and the U.S. Army Corps of Engineers present the strategy developed through consultations with federal, state, and local governments and the private sector. While most public works are state, local, or private, the federal government has a pervasive influence through financial assistance and regulations. ACIR established six task forces, whose statements of principles and guidelines are included in the report along with a four-point strategy for (1) high quality investments, (2) cost-effective maintenance, (3) effective, efficient, and equitable regulations, and (4) affordable facilities. The consultations also produced an action agenda calling for Presidential and congressional leadership, guidance on infrastructure and investment, and support for infrastructure agencies.

SR-16 1993 **$10**

Toward a Federal Infrastructure Strategy: Issues and Options



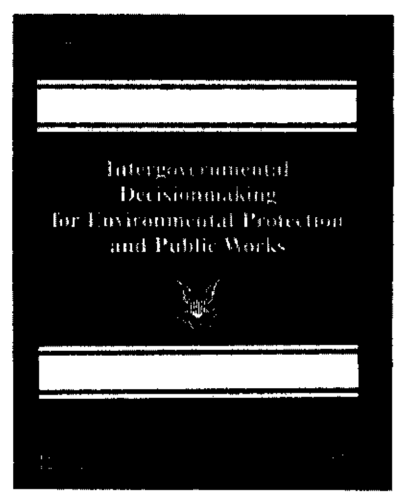
Toward a Federal Infrastructure Strategy documents the progress of an interagency initiative to develop a federal infrastructure strategy through a partnership including the Department of the Army, the Environmental Protection Agency, the Department of Energy, other federal agencies, state and local 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**

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 47 for order form)

Budgeting for Performance

Alice M. Rivlin

The ACIR conference and its report on high performance infrastructure are important and timely. The issues they raise, as well as some others, are relevant to using infrastructure to give us the growing economy we want. The ACIR/Corps of Engineers report contains specific recommendations for improving investment choices in managing the nation's infrastructure. This is the right time to be making these points.

The Clinton administration has put enormous emphasis on infrastructure, and interest in the subject is nationwide. It is also evident in the Congress. For example, Rep. Bob Carr, chairman of the House Appropriations Subcommittee on Transportation, is pursuing ways of improving infrastructure analysis and criteria. Furthermore, the Vice President's National Performance Review focused heavily on better choices in infrastructure investment and better ways of regulating. Finally, the *Government Performance and Results Act of 1993* supports improved management and performance of the government generally, including infrastructure.

A New Focus on Infrastructure

Things are coming together for a new focus on infrastructure and how to manage it well. The task force recommendations on improved analysis, including increased use of benefit-cost analysis, is an approach that I have favored for a long time, and now is the time to renew our effort to make it happen.

One of the task forces focused on infrastructure maintenance and our tendency to underinvest in it. One would think that this was pretty much common sense—if we build major infrastructure, we should maintain it. But we have not done so. We built the Interstate Highway System with great fanfare and effort, and it made an enormous contribution to the nation. But we waited about 20 years to think seriously about how to maintain the system. As stressed in the report, we need to build maintenance into thinking about infrastructure from the beginning.

Next come recommendations simplifying regulations to make it easier to proceed with an infrastructure project. The Clinton administration is working on improving the regulatory process. Regulation is always a balancing act. We need to protect the health and safety of the American people and we need to protect the environment. However, over the years, we have done this in ways that are excessively costly, complicated, time intensive, and paper intensive. We need to rethink this process, especially with respect to environmental protection. We have to integrate consideration of the environment into everything we do, from the beginning.

The report urges that we give serious consideration to new ways of financing infrastructure. The administration wants very much to be part of this effort to find alternatives.

Importance of an Infrastructure Strategy

This effort to develop an infrastructure strategy is important and timely for three reasons. First, it can help us achieve economic growth and productivity by improving infrastructure investment, decisionmaking, and management. Second, it will help us make the tough budget decisions that are important no matter what budget you're dealing with. We are all in the same situation. Budgets are always a question of limited resources, but now the problems of using our resources effectively are more serious than ever. Third, an infrastructure strategy will help us deal with the wider implications of infrastructure, such as environmental quality and safety.

Economic Growth and Productivity

The connection between economic growth and infrastructure is central to the administration's thinking for increasing our standard of living in the future, not just more jobs but better jobs at higher incomes. That means increasing our productivity, which clearly means increasing investment, both public and private. We must do two things at once, and they are both hard things. We must reduce the federal budget deficit because it is a drain on private saving that has been going on too long and that will escalate if we do not do something about it. Reducing the deficit means either cutting back on programs to which people and politicians are committed or increasing revenues. Nobody likes to do either one.

Not all of the investment needed to make the economy grow can be in the private sector. Reducing the federal deficit at the expense of federal investment would be very counterproductive. If there is anything that we have learned from analysis, thought, and observation, it is that we also need to increase public investment in workforce skills, in staying in the forefront of technology, and in having a modern, effective infrastructure.

There has been a lot of controversy among economists, most of it fairly esoteric, about how you measure the contributions of infrastructure to productivity and economic growth. There have been some wild claims that make it sound as though just fixing the roads and bridges is all we need to do to get the economy moving again. Obviously, there is a connection between ability to move people, goods, and ideas around and the productivity of an economy. We can have a highly skilled workforce and be on the cutting edge of technology, but if it takes too long and costs too much to move the product and the people and the ideas, it is not going to be the kind of productive economy that we need.

Infrastructure is a big piece of our economy. The United States has about $1 trillion invested in public works capital. It spends $100 billion annually on operating, maintaining, and adding new public works. Transportation, also, is around 15 percent of our gross domestic product. Furthermore, we drive and move an incredible 3.5 trillion passenger miles.

Because of the size of these numbers, any significant improvement in infrastructure productivity has the potential to enhance economic growth. The President's plan recognizes this link and calls for significant increases in federal infrastructure spending, particularly for transportation and environmental infrastructure.

Budgeting

We have gotten a substantial part of the infrastructure investment that the administration requested for Fiscal Year 1994. Next year's budget will have even more infrastructure spending for transportation, communications, and environmental infrastructure.

At the same time, we have to be committed to the goal of getting the deficit down so that private sector investment can rise. That is why it is so important to use infrastructure money wisely.

The administration is looking at Fiscal Year 1995 and making hard choices. The Congress has voted a hard freeze on discretionary spending, which means that there is not going to be any more money in 1995 in the aggregate than in 1994, not even allowances for inflation. The investments we put in our plans for the FY 1995 budget are higher by $13 billion than the discretionary caps.

If we are to protect these investments, including those in infrastructure to which the administration is committed, we will have to cut something else, and we must be sure that every investment will be effective. This new budgetary reality that we are facing, not just for next year but for the foreseeable future, is what ACIR's report is all about.

Managing and Pricing Infrastructure

This new budgetary challenge must take us even beyond thinking about how to make constrained choices well to thinking about managing the nation's infrastructure in a new way. If we do not, we will have only a continuation of past practices.

We can no longer build our way out of infrastructure problems. We don't have the money, the land, or the time. We have to start thinking about managing the whole infrastructure system. That includes managing the demand for infrastructure by pricing it more intelligently. If we build more roads and wider roads but do not price the use of these roads, there will just be more users. We will build farther out into the country and we will have longer commutes. With more multi-earner families, they will all be driving in different directions. If we do not put prices on these trips, congestion will worsen, economic productivity will slow, and the environment will suffer.

Now is the time to think about managing the highway system better. There have been breakthroughs in computers, communications, and sensor technologies that make the idea of pricing infrastructure more intelligently not just a textbook theory, but a real possibility.

Demand Management and Pricing. Using demand management and pricing, including highway congestion pricing, is not just a means of financing. It can make our use of infrastructure more effective and efficient. It can provide signals to governments about which investments are genuinely desired and have high payoff.

Highway congestion is the most obvious example of our need to use technological breakthroughs in implementing demand management. Highway congestion is increasing annually. More than 70 percent of peak hour travel on the urban interstate highways is considered congested. It has been estimated that this results in about 1.25 billion vehicle hours lost annually, and in lots of wasted gasoline. The Texas Transportation Institute estimated that the annual cost of congestion in 39 urban areas exceeds $34 billion, or $290 per resident.

The *Intermodal Surface Transportation Efficiency Act* (ISTEA) offers the beginnings of congestion pricing. ISTEA authorized about $25 million for five pilot projects for congestion pricing. Several urban areas have applied for these funds, and I hope there will be a breakthrough led by these demonstrations.

A big breakthrough on this is necessary. If we are to price the cost of driving more intelligently, we cannot do part of the system. We must use congestion fees to improve transit systems at the same time. We must look at rail systems and express buses. We must have a vision of what a metropolitan area transportation system could be like if we were able to price highway congestion properly and use the proceeds to speed up the whole network by improving transit.

Using emerging electronic technology to charge more for driving on a congested highway—sending users a bill like a phone bill that has a higher charge for a more congested time—will raise some serious questions, which come up any time a radical change is made in the way something is priced. First and foremost is the question of fairness. Is it fair to charge people more to drive at a congested time or in a congested area? Maybe they have to be there. We can answer this very serious question only if we have a strategy for a whole metropolitan area that provides alternatives that will be faster and fairer for everybody, and that uses congestion fees to finance faster transit and alternative routes.

Other Types of User Charges. There also are other types of infrastructure for which we need to charge the user. One is airport peak-load pricing. Another is to charge more for the use of water and for the production of wastewater so that we create incentives to conserve and economize.

We also have to reexamine existing pricing and demand management mechanisms. We need to make sure that user charges accurately reflect the costs and benefits to infrastructure users—including both the capital and maintenance costs imposed by users. A prime example is the weight-distance tax for highway use, referred to as the axle weight tax. Current fuel taxes simply reflect miles driven, not the capital and maintenance needs of highway users, particularly trucks.

Highway capital and maintenance costs rise exponentially with the load put on the road segment. This does not simply mean that heavier vehicles do more damage; the real effect depends on weight per axle. Cliff Winston, of the Brookings Institution, has estimated that the rear axle of a 13-ton van causes over 1,000 times as much damage as the average automobile. Additional axles distribute the weight of a vehicle, making it less damaging to the roadway. However, current user charges, based primarily on fuel use, provide little incentive for using vehicles that distribute the weight in a less destructive manner. A system based on axle weight has been estimated to have net benefits of $7 billion annually.

The politics of this issue are controversial, but they reflect people's prevailing sense of fairness. If we are going to price infrastructure more intelligently and use it more efficiently, we have to think about fairness—intermodal fairness, regional fairness, income fairness, and about something that I call "reliance fairness." There are the people who invested and who built their lives around the incentives already in the system. Those people feel that if you change the rules, if you change the pricing to their disadvantage, then it is unfair. They counted on it being that way. So we have to think about transitions, grandfathering, and slow movement in the right direction. But, if we do not start to do it now, we will go on perpetuating an inefficient system.

Using New Technologies

Another opportunity is presented by the technologies that can help us manage the infrastructure in a more effective way. One of those is the Department of Transportation's Intelligent Vehicle-Highway System (IVHS) initiative, or "Smart Cars—Smart Highways." The administration has been emphasizing this in a major way. Breakthroughs in computers and communications, artificial intelligence, expert systems, and other defense-related technologies can help to increase highway and transit capacity and efficiency without major new construction. The IVHS technologies will help us get around land use constraints while meeting economic growth, environmental, and budget goals.

IVHS will improve traffic control, warn drivers of dangerous situations ahead, and make more efficient use of highway infrastructure. IVHS will include such things as in-vehicle navigational capabilities that can help drivers plan efficient routes. When linked to dynamic traffic reporting systems, IVHS can help drivers avoid congested areas. The system has been tested on 2,000 vehicles in Orlando, Florida, and similar tests are taking place in other areas.

IVHS also will include additional safety technologies, such as blind-side warning systems, hazardous conditions warnings, and vision enhancements that could help drivers avoid accidents, damage, loss of life, higher costs, and enormous increases in congestion.

Learning from Others

On a recent tour of Europe, a U.S. delegation of federal and state highway officials learned some interesting facts about European road systems. For example, Europeans generally build their roads to last longer, in some cases 40 years versus the U.S. 20-year standard. They generally build them thicker, with better bases, and in some cases to withstand the heavier loads of trucks. Some of the European design practices may offer significant benefits. Other public infrastructure program agencies should try to gain similar insights from other states and countries.

The Europeans also have innovative infrastructure construction and operating contracts and performance standards. Performance standards can foster innovation rather than simply meet the specs, especially when a contractor has ideas about how to build it better.

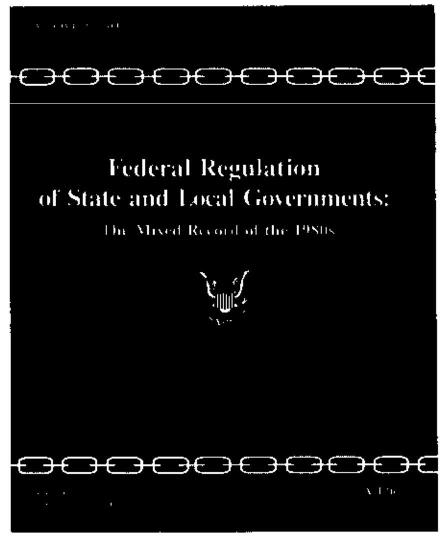
Performance standards also offer a potential to allow the private sector to demonstrate its technical expertise and new ideas. As part of the review of performance-based standards, we need to consider the increased use of turnkey operations in which a private group designs, builds, and operates infrastructure based on performance criteria agreed to in advance. EPA, the Federal Transit

(continued on page 26)

Federal Regulation of State and Local Governments: The Mixed Record of the 1980s

A decade ago, ACIR issued a report on regulatory federalism—the use of federal regulations aimed at or implemented by state and local governments. This report examines the results of initiatives to reform intergovernmental regulation during the 1980s, especially Executive Order 12612 on Federalism and the *State and Local Government Cost Estimate Act*. The report also inventories a number of new mandates and traces the U.S. Supreme Court's evolving doctrines affecting intergovernmental regulation.

A-126 1993 **$15**



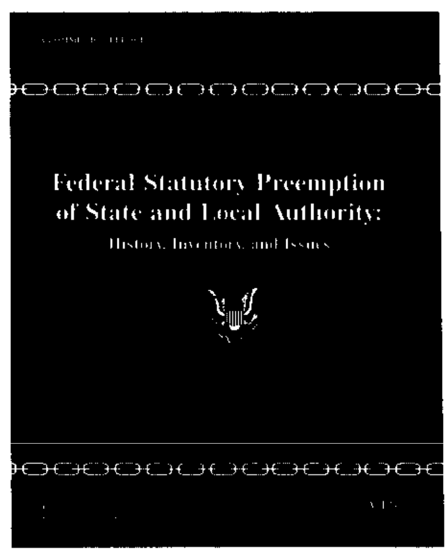
Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues

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**



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Restoring Public Confidence in Infrastructure Investment

Thomas M. Downs

As acting chairman of the Infrastructure Subcouncil of the Competitiveness Policy Council (CPC), I feel passionate about the nation's need to get its act together on long-term capital investment. Probably more than any other nation, the United States has had a dream about capital. Early in its history, the nation put much of its wealth into harbors, lighthouses, canals, railroads, airports, urban and agricultural water systems, and sanitary sewer systems. From the beginning, the nation has been clear on the need to spend money today to get a good return tomorrow.

Even now, in the hardest of economic times in some communities, bond issues for capital investments still pass because the public trusts in the prospect of a long-term payoff. We need to reemphasize this long tradition of investing because we are in danger of losing it. Public trust in the federal government's ability to make sound capital investments has been eroding rapidly.

A degree of public consciousness for increasing capital investment reemerged during the 1992 presidential election, but we are up against a strong negative campaign in the media that is turning almost every capital investment into pork. In the process, we are in danger of frittering away a moment when a national consensus about capital investment could be seized for the common good.

The March report of CPC states: "Over the last 25 years, there has been a massive underinvestment in U.S. infrastructure. Federal outlays in infrastructure in 1990 were half the level of 1980. Germany invests about four times as much as we do in this sector." The Japanese are investing $1 trillion in pubic capital over the next 10 years to help build their economic future. The U.S. investment strategy is not keeping up with the public capital investments being made in either Europe or Asia.

CPC also noted that, "The best short-term plan is a concerted beginning on a coherent long-term effort. That long-term effort should include well selected projects with high rates of positive return." The focus of the task forces in the ACIR/Corps of Engineers report on long-term planning and benefit-cost analysis is the best set of recommendations on the subject that I have seen. I strongly urge ACIR to continue in this direction.

Competitiveness and Connectivity

CPC goes on to say: "All levels of government must approach the national transportation system from a strategic perspective of competitiveness. Numerous gaps now exist on intermodal linkages, particularly in rail links to highways and ports, and in ground access to airports. The Department of Transportation must develop an effective intermodal strategy, keyed in particular to our export efforts. This strategy should identify trade flows through major corridors and key linkages."

These recommendations strongly suggest that competitiveness and connectivity of systems are essential investment criteria. Both are important in long-range planning and in benefit-cost analysis. Competitiveness is important because the world is now a ruthless, unforgiving marketplace. Connectivity is important because no capital investment stands alone, but is connected to some other use, end product, or relationship to another capital facility.

Maintenance

Another quote from CPC: "We need to sharply increase the incentives to state and local officials to stress maintenance. Requiring public reports on the status of maintenance activities is one approach; another is to have bonds and grants carry 'covenants' that lay out a schedule of maintenance." It also is possible to measure and report on the national status of public capital by measuring its approximate value, life, and maintenance requirements.

Capital Budgeting

CPC recommends:

- Establishing a capital budget for the federal government like those in every state government and most foreign governments;
- Turning around the federal government's pork barrel approach to infrastructure, which has bred so much cynicism about infrastructure spending;
- Seriously reassessing the congressional structure to handle capital investment, to reduce the usual four committees per house involved in any decisionmaking on authorizations and appropriations; and
- Fully funding the authorization levels in the *Intermodal Surface Transportation Efficiency Act* and adding $12.5 billion to focus on national mobility needs.

It is essential to rationalize the government's investment process by distinguishing clearly between current and capital expenditures. It is crucial that such investment be financed responsibly. CPC believes "that infrastructure investment, building on the tradition of the Highway Trust Fund, should be financed directly by earmarking the proceeds from any increase in the nation's gasoline tax." There should be stronger recognition of the need for dependable and dedicated funding for capital investment. Without it, the recommendations about long-range planning and professionalization of the benefit-cost analysis process are futile.

Damage Control

In an interim review of its recommendations, the Infrastructure Subcouncil found significant damage from the recent infrastructure pork barrel debate. Several recommendations came out of that review.

First, an adequate, stable funding mechanism remains an absolute necessity for a productive infrastructure sector. Long-term investment cannot proceed if it is up for grabs in each year's budget cycle. The gas tax has more or less held its own in recent years because the resources are still seen as user fees dedicated to capital purposes. As the Congress begins to use the gas tax for deficit reduction, the elusive goal of stable user fees recedes. Worse, it may turn into another federal preemption of local taxing capabilities with no net gain in capital investment.

Second, it is hard for the federal government to separate short-term spending from long-term investment because the budget mixes the two indistinguishably. Valuing all uses of money with a one-year perspective leads to unwise uses of tax dollars; it almost guarantees that capital needs will be sacrificed for short-term cash flow necessities. Although one remedy might be a capital budget for the federal government, it is recognized that this has been recommended at least since 1952 with little result. For now, CPC recommends that the Office of Management and Budget prepare, and the Congress separately consider and vote on an annual investment budget that would provide a clear distinction between investment and operating expenses.

Third, with little enthusiasm for new spending and waning public confidence that the federal money being invested is being spent wisely, we need a moratorium on new demonstration projects, including those for water projects, highway and transit demonstrations, airports, and other facilities. Such projects have proliferated without regard for state and local priorities. The Congress should agree on criteria for funding needed demonstrations because there are legitimate areas in which the federal government should be the lead investor in developing and demonstrating new technologies. Intelligent vehicle-highway projects (IVHS) and high-speed rail are two examples.

All the old arguments against a federal capital budget—that it will be another umbrella under which to hide operating costs and an excuse for not balancing the federal budget—are excuses designed to preserve the ability of the Congress to slip capital investment money into short-term spending. We must have a capital budget if we are to protect sound capital investments from the current deficit reduction rush.

Finally, we have to have deficit reduction and new investments. As long as these two things are seen as mutually exclusive, we will be at a dead end. We will be unable to compete internationally because we will be bleeding ourselves dry internally to plug holes in our deficit. We will allow ourselves to do that because we have no capital budget, no concept of a sound national investment strategy.

Strengthening the ACIR Report

The conference report from ACIR and the Corps of Engineers is on the mark, and it could be strengthened even further in three areas:

(1) Put more emphasis on international competitiveness. It has to be part of the criteria for long-range planning and benefit-cost analysis. Capital is no longer just local.

(2) Focus even more on the role that a federal capital budget can play in the deficit wars.

(3) Push for more dedicated, long-term capital funding. Innovative funding, even for certain kinds of capital projects, is simply an excuse to avoid some very tough federal questions about dedicated long-term capital investments and the proper role of the federal government. Innovative financing will be too small to solve the problem.

Finally, the government that is closest to the construction project is the best government to decide how to do it, where to do it, and what needs to be done. Public trust starts at home.

Thomas M. Downs is Commissioner of Transportation, State of New Jersey, and Acting Chairman of the Infrastructure Subcouncil, Competitiveness Policy Council.

Views from the Congress

Sen. Bob Graham

Committee on Environment and Public Works

The Subcommittee on Clean Water, Fisheries, and Wildlife of the Senate Committee on Environment and Public Works, which I chair, has jurisdiction over the *Clean Water Act*, among other things. We are in the reauthorization process, and many of the suggestions in the ACIR/Corps of Engineers report will receive attention. The report is a thoughtful and constructive contribution to public policy, in the best tradition of the Advisory Commission on Intergovernmental Relations.

I am also the co-chair of the Congressional Infrastructure Caucus, which was established in 1991. The purpose of the caucus is educational. We try to bring to the members of Congress the best thinking on infrastructure and begin to build a constituency for support within the Congress. We hope to open a serious discussion about where the nation, not just the federal government, should be going with our commitment to an adequate infrastructure.

Deficits

We talk a lot about the deficit we are facing. The centerpiece of the President's economic plan is a $500 billion reduction in the federal budget deficit over the next five years. That is one fairly obvious and quantifiable aspect of our national deficit.

But we have other deficits, and one of the most serious is that we have been disinvesting in infrastructure for a very long time. That is the kind of disinvestment that you don't see immediately, but you begin to assess and feel its implications over time.

One of the discouraging things to me is to come back from places like Buenos Aires, where they have been disinvesting in their infrastructure for about a century, and see many American cities beginning to look like the Buenos Aires of the world.

The Federal Role in Infrastructure

Historically, infrastructure in the United States has been a state and local responsibility. The role of the federal government is largely a product of the post-World War II era, particularly the last 25 years.

Why has the federal government become so involved in infrastructure? One reason in fiscal capacity. The federal government had the resources to become a major player. When the *Clean Water Act* was passed in 1972, the national debt was less than $500 billion. To put that in context, we are going to add almost $300 billion to the national debt in 1993 alone, bringing the total to about $4.5 trillion. The position of the federal government has changed dramatically.

There also was a question about the administrative capability of state and local governments to accept increased responsibilities. There was a defense orientation (in fact, the official name of the Interstate Highway System is the Defense Highway System). It is interesting how closely the nation's infrastructure has been related to the military. George Washington and Thomas Jefferson observed a lack of trained engineers in America, and their response was to establish the Army Corps of Engineers.

The federal government also came to a high level of environmental consciousness earlier than most state and local governments. There was federal leadership on infrastructure programs such as wastewater treatment facilities.

Most of the reasons for a surge of federal government involvement in infrastructure after World War II have changed in recent years. This occurred not only because of the deteriorating fiscal position of the federal government but also because of the increased capacity of state and local governments and the greater professionalization of their staffs—a factor for which ACIR can take some considerable credit. In addition, the national defense rationale is less relevant. Today, the environmental movement has a much more pervasive influence than national defense.

Reallocating Infrastructure Responsibility

This is the time to ask some basic questions about the best allocation of infrastructure responsibilities between the federal government and state and local governments. I would like to suggest four principles to guide that discussion.

(1) The management and financing of the primary components of the nation's infrastructure should be assigned to a single level of government.

This is necessary because of the increased cost, delay, and inefficiencies that result from the practice of having all governments involved in decisions. If you are going to build a road of almost any scale, for instance, you will be involved with local planning and zoning, state management, federal mandates, and a combination of state and federal funding.

In the *Clean Water Act* reauthorization hearings, we received discouraging testimony indicating that the $22.5 billion being appropriated each year to support the state revolving loan fund, which assists local communities in building required wastewater treatment facilities, supplies only enough funding to cover the additional cost of meeting federal specifications. In other words, there is relatively little benefit in terms of advancing the cause of wastewater treatment construction.

A considerable lack of accountability results when multiple governments are involved. For example, I voted against the *Intermodal Surface Transportation Efficiency Act of 1991* (ISTEA) because I thought it was deceptive. Because the act is so underfunded in terms of the federal responsibility for construction and maintenance, the nation's highways and transit systems are guaranteed to be in worse condition at the end of the six-year authorization period than they were in 1991.

There also is a tendency to distort priorities when multiple governments become involved. For example, ISTEA bases its funding allocations on the 1980 Census and carries that through 1997. The *Clean Water Act* is even worse, distributing $2.5 billion based on a formula using a 1978 assessment of needs. Such distortions encourage members of Congress to generate special projects in order to get around the inequities in the basic allocation. The *Clean Water Act* now includes about $500 million in special projects that don't meet any standard of relative need or priority.

(2) The responsible government should be state or local for most components of the nation's infrastructure.

Except in cases, like aviation, that clearly require a national perspective, I believe that placing infrastructure responsibility in state and local governments will produce benefits. That is where the joy of being able to deliver the benefits meets the pain of having to pay for them most effectively. This creates a discipline in justifying the worthiness of each project.

The federal government cannot afford its current level of commitments to infrastructure finance. Therefore we are seeing things, like the *Surface Transportation Act*, in which we are systematically underfunding, over-promising, and under-delivering in one program after another. This practice is contributing to disinvestment.

Economic development also should be primarily localized and, because infrastructure is one of the key components of an economic development strategy, it should be primarily localized.

(3) To help state and local governments carry out those responsibilities, the federal government should be the primary financer of health care and income maintenance programs; continue, and where appropriate increase, access by state and local governments to tax-free bond financing for infrastructure; and provide additional fiscal capacity for states, or at least avoid further erosion of current capacity.

In Florida, in recent years, about 75 percent of the increase in state revenue from normal economic growth, as opposed to changes in the tax system, has been going to pay the additional costs of health care, primarily Medicaid. It is critical that, as part of the national health care reform movement, the federal government relieve the states of Medicaid so they will have the capacity to accept some of the new health program responsibilities.

We also need to continue to provide access to tax-free bond financing to enhance, or at least avoid further impinging on, state fiscal capacity.

(4) The federal government should continue to have a major role in financing maintenance of federally provided infrastructure. To help make this affordable, the federal government should have a primary role in infrastructure research and development and in helping introduce innovative technologies that will have nationwide benefits.

We are going to send about $15 billion to $16 billion this year in federal funding to the states for highway programs. The estimated cost to maintain the federal investment in the federal highway system, primarily the Interstate system, is about $6 billion to $8 billion. I would begin to move toward establishing this maintenance portion as the new level of federal assistance to the states and give them primary responsibility to make any further enhancements of the highway system.

The federal government also has a key role in infrastructure research, practical applications, and developing and assisting in the introduction of new and innovative technologies, such as high-speed rail.

Rep. Bob Carr

Chairman, Transportation Appropriations Subcommittee

The Transportation Appropriations Subcommittee, which I chair, undertook an experiment this year by starting its FY 1994 appropriations hearings not with panels of transportation experts but with economic experts. Our emphasis was to try to figure out the relationship between transportation spending and the economy. We learned a great deal. First, we need to know more. All those books about pork barreling just rail and flail at the Congress and its lack of judgment. But, there is a dearth of really good information, widely accepted, widely distributed, and widely known about how to make critical decisions about public investment.

The committee set out, with help from those who have given a lot of thought to the problem, to find out how to estimate an economic rate of return on a public investment. Private business has the bottom line of profit and loss. Government, however, generally is asked to do things which we need to have done that by their nature do not make money. Otherwise, some private sector operation would be doing them. Government is a nonprofit venture, and it is difficult to measure its economic rate of return or benefit-cost ratio.

Distributional Strategies

Over the years, the Congress has adopted a variety of strategies that have virtually nothing to do with economics or investment. They have been underpinned largely by distributional strategies, not investment strategies. We raise the gas tax, for example, to fund the highway and bridge program, and then we use a formula that just returns that money across the country without a lot of criteria about how the money gets spent. Of course, we hope that good judgment is used to make smart investments for the good of the nation. But, when that happens, it is almost a matter of coincidence.

The Formula Problem

One problem with distributional strategies is that formulas are no more pure than the directed pork, because you can embed pork in a six-year ISTEA formula and declare permanent victory for certain states over others. My state is a donor state. In terms of population, miles of road, and vehicle miles traveled, Michigan should be somewhere between seventh and ninth in ISTEA allocations, but it ranks number 11. There are states with far fewer miles, far fewer people, far fewer motor vehicle miles traveled that get more money. Formulas do not have a logic other than distributing money across the country, and sometimes they do it unfairly. Because the formulas are set in authorization bills that go on for years, they create a multiyear disadvantage, making donor states wait a long time for an opportunity to correct those deficiencies.

The Perspective Problem

Another problem with distributional strategies is that the federal government raises the money and just gives it back to state and local governments, which decide how to spend it. I agree that the government that is closest to the people is the best government, but from an investment or economic point of view, that is not necessarily the best way to get the greatest bang for the buck.

The local perspective often is not a national perspective; it doesn't fit into a national strategy. And if the criterion for public spending is to get an economic rate of return that is at least as good as in the private sector, or at least as good as if it were spent on the highest national priority, then I think you can see that distributional strategies just float money around the country without much assurance of real benefit.

In transportation, particularly, investment strategies are heavily tilted toward economic development. So you end up with a lot of "Field of Dreams" kinds of things. State or local officials want to build light rail systems to do various types of social engineering, or airports in the hope that everybody will come and it will be a big hub that will generate a lot of business and new jobs.

Although building such projects may create some jobs and some economic stimulus for a particular area, the total effect on the national economy may be to create unemployment, if those dollars could have been better spent some place else with a higher economic rate of return. It is very hard to move these expenditures around with distributional strategies compared to investment strategies.

The problem is that it is politically unacceptable to get away from distributional strategies because there is no faith, either among the American people or among those in government, that investments will be made fairly without some formula. We need to enlarge the portion of the pie that people with economic investment discipline can direct for the good of the nation, and try to beef up those things that we can do to prevent huge speculative public works investments that are a drag on the overall national economy.

For example, the Denver Airport, in my judgment, was a misplaced priority in terms of our nation's investment. We would have gotten more bang for the buck, a greater overall economic rate of return to our entire economy, if that money had been used to increase the capacity of a dozen airports as opposed to building one new airport.

Estimating the Risk

Distributional strategies also make very little use of risk assessment. We need to estimate the chances that benefits will result from the investments we are about to make. When we get someone before our committee saying, "Congressman, give us this light rail system because it will have 50,000 riders per day by the year 2000," we do not know how likely that is. We have found that ridership forecasts tend to be largely promotional; they were used to get local support for a project. We see ridership forecasts from all over the country, and they just don't hold up. When challenged, the sponsors start lowering their estimates. In one example, the number was lowered to 35,000 people a day, and when the project was under construction and the money was committed, the number dropped to 12,000 riders. Well, at 12,000 riders a day, the project was not cost-effective. It is a loser and a drag on the overall national economy.

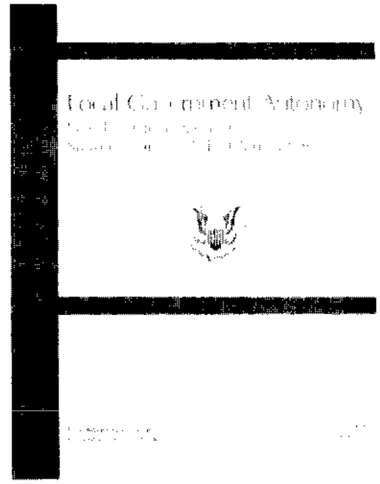
So we have to find a way, without totally overruling local decisionmaking, to have some kind of check and balance in our national infrastructure programs. If local people want federal money in a local project, we have to have some assurance that it will be a sound investment from a national point of view.

The Transportation Appropriations Subcommittee has developed a questionnaire to support our investment strategies. We ask proponents of airway, highway, and transit projects to justify their projects as economic investments. We are still trying to perfect that document. We also are developing a spreadsheet that will enable us to analyze the responses to see, on a risk assessment basis, whether what we are being told is fact or fiction. We do not have all the answers, but the questionnaire embodies the best of what we have learned so far.

The administration is supporting this new approach. We believe it represents an opportunity to get a better return for the taxpayers' dollars. After all, that's why we all are in government.

(see page 47 for order form)

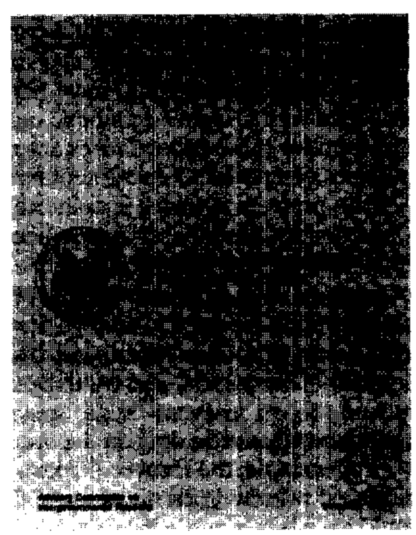
Local Government Autonomy: Needs for State Constitutional, Statutory, and Judicial Clarification



ACIR urges states to clarify local home rule provisions and increase discretionary powers for local governments. The Census Bureau counted 86,743 units of local government in 1992. Local home rule is now available in most states either by statute or constitutional provision. State constitutional provisions for local self-government are singled out for special attention in this report. They are the cornerstones on which any sound theory of local government autonomy can be built. ACIR also recommends that state and national associations of local governments provide legal support to advocating local initiative powers and immunity from the reach of state government, and that state and federal courts reconsider local government as entailing citizen rights of local self-government, not merely as creatures of the states.

A-127 1993 **$10**

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.

A-123 1992 **$20**

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Views from Federal Agencies

Mortimer Downey
Deputy Secretary of Transportation

The Department of Transportation (DOT) places great importance on infrastructure investments and on ways to work more effectively with our federal, state, and local partners to focus the investments so they can be both cost effective and environmentally sound.

Federal Partners

Despite differences in our approaches to funding infrastructure, DOT, the U.S. Army Corps of Engineers, and the Environmental Protection Agency (EPA) have a lot in common, and we have a track record and a future intent to work together. For example, in 1992, the Corps, EPA, and DOT signed an important Memorandum of Understanding that will improve coordination, emphasize innovative and cost-effective planning approaches, and integrate requirements of the *National Environmental Policy Act* and Section 404 of the *Clean Water Act*. This kind of cooperation makes planning and project development simpler and more effective for state and local agencies. It is the wave of the future.

An effort is under way by EPA and DOT with respect to conformity regulations under the *Clean Water Act* and the planning and management system requirements under the *Intermodal Surface Transportation Efficiency Act* (ISTEA). Again, this is an effort to make sure we do not duplicate requirements but apply them effectively to the kind of decisionmaking that needs to take place.

Investment Strategy

DOT's goal is to ensure that scarce federal, state, and local financial resources are used wisely, and that the nation and the economy get the highest return that they can from our investments. The strategic infrastructure study that ACIR has completed in cooperation with the Corps is an important step in moving us toward that goal, helping us identify and encourage good practice in infrastructure management, and developing a consensus among the broad spectrum of interested parties about the issues and best practices.

The recommended four-point strategy is relevant to DOT programs. It emphasizes selecting high-quality investments that will be based on detailed analysis; ensuring effective, efficient, and equitable regulations; and ensuring affordability of programs while encouraging innovative financing. DOT agrees with all those points and is working to translate them into new ways for the federal government to look at enhancing the nation's basic infrastructure.

Presidential Leadership

The action agenda spelled out in the report calls for presidential and congressional leadership. President Clinton has put great emphasis on the need for infrastructure investment. In *A Vision of Change for America*, we set out a blueprint for how increasing investments can be a foundation of economic growth, and we are following that blueprint.

Transportation is one of the key underpinnings in that program. For FY 1994, more than 70 percent of the department's resources will go toward investments in highway, rail, transit, and aviation infrastructure.

Dedicated Revenues

Another key point in the ACIR report is that funding for infrastructure investments should come from dedicated sources of revenue designed to encourage multiyear stability for planning long-term investment and for maintaining existing facilities cost effectively. The DOT budget derives 77 percent of its funding from such dedicated user fees, and it really shows how stable funding can work to assure continuity in the investment area. We cannot expand that investment without expanding user fees, but we have shown how it works and we think it is a model that other agencies could follow.

Regulations

Secretary Federico Pena has directed DOT administrators to review current and planned regulatory requirements carefully to be sure they do not impose unreasonable burdens on those the department regulates, including state and local agencies that receive infrastructure grants.

In March 1993, the department issued a notice of proposed rulemaking on the six ISTEA management systems that will provide the states and us with data to better address surface transportation infrastructure issues and inform the planning and decisionmaking process. The six systems are highway pavement, bridges, highway safety, traffic congestion, public transportation facilities and equipment, and intermodal facilities and equipment.

Performance Reports

In its 1993 biennial report, for the first time, the department issued an integrated analysis of transit and highway needs and performance. The report's highlights are important in terms of system benchmarks for highway and transit, and they show how the process of planning and analysis can be used to support better decisionmaking.

Some of the conclusions are that highway pavement conditions have been improving throughout the 1980s and 1990s, but congestion is still a problem and is increasing on urban highways. We found, overall, that highway bridge conditions have stabilized, and the number of structurally deficient bridges decreased. Not such good news, the average age of transit buses exceeds the federally recommended age by some 20 to 35 percent. Transit financial performance is declining, with the cost per passenger mile increasing 17 percent between 1984 and 1990.

The best news is that the fatality rate on our systems is the lowest ever. But we need to continue safety efforts because more than 39,000 people died in highway crashes last year, far too high a number.

We expect to complete an integrated highway and transit report in March 1994 that will introduce a new effort to provide a national economic assessment of our highway investments, putting a user dimension into the needs analysis process. In the past, we evaluated the impact of users on the performance of highways. The new model also will allow us to evaluate the impact of highway performance and conditions on users—what costs are being imposed—and to establish useful cost-benefit criteria for analyzing various scenarios of highway needs.

With state and local governments, we are reexamining highway design criteria. We are coming close to concluding that we could cost justify a much longer life of our facilities and save on reduced maintenance and less frequent reconstruction.

When DOT sent its annual report to the Congress this year on the allocation of transit new-start funds, we said, here is what we think should be done with the funds, here is the basis on which we analyzed the data, and here are the conclusions we draw. The Congress was urged to look at this information and the ranking the department puts on the projects before it makes its decisions. These facts have had some influence on the Congress.

Innovative Financing

The department is looking at innovative financing mechanisms. They are not the answer to every problem, but they are an answer that we need to use, especially where new capacity is being built and where public and private money can be focused on critically needed improvements.

ISTEA broke new ground in infrastructure financing. It provided new tools to allow government to be innovative and flexible enough to provide and attract capital to some key infrastructure needs. It relaxes restrictions on using toll financing and authorizes states to lend federal funds to private developers.

A concrete example of the applicability of this new financing initiative could be meeting the infrastructure needs that will follow from the trade opportunities that will be generated by the North American Free Trade Agreement. DOT has studies under way to analyze those key trade corridors and explore border needs and how we can finance these and other infrastructure projects best in the future.

Another area where we see the possibility of using innovative financing and expanding partnerships with state and local governments and the private sector is in our high-speed ground transportation initiative. The President's budget recommended a five-year program of $1.3 billion in grants to facilitate the development of ground transportation and the development of innovative technology. We hope to see the total investment leveraged to at least $2.5 billion through a network of partnerships with public and private entities.

Performance Pilots

Finally, the department supports the *Government Performance and Results Act of 1993*, which requires federal agencies to develop strategic plans, set perform-

(see page 47 for order form)

Characteristics of Federal Grants-in-Aid to State and Local Governments: Grants Funded FY 1993

The total number of federal grants to state and local governments increased from 557 to 593 between 1991 and 1993. Grant outlays rose to $206.4 billion in 1993 from $152 billion in 1991, an increase of 36 percent. The number of categorical grant programs grew from 543 in 1991 to a high of 578 for 1993. The largest numbers of new categorical grants were in health; education, training, employment, and social services; and natural resources and environment. There were 15 block grants in 1993. About 75 percent of all grant aid is distributed by formulas and the rest on a discretionary basis. Medicaid, the largest formula program, accounts for about 39 percent of all grant outlays. Categorical grants continue to expand, with project grants showing the greatest growth.

M-188 1994 **$10**

Federal Grant Programs in Fiscal Year 1992: Their Numbers, Sizes, and Fragmentation Indexes in Historical Perspective

The federal-aid system is more fragmented than ever. Using a "fragmentation index," based on number and size, to compare 21 groups of federal grants programs, ACIR found that only energy, transportation, and health reduced the number of small grants and increased large grants since 1980. In 1992, about 92 percent of federal grants to state and local governments were funded by only 10 percent of federal-aid money. Despite efforts to consolidate grants during the 1980s, the system still had 506 micro-grants out of a total of 553. In 1992, the three largest grant programs—Medicaid, Highway Planning and Construction, and AFDC—got half of all grant money. Grant funding in 1992 ranged from Medicaid at $69.6 billion to Appalachian Community Development at $22,000.

SR-14 1993 **$10**

(see page 47 for order form)

ance goals, and report results annually to the Congress and OMB. It calls for a pilot program to carry out these efforts and perhaps relax some of the restraints on management in at least ten agencies.

Conclusion

The ACIR task forces suggested comprehensive legislation to try to implement the infrastructure recommendations. It is not clear whether that is the right way to go, or whether we should do it incrementally through existing programs. The key is to get the changes made in all the programs in the best possible way.

We need to work on dedicated funding. We also need to make the Congress a partner in these efforts. There has been some congressional interest in establishing investment criteria. However, there also is continued interest in the designation of demonstration projects and special allocations. If that is the direction things are going to go, we could just cede all decisionmaking to the Congress. But to get a maximum return on our investment, there must be a more comprehensive approach.

G. Edward Dickey
U.S. Army Corps of Engineers

We all became aware of the importance of infrastructure to the health of our economy as we looked at the flood problems of the Midwest last summer. It is obvious that we face important decisions about how to reconstruct that infrastructure. Some of the lessons in the ACIR/Corps of Engineers report may help us as we address these issues.

The task force consultation process that the Commission conducted worked well. Many federal agencies participated in the effort to bring a broad range of perspectives to the infrastructure decisionmaking process and help build consensus. Many of the concepts here have been followed by the Corps of Engineers more or less successfully for many years, and we have learned many lessons, particularly in the last 20 years, when there has been enormous change in the Civil Works program.

Investment Analysis

In its water project evaluation, the Corps has followed a rather formal process of benefit-cost analysis. Indeed, when one looks across federal agencies at a model of benefit-cost analysis, one is drawn toward the Corps' program. The analysis ranges from the rather simple for relatively straightforward small flood control projects to quite elaborate, expensive systems simulations in connection with inland navigation improvements. There has been a tremendous increase in the sophistication of the analysis in the last 20 years.

But, we continue to have problems with analyses because the market for economic analysis has been limited, until recently, to the executive branch of the federal government. Its use does not go much beyond the internal review processes of the Corps of Engineers and the Department of the Army, and, of course, the Office of Management and Budget, and it functions primarily as a project review method in formulating the President's program. The cost sharing reforms of 1986, however, created a whole new audience for these types of analyses, which, along with the projects that flow from them, have important financial implications for the Corps' cost-sharing partners.

This change has been remarkable. For example, before the cost-sharing act, the American Association of Port Authorities objected to the Corps doing regional analyses of deep-draft harbor projects. They believed this to be a waste of money, that it was sufficient to look at each individual harbor to see whether it made economic sense, without regard to the impacts on adjacent harbors. Now, with the cost-sharing reforms, a regional port analysis is the first thing that some of the project sponsors ask for, either from the Corps or on their own. They are not about to put their money into a harbor improvement that does not make economic sense and attract the kind of traffic needed to justify the investment.

For the inland navigation system, a fuel tax goes into a trust fund that finances half the cost of improvements to the waterway. When the fuel tax was enacted, an 11-member advisory board was established to represent the inland waterways industry. The board meets at least twice a year to review the status of the Corps' investment program and to make recommendations to the Secretary and to the Congress about program priorities. The board has forced the Corps to do what the Secretary's office and the Office of Management and Budget were unable to get it to do for a decade—to look at waterways improvements projects as part of a national investment program, and to evaluate one against the other to set priorities.

It is very difficult to implement many of these improvements administratively, even when we all agree on their importance. We need a complementary pricing structure, in terms of cost sharing of new investments or cost recovery or whatever. Pricing policy is a powerful tool that can create incentives and new audiences for good analysis.

Investment policy, cost sharing policy, and pricing policy complement each other and support good analysis. Together, they can do much to substitute for formal requirements for analysis.

Operation and Maintenance

The Corps of Engineers maintains an enormous infrastructure with a replacement cost of well over $100 billion. It includes inland waterways, multiple purpose reservoirs, flood levies, and much more. About half of the Corps of Engineers' budget, about $1.7 billion, goes annually to infrastructure maintenance.

The Corps has a formal and disciplined operations and maintenance system, yet expenditure productivity and performance-based indicators remain elusive. The Corps has recently moved more toward indicators of performance, but we must be careful of what I call the tyranny of averages. We need indicators that go beyond those simple averages, as difficult as that might be.

The Corps' experience has yielded two lessons on maintenance. One is a program called REMER, which has gone back from 20 to 50 years to look at performance and review design standards for new structures to determine whether they may be too stringent. This review, built on experience, has led to significant savings in maintenance and rehabilitation.

The Corps also has done a study of its maintenance practices that is expected to be used to develop standards that will be applied in all of the 37 Corps districts. The districts operate quite independently. Providing reasonable and cost-effective maintenance standards that can be applied across the board can relieve each district of the need to find the best approach.

Pricing operations and maintenance is a difficult challenge. Historically, the focus has been on cost recovery. Experience has shown, however, that cost recovery is the wrong focus of pricing policy. The focus should be efficient use of existing resources. In almost all cases, efficient pricing leads to more than just cost recovery—to a "profit," if you will—which for most government programs is an embarrassment that is somehow viewed as unfair. Efficient pricing leads to minimizing the requirement for new capital expenditures. When you make the best use of existing facilities, you don't need to build new ones as fast.

The role of pricing will be growing. In a 1977 study of pricing navigation projects, we talked about congestion fees as a way of managing congestion and existing facilities. In fact, a Corps study shows that there are enormous economic benefits to appropriate pricing at congested locks. Such a system would avoid having long-distance, high-value commodities sit for a couple of days while barges of sand and gravel going a couple miles are tying up the lock. Back then, the idea was treated with contempt by the Congress and the industry. The industry saw congestion pricing as a scheme to avoid spending money on new locks and dams. From the viewpoint of an economist, appropriate congestion pricing is just a way of promoting efficient resource use.

Nontraditional Use of Benefit-Cost Analysis

Although the Corps is noted for its work in economic infrastructure—such as locks, dams, and reservoirs—in recent times, much of the Corps' planning expertise in the Civil Works program has been devoted to natural habitat restoration projects. (The Corps also does a lot of hazard and toxic waste cleanup work in its military role.)

Using incremental analysis and consideration of alternatives, and careful scaling of projects, in environmental restoration we find that there is an enormous ignorance about the underlying scientific cause-and-effect relationships.

The Corps is studying the restoration of the Everglades ecosystem. The underlying premise is that if you restore the historical hydrologic relationships, the historic vegetation and ecosystem, in its broadest sense, will be restored. That's a big act of faith, and it entails a complex scientific problem of specifying what is wanted. The first decision is what natural hydrologic cycle is to be restored. Even that, it turns out, is no small job. So, we have a nontraditional problem with serious traditional barriers. We cannot make a straightforward application of the principles of benefit-cost analysis or cost-effectiveness analysis to these areas.

Pricing and the cost sharing policies are applicable in these areas. In the Corps' 1992 Kissimmee River restoration study, for example, realism was introduced by the adoption of a 50-50 cost-sharing policy with the State of Florida. This made everyone recognize that limited budgets meant being careful about spending on an individual project.

Conclusion

It is very important to package cost-sharing and investment policy with analysis. If I had my choice, I would rather have a carefully structured cost-sharing policy, or cost-recovery policy, than a big administrative commitment to a formal analytical requirement. Cost sharing broadens the market for good analysis and for sound investments, and brings the beneficiaries of the project into consonance with the taxpayer who is paying a substantial share of these projects.

We need to insist more strongly that efficient use of existing infrastructure be a precondition for new investment because that represents one way of minimizing the demand for new capital requirements. The ultimate result of pricing policy and analysis should be to economize, in the sense of making best use of existing infrastructure and limited financial resources.

David M. Gardiner

Assistant Administrator for Policy, Planning, and Evaluation
U.S. Environmental Protection Agency

I would like to start with a personal example of the benefits of high performance infrastructure. My father's family homestead is on the banks of the Kennebec River in Maine. Since before he was born, the river was so polluted that no one could swim in it. I recall seeing raw sewage floating in the river. Today, as a result of investment in high performance infrastructure, among other things, the river is clean enough to swim in. Such investments can make improvements in the quality of people's lives. That is our intent at the Environmental Protection Agency.

EPA has a fairly comprehensive infrastructure strategy, but we are trying to make it better. The strategy includes five basic areas of financing, assistance and outreach, regulatory development, assessment tools, and applications.

Financing

EPA has a long history of financing the kind of infrastructure improvements that benefited the Kennebec River. Even today, nearly two of every three dollars that the agency spends is aimed at infrastructure, virtually all of it on clean water. The total investment in wastewater treatment alone over the last 20 years has been $60 billion.

The Clinton administration is committed to continuing that investment. It was an important component of the President's jobs package that was defeated in the Congress. It continues to be part of the President's FY 1994 and FY 1995 budgets, with $599 million for FY 1994 and a billion dollars annually for FY 1995 through FY 1998 for a proposed safe drinking water state revolving fund. That is a substantial investment, and we need to be committed in the budget process. As we look ahead to the reauthorization of some of our important statutes, such as the *Clean Water Act*, we will be looking aggressively at financing needs.

We cannot look just at expenditures by the federal government or state revolving fund as a way to continue financing. We also need to look at the other side of the coin—how can we drive down the cost of infrastructure overall? In that connection, the President has launched an environmental technology initiative that includes FY 1994 and FY 1995 budget proposals aimed at making sure we are developing innovative environmental technologies and spending our federal, state, or local dollars on the most cost-effective environmental technologies.

Assistance and Outreach

EPA recognizes that infrastructure is more than just a financing issue. In addition to providing money, it is very important for the agency to continue to provide assistance and outreach, especially to our partners in state and local governments who often are the recipients of some of the mandates that require infrastructure investment. We want to assist the states and local governments in particular not only by providing expert and peer advice (as we do through the environmental finance boards and state financial capacity studies) but also through technical outreach.

We also need to look for new partnerships with the private sector. That is why we have, under the Partnership for Rebuilding America Program, three pilot projects in Indianapolis, in the Miami Conservancy District of Franklin, Ohio, and in Sliverton, Oregon. These projects are examining how public-private partnerships may work, the barriers to creating others, and the degree to which they can provide real solutions to the pressures that are put on state and local governments in infrastructure.

Regulatory Development and Permitting

EPA has two teams looking aggressively at regulatory development and permitting to start to make improvements that will maximize the involvement of our partners and the value of our investment in infrastructure. One team is looking at the way in which we develop regulations. I think there is widespread feeling in EPA that we can improve that process substantially. In particular, we need the early involvement of our most important stakeholders, including our state and local partners. These partners can help us identify regulatory burdens so we can make sure that we have high performance regulating, which may lead to high performance infrastructure.

The second team is working on permitting. Many state and local governments, and many local utilities, are subject to EPA regulations. Therefore, we are looking for opportunities to make sure that we are doing the best job possible in permitting. We are encouraging innovative environmental technologies and trying to make sure that our regulations can be complied with at the least possible cost.

Assessment Tools and Applications

In the area of assessment tools and applications, EPA is moving to shape different strategies that will encourage high quality investment in infrastructure. Administrator Carol Browner's theme is making sure we prevent pollution before it occurs. We want to shift the focus of pollution programs from examining only what comes out of the end of the pipe to the entire industrial process. We want to make sure we have found the most cost-effective ways of preventing pollution before it gets into the environment where it becomes expensive to control.

The City of San Jose, California, for example, has a 10-year plan to reduce its wastewater flows. Ultimately, they hope this will enable them to defer a $180 million wastewater treatment plant expansion. This effort includes aggressive water conservation. They hope this effort will save not only a major public investment in infrastructure but also substantial amounts on the water bills of industries and residential users.

EPA also is developing new techniques to help our state and local partners finance environmental programs. For example, in a recent experimental project with Marietta, Georgia, EPA is helping the city with a pricing scheme for municipal solid waste. We hope this project will encourage residents to produce and dispose of less solid waste and help the city raise badly needed revenue.

We also are shifting performance measurement away from "bean counting"—how many permits issued, how many things built, how many enforcement actions—to focusing on the achievement of environmental goals—is the water getting cleaner? It is important to improve investment performance.

The EPA administrator also has established an important priority to make sure that EPA's science is top notch and that every regulatory action and policy decision is based on the soundest science possible. This is important if we are going to ask others to invest in environmental infrastructure.

We need new partnerships with other federal agencies as well as with state and local governments. Coordinating the *Clean Air Act* and ISTEA is an example of where EPA is working with DOT. Joint pesticide pollution prevention efforts also have been launched by EPA and Agriculture. The overall plan is to reduce the use of pesticides over the next decade or so. It is hoped that this will reduce the level of contamination of both surface and ground water. That would avoid the need for investment in expensive clean-up.

In the course of the next few years, EPA hopes be able to make a number of substantial improvements that will lead to making sure that every dollar we spend for environmental protection is well spent.

Budgeting for Performance
(continued from page 13)

Administration, and the Federal Highway Administration are looking into these techniques.

Rethinking the Federal System

We must rethink who does what in the federal system. The federal government is involved in many types of infrastructure, including dams, hydroelectric facilities, flood control projects, roads, bridges, transit systems, airports, and water and sewer systems. We contribute funds and impose regulations in many different ways. We build and operate some infrastructure, we provide discretionary grants to others, as well as formula grants, funding for state revolving funds, and tax benefits for state and municipal bonds. In other cases, the federal government plays no role.

This mosaic of complicated intergovernmental relations in infrastructure, as elsewhere, needs to be rethought. It is overly complex. It leads to confusion of responsibility and accountability among governments; it diffuses responsibility and accountability. We need to ensure that program delivery and financing mechanisms do not cause poor decisions to be made, such as deferring maintenance on highways or bridges, or overemphasizing wastewater treatment with point-source controls to the neglect of nonpoint sources. This kind of counterproductive decisionmaking can occur when federal grants make capital replacements cheap compared to maintenance and can distort the decisionmaking by state and local governments.

We need to promote good decisionmaking, better accountability, and solutions to some of our budget problems. Using new pricing mechanisms, and more and better designed user charges can make it more feasible to sort out those responsibilities.

Alice M. Rivlin is Deputy Director of the U.S. Office of Management and Budget.

Views from State, Local, and Private Organizations

Robert H. Goodin
Director of Public Works
City of Rockville, Maryland
(Representing the American Public Works Association)

The mission of the American Public Works Association (APWA) is to improve the quality of life by enhancing the delivery of public works services. This requires intergovernmental cooperation, as the ACIR report notes. The recommendations are right on target with the mission and policy of APWA.

Making Investment Decisions

Improving the quality of infrastructure investments is what local public works management is all about. The guidelines proposed by the investment task force for evaluating investments follow Vice President Gore's National Performance Review, including the principles of mission-driven government, results-oriented government, enterprising government, decentralized government, and market-oriented government.

The decisionmaking tools—including performance measures that define program outputs and benefit-cost analysis—help answer the question, "Would you be better off with or without a project when it's built, and how much better off?" Many public works directors use these tools.

Maintenance

The objective of improving maintenance is the heart of public works. We are always confronted with the problem of maintaining what we build. The political problem is that we do not have a ribbon cutting for a rehabilitated sewer. We have "Friends of the Library," but we don't have "Friends of the Sewer." The subtleties of preventive roof maintenance are too difficult to get the public excited about. But constant preventive maintenance keeps us ahead of the game.

Among the principles of good maintenance is the need for multiyear planning. The city of Rockville has a six-year capital improvement program that includes major maintenance items. We also need new technology to help reduce the need for maintenance. For example, the use of Corten steel, which needs no painting, has saved a lot of money. Value analysis and value engineering, with a single contract for designing and building facilities, also saves money. Using that process, the Fort McHenry Tunnel on the Interstate Highway System in Baltimore saved about $70 million and was finished ahead of schedule.

Federal Regulation

Rockville recently updated its booklet for developers, "The Development Review Process," which might be subtitled "All You Ever Wanted to Know about Developing in Rockville." In one source, it gives a clear and simple idea of what the city wants, contains flow charts of the permit processes, and answers development questions. It really cuts the time and expense of developing in the city.

The problems of unfunded mandates, especially those from EPA, are creating a constitutional crisis. The Tenth Amendment to the U.S. Constitution—reserving the unenumerated functions of government to the states—has lost its meaning. The problem is not only the cost of these unfunded mandates, but also the delay in trying to apply them. Part of the problem arises because of the "one-size-fits-all" federal rules. In different parts of the country, with different climates, many uniform rules do not make sense.

We all know examples of poor peer review on environmental science. Wetlands, for example, is an issue on which "reverence" has obliterated the fact that some wetlands have practically no value; others have value so great as probably to warrant postponing or prohibiting development near them; and others are in the middle, where mitigation might be appropriate. Local governments should be given greater discretion in doing what makes good scientific sense in wetlands.

Executive Order 12612 on Federalism speaks directly about reducing the burdens imposed by the federal government. Rep. Gary Condit of California, and others, have introduced bills that would help mitigate federal mandates. The Condit bill says, in part, "The purpose of this Act is to assure that the Federal government pays the total amount of direct costs incurred by state and local governments in complying with certain requirements." Another section says, "Notwithstanding any other provision of the law, any requirement under a federal statute or regulation that a state or local government must conduct an activity, including a requirement that government must meet national standards in providing a service, shall apply to the government only if all funds necessary to pay the direct cost incurred by the government are provided by the Federal government." APWA supports that approach.

Alabama and South Dakota have mandate consultation acts to deal with federal mandates, and 14 other states are considering acts to summon the U.S. senators and representatives to a joint session of the legislature to explain why they impose costly federal regulations on the states without providing funds to implement them.

The next logical step would be to repeal the Seventeenth Amendment and go back to having U.S. Senators elected by the state legislatures.

The environmental regulation process needs to be less costly and lengthy, more true to good science, and more certain. We must develop long-term environmental strategies for sustainable development that satisfy growth and development needs without compromising the environment. Environmental protection and economic development must be viewed as concurrent goals.

Financing Public Works

The task force report on improving infrastructure financing is consistent with APWA's policies of searching for alternative sources of funds and not allowing diversion of trust funds. In particular, motor fuel taxes and the transportation trust funds must not be used for other purposes.

From a city standpoint, the 1986 tax reforms on arbitrage, which penalize municipalities for prudently investing project funds as they proceed through development, must be removed.

Finally, the *Davis-Bacon Act of 1931*—which was designed to favor white, skilled, and unionized construction workers over the disproportionately black, unskilled, and nonunionized construction workers—is a waste of money. It adds $6 billion a year in construction and maintenance costs that we cannot afford.

Conclusion

APWA and the infrastructure task forces convened by ACIR are on parallel tracks. There is a need for high quality, well maintained, soundly regulated, and affordable infrastructure. There also is an obvious need for better peer reviewed science and less politics. We need to get away from one-size-fits-all mandates, whether they are funded or not, and provide more local decisionmaking. We clearly need a renewed respect for the Tenth Amendment and Executive Order 12612, integration of environmental programs, and a simple booklet from EPA entitled, "All You Need to Know about Following Our Rules."

We must keep the trust fund money dedicated to infrastructure and not waste it on high-cost financial rules or on inflated wage scales. And finally, we absolutely must maintain the infrastructure.

Michael J. Pompili

Assistant Health Commissioner
City of Columbus, Ohio

It is important to understand local frustration about federal mandates. Until two years ago, all I had to do was cut weeds, pick up the garbage, and take care of dog bites. I didn't know about federal mandates or ACIR. Washington seemed far away.

Now that we have calculated what federal mandates are costing us, and how complicated they are to comply with, Washington seems a lot closer. We are fortunate, indeed, to have ACIR looking out for the interests of all governments.

Making the Issue Clear

How can we make such a complex issue clear and persuasive in a 30-second sound bite? If we cannot do that, we probably cannot solve the problem, because it will not get the attention it needs. So, here are four simple points:

- It is not just the water, sewer, highway, and rail requirements, individually, that we must worry about; it's the cumulative impact of all these, and more, on local governments.
- It is not just that the federal government has no more money; local and state governments don't either. So what is occurring is a reallocation of the funds in local budgets.
- Every community is different. One-size-fits-all requirements play havoc with us.
- There is no public support for increased taxes or higher user fees.

The Cumulative Impact

To get a sense of the cumulative impact of federal mandates, read the government's *Regulatory Agenda*. Issued in April and October, it lists all the new regulations that will be worked on for the next six months by all federal agencies. The April 1993 issue had 1,441 three-column pages, not counting the indexes. The pages describe 4,927 different rules being developed, which every local government is expected to follow. There is a special 33-page index to help small governments figure out what applies to them, and a general 57-page subject index.

Commanding Local Budgets

Many people look at the cost of dealing with one regulation and conclude that there is no problem. But, when we consider the unfunded costs of all federal regulations at the same time, it is a very serious problem. For example, the forthcoming report of the Ohio Governor's Task Force on Water Quality will show that 72 percent of the funding for wastewater treatment in the state in 1975 came from the federal government; in 1992, the federal payment covered 29 percent. Even more amazing, 71 percent of all of the money for wastewater treatment in 1975 was grants; in 1992, only 17 percent was grants. We have switched from a system of predominantly federal grants to one of predominantly state loans, with local revenues meeting 82 percent of the costs.

The City of Columbus is growing, but our unemployment rate is about 4.5 percent. We also are fighting off a $19 million budget shortfall that is necessitating layoffs from my staff. At the same time, our cost to dispose of garbage has just doubled, and we are facing added costs for OSHA compliance and other federal mandates. Columbus is not unique; if anything, it is probably in better shape than a lot of other communities.

One Size Fits All

As studies of federally mandated costs have come across my desk from communities and states, I have been struck by how different the costs of compliance are from place to place. The states mostly pass through the environmental mandates to local governments, but they get hit with Medicaid. The costs to most local governments are substantial, but it might be mostly for the *Clean Water Act* in one community, and the *Safe Drinking Water Act* in another.

Public Support

The last point, and the most important, is the lack of public support for increased taxes and user fees. As these costs are passed to local communities, we must be able to show the benefits clearly and assure citizens that we are not wasting their money. We have to involve citizens in setting priorities in their own communities so they will know where their dollars are going and can understand why their taxes are going up. That requires a close partnership between the local, state, and federal governments, which we do not have now.

Because of the one-size-fits-all approach in many federal mandates, some programs are extremely inefficient and wasteful. That makes it very difficult for local governments to build public support. We all have to be more accountable.

Thomas Harrelson

Former Secretary of Transportation
North Carolina
(Representing the National Academy of Public Administration)

The National Academy of Public Administration (NAPA) is a congressionally chartered, nonpartisan, nonprofit organization, which just passed its 25th anniversary last year. Its mission is to improve efficiency among and within the several branches of government.

NAPA has been conducting research on the effectiveness of state departments of transportation. From field visits with the customers, suppliers, stakeholders, and principal executives of DOTs in 12 states, we heard a deep frustration with the processes of government and rising taxes. The feeling is that too much is spent on things that are not directly related to the principal reason why the taxes were raised, and too little is spent on improving infrastructure.

In North Carolina, when I was the DOT secretary, we had to implement a massive trust fund, quickly, because we could no longer rely on the federal trust fund. North Carolina, a fast growing state with urban congestion and severe rural poverty, had been paying far more into the federal trust fund than it was getting back, and even that fund was being frozen to help ease the federal deficit. We need to put the "trust" back in that federal fund if we are to rely on it.

We redoubled our efforts to work with the Corps of Engineers' regulatory process, and with DOT, to get the programs moving. This was not easy. We had very important issues to deal with, including the desire to be both energy independent and internationally competitive. One goal urged us to make energy more expensive while another said keep energy cheap. We had the desire for environmental improvement along with the need for infrastructure improvements that often caused environmental damage. These dilemmas caused delay. We had to deal with both the bureaucracies and their constituents, and break the gridlock that keeps us from serving the people, creating jobs, and paying for environmental mitigation.

John Horsley

Founding Chairman
The Rebuild America Coalition

Back about 1987, it came to the attention of many national organizations that, despite the best efforts of the Joint Economic Committee of Congress, which had published the study *Hard Choices*, we were not making those choices. So, as then infrastructure committee chairman for the National Association of Counties, I thought we should get the private sector to join forces with county and city governments to form a coalition that could convince the decisionmakers, including Congress, that we had to do more.

We went to the National Association of Home Builders, the Associated General Contractors, the Consulting Engineers Council, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the National Governors' Association. That got the Rebuild American Coalition off to a good start. We also had the AFL-CIO Building Trades. From that core of national organizations, about half public and half private, the coalition now has more than 60 sponsors. Our mission is to care about the same issues that are on the ACIR conference agenda.

The ACIR Report

ACIR, the Corps of Engineers, and the six substantive task forces have developed a new, exciting national infrastructure strategy. As a former local elected official who cares about making public works systems work for our citizens, I was struck by the suggestions to restore credibility to what has too often been trashed as pork barrel spending. What we are advocating are quality infrastructure investments.

Last Spring, the Civil Engineering Research Foundation, in concert with the U.S. Department of Commerce, sponsored a national conference on high performance construction materials. Some very advanced materials are coming onto the market. They are lighter, stronger, and easier to install, requiring less downtime for actively used facilities. To replace a stretch of road, we can use fast-drying, hard-curing fill materials and topping materials that keep a facility out of service only hours, or less than a day, instead of a week or more. Whether it is high performance construction materials or innovative management techniques, I strongly concur with ACIR' recommendations to improve the quality of infrastructure investments.

On the need for reform of the federal regulatory process, ACIR understands that some very well-meaning regulations have unintended consequences. And, when you have many layers of regulations, the effect can be very bad. The professionalism that now exists in many of the major counties and cities, and in the states, means that we no longer need the layer upon layer of federal regulations and regulators. I hope that ACIR can take the lead in devolution and elimination of duplicative layers of federal regulation.

We need a new partnership with county, city, and state governments to set performance goals for local and state governments. We also need the federal government to get out of the way. We have the capability and commitment to achieve the national goals that the Congress has set for us without federal agencies tying us up in knots and going through protracted compliance delays.

The Need to Spend More

The focus in this national strategy needs to stay on qualitative improvements to restore the credibility of infrastructure spending. The Rebuild America Coalition has focused on the need for substantial net new spending on infrastructure. As much as we need to enhance and restore credibility to national infrastructure investment, the fact is we have been suffering from too little spending.

For generations, it has been a tradition to leave for the next generation the new investments that have made America's economy preeminent in the world—whether it was New York Governor Dewitt Clinton's canal system that opened up the East, or the railroad system that opened up the core of the country, or the water investments that opened up the West, or the Interstate Highway System that transformed and linked the entire country. But from the 1970s through the 1990s, we have taken more out of the economy in terms of infrastructure than we've put back in. In the federal budget, infrastructure investment has been squeezed out to make room for human investment and debt service.

The Coalition's Record

When we formed the Rebuild America Coalition, we put together the credibility of the public organizations with the skill and message of the private organizations to begin grass roots education on the issue, and to bring the message to the decisionmakers in Washington. We have had some success.

During the 1992 elections, the coalition interviewed 187 Democratic and Republican candidates for Congress. Of those interviewed:

- 93 percent favored increasing federal funding for infrastructure.
- 91 percent said we should ease IRS restrictions on the use of tax-exempt financing in infrastructure investments.
- 69 percent supported creating a new federal capital assistance program that would provide grants to states and localities to help meet their infrastructure needs.
- 93 percent said we should continue federal funding of state revolving loan funds for infrastructure investment.
- 89 percent said we should establish a federal capital budget that would make it easier to plan and account for long-term capital public investments.

The most exciting development for the coalition came when candidate Bill Clinton, in a June address to the Conference of Mayors in Houston, endorsed our goals, and proposed his own Rebuild America fund. During the transition, we all thought the millennium had arrived as the new administration and some new members of Congress seemed to recognize the need for infrastructure investment.

Prospects

When the stimulus package was defeated, we began to see how hard this was going to be. But, I believe that we will recognize the need to create jobs and to invest in infrastructure.

Over the last 20 years, the population grew by 25 percent or 50 million people. And we are expected to add over 30 million in the next 20 years. Those who say that we can survive by improving and enhancing current capacity are not recognizing that net capacity has to be expanded just to keep pace with population. I think that we will see major infrastructure investment, whether for the short-term benefit of creating jobs or long-term capital investment to enhance economic competitiveness or advanced technology enhancements.

Barbara Dyer

Director, Alliance for Redesigning Government
National Academy of Public Administration

I was at the Council of State Planning Agencies when their important book *America in Ruins* was released. I refer to it as the "Chicken Little" book of public works. They talked about the difficulties created by a long period of disinvestment in public works systems. Just as the book was published, the Myannis Bridge in Connecticut collapsed, and infrastructure was really on the map. That was well over a decade ago, and there have since been many projects to improve the quality of capital planning and capital budgeting at the state level.

Now, how does all the talk of reinventing governments affect what we do in infrastructure? In the 1980s, I was eager to move away from the Chicken Little mentality to one that focused on a process of including people and defining the quality of life and the kinds of supports required. Reviewing this issue again, I am not sure that we are any further along in that process.

While we have major new transportation legislation, ISTEA deals with a topic that is too circumscribed—intermodal surface transportation of people and goods. We still do not have a place where we all can come together to ask, "What's important about moving ideas, moving people, moving things that we need to ensure in the investments we make? What's important about the environment and the quality of life, and the way we relate to place? How do we design an integrated approach to long-term system improvement? How do we address very real trade-offs between investments in fiber optics and in highways?"

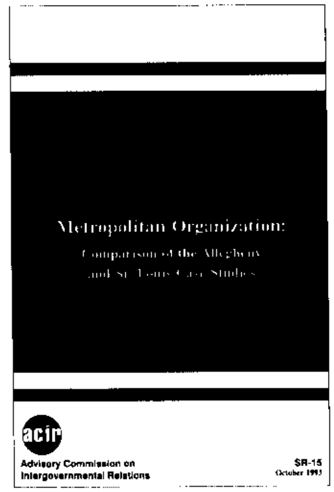
We still tend to define infrastructure in fairly narrow ways that preclude new solutions; we don't leave much room for debate. We define it as an economic development program for which we need economic stimulus, and we create an infrastructure jobs program as the obvious solution. Or we worry about safety when roads or bridges begin to deteriorate and then start focusing on higher standards for construction. We point to lack of investment and try to figure out ways of spending more.

We are still thinking about separate worlds. If we are in the water and sewer business, we are advocates for water and sewers; if we are in the highway transportation business, that's the way we think about it. If we are in communities and are trying to pull together in a community process, we have trouble communicating with the highway engineers and the water and sewer people. These separate worlds connect in important ways, but the vocabulary and the language and the spirit don't connect.

In the model we are using to reinvent government, if we were to actually "walk the talk" in the world of infrastructure, we would have tables where people come together to create a vision that is integrated and fosters a common vocabulary. We would create investments and design our capital budgets to promote integrated outcomes. We would design performance measures that let us know whether we are making progress toward those outcomes so we could check in future years to see whether we are moving in that direction. We would remove the blinders so, as the American reality continues to change and evolve, we would continue to be able to make adaptive changes.

(see page 47 for order form)

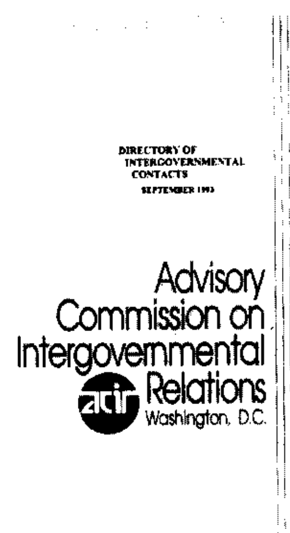
Metropolitan Organization: Comparisons of the Allegheny and St. Louis Case Studies



ACIR reports on lessons learned and directions for future research based on its major case studies. St. Louis and Allegheny Counties were selected because they are among the most fragmented counties in the United States. The reform expectations of inefficiency and duplication in services and ineffective metropolitan governance were not borne out by these studies of police, fire, education, and street services. There was a pervasive pattern of cooperation among governments, a marked attempt to integrate service delivery, and a response to areawide concerns. Further research should examine entire metropolitan areas that are less fragmented, additional services, tax-base equity between central cities and suburbs, and the role of the states and interstate compacts in solving intergovernmental problems and instituting areawide cooperation.

SR-15 1993 **$8**

Directory of Intergovernmental Contacts



This directory is divided into three sections: (1) state ACIRs, which describes the type of organization, legal basis, membership composition and size, budget, staff, functions, and recent activities; (2) principal intergovernmental offices in federal executive departments and agencies, congressional committees, and other federal organizations that have an intergovernmental component; (3) selected national associations representing state and local interests.

SR-17 1993 **$10**

(see page 47 for order form)

SPECIAL FEATURE

State and Local Governments In International Affairs ACIR Findings and Recommendations

NOTE: This section includes findings and recommendations adopted earlier by the Commission. These are followed by articles written especially for *Intergovernmental Perspective* on GATT and NAFTA as they relate to state and local government powers, and an overview of state offices in Europe.

Findings

1. International boundaries are becoming more porous, thereby bringing state and local governments increasingly into the international arena.

Ideas, technologies, trade products, investments, communications, and people from many lands are moving across national boundaries with increasing ease and in growing numbers as the world becomes more interdependent. This trend is expected to continue and, perhaps, accelerate substantially in the 1990s and beyond, resulting in a greater internationalization of the U.S. economy. This development offers unprecedented opportunities and challenges for our federal system and its ability to serve the American people. The United States government alone no longer can shield its state and local governments as effectively as it could in the past from adverse international forces that open state and local governments to a global economy that is increasingly competitive, interdependent, technologically interwoven, multicultural, multipolar, and subject to a multitude of influences from national governments, international organizations, transnational corporations, multinational public interest groups, and the state and local governments of many nations. This rapid internationalization is requiring American state and local governments to revamp as well as develop their own export programs, trade missions, foreign investment programs, cultural exchanges, tourist programs, immigrant services, and other policies toward relevant foreign affairs in response to vital issues that confront them daily from abroad.

2. State and local government functions are essential to an internationally competitive America.

If the U.S. economy is to be competitive with the economies of other nations, it needs to be based on excellent physical infrastructure, reasonable taxation and regulation of businesses, a well qualified and highly adaptable work force, flexible state-of-the-art industries, and equal and open opportunities for all citizens to contribute to and benefit from prosperity. State and local governments have primary roles in each of these fields, and, increasingly, they are bringing such factors together into coherent economic development programs designed to attract and hold business firms, jobs, investment, and tourists, and to link economic growth more effectively to education and the public well-being.

3. Effective federal government and private activities are essential to an internationally competitive America.

State and local governments by themselves, of course, do not hold all the keys to international competitiveness. Private enterprise is the foundation of America's economy, and it is the federal government that sets the overall policy framework within which the private sector and state and local governments can operate in the global arena. The federal government has vital responsibilities for macroeconomic policymaking affecting such matters as the costs of capital, the rates of capital formation, the value of the dollar, and basic trade relationships. In addition, the federal government traditionally has played significant roles in antitrust regulation, basic scientific research, industrial research and development, technology transfer, and interstate and foreign commerce generally. The federal government also has responsibility for immigration and refugee policies, which can have substantial effects on state and local budgets and services and on the ability to recruit needed talent.

The key ingredient in competitiveness, however, is private sector entrepreneurship. Public policy—federal, state, and local—can encourage or discourage this activity, but seldom can provide it directly. There is considerable controversy about the effects of current federal monetary, taxation, deficit, and regulatory policies on the entrepreneurial capacities of American business. Because these are matters of great importance to the U.S. competitive position, they need serious and continuing attention.

4. State and local activity concerning international affairs is growing rapidly.

State and local governments are increasing their direct international involvement through three broad types of activities: economic development, international exchanges, and foreign affairs initiatives.

State and local economic development activities encompass concerns for trade, tourism, technology, and foreign investment. By and large, these activities are not intergovernmentally problematic, but they would benefit from better intergovernmental coordination.

State and local international exchanges are widespread, long-standing, and growing in number and sophistication. "Sister cities" and "sister counties" have become so popular, for example, that they have been matched with "sister state" relationships. Originally instituted as generalized gestures of friendship to help improve international understanding and reduce tensions, such programs have evolved into serious initiatives for economic development, sharing information, education, culture, and reducing tension. These activities rarely pose intergovernmental problems; frequently, they involve state-local and interlocal cooperation, and the federal government often has played supportive roles, as is the case presently, for example, with the efforts of many state and local officials to provide technical assistance to the fledgling democracies of Eastern Europe.

The foreign affairs initiatives of state and local governments range from gubernatorial concerns about the uses of the National Guard in the military structure at home and activities overseas to the disinvestment of state and local funds from companies doing business with South Africa to the development of relationships with governmental entities abroad to lobbying the federal government on foreign affairs issues to providing technical assistance and other aid to communities abroad. When such state and local activities appear to violate the constitutional prerogatives of the federal government, they are adjudicated in court. Otherwise, whether wise or unwise, they stand as expressions of the pluralism of American federalism.

Every indication is that state and local government activities of all three types will grow. Furthermore, all types of local governments have become involved in global affairs—municipalities, counties, townships, school districts and special districts, big or small, urban or rural. State and local governments have responsibilities concurrent with the federal government for the economic well-being of their citizens and the prosperity of their own jurisdictions, and have been left relatively free to engage the global arena on matters relevant to their responsibilities.

5. The pluralism of the federal system is enhancing American competitiveness.

In many respects, the activism of state and local governments in international economic affairs compensates for the changing roles of the Unites States government. Federal grant assistance to state and local governments for economic development has declined significantly in recent years. Federal programs for promoting international trade and tourism are not increasing, and support has been reduced for research and development. In response, state and local governments have become more proactive in promoting their economies. Differences in regional outlooks among state and local governments, and the diversity of approaches among them, provide a healthy mixture of activities, resulting in a stronger American presence in the new economic alliances developing along the Pacific Rim, in Europe, across the Canadian and Mexican borders, and in other parts of the world.

There is ample room in the federal system to adjust the international activities of the federal, state, and local governments in response to changing international conditions. Presently, the high degree of concurrent responsibilities being exercised in the global arena by state, local, and federal governments has contributed constructively to American competitiveness and democratic leadership throughout the world. The occasional conflicts and exercises of destructive competition that have occurred have been manageable and largely self-limiting within the present federal system of government.

6. Some opportunities for improving America's international competitiveness have been lost.

There is, however, insufficient communication and understanding on competitiveness issues between the federal government and the state and local governments. The federal government collects relatively little information about the activities of state and local governments in international affairs, and relatively little attention is paid to such activities by the U.S. Department of State and other relevant federal agencies. The international needs and concerns of state and local governments are not addressed adequately by training programs for foreign service officers and other foreign policy personnel, and U.S. embassies as well as other U.S. offices overseas are not always well equipped to assist state and local officials. Furthermore, state and local governments do not always coordinate their overseas activities and foreign affairs initiatives with each other or with the federal government. Consequently, there is often more independence of action than cooperation and mutual reinforcement.

Three other types of opportunities are often lost: program evaluation, public awareness, and joint activities. There is very little solid evaluation of costs and benefits of these activities or communication about the few evaluations that are available. Public awareness of the global economy is growing, but the level of attentiveness remains insufficient, and the public is ambivalent about state and local initiatives in international matters. With respect to joint activities, states and localities are beginning to implement joint economic missions and to represent themselves through joint offices in Brussels, Tokyo, and other major international centers. There may be more potential for such cooperation, especially through enhanced regional coordination within major sections of the United States.

7. Certain forms of competition for foreign investment can be detrimental to taxpayers generally and to lower income citizens particularly.

At present, the area of greatest concern is the effects of international competition on states and localities. State and local governments increasingly are cooperating on matters of export promotion and other economic development programs having regional or metropolitan benefits, but in the areas of foreign investment and, to some extent, tourism, these governments often compete vigorously. Although interjurisdictional competition has many benefits for a federal system, competition that is based on tax incentives and other "giveaways" is generally detrimental to all other taxpayers and to other jurisdictions that lack the resources or the desire to compete in this manner. The use of fiscal incentives to attract business also can reduce the resources available for education, public welfare, and other programs having general public benefits. In addition, the jobs created may not be optimal for a community, and the investment may not be successful enough or stay in place long enough to provide a return on fiscal incentives.

There appears to be growing concern about improving the fairness of interjurisdictional competition, equalizing the rules of the game to be followed, and shifting to a form of competition that relies more on the human and physical assets of jurisdictions (e.g., good transportation and a skilled workforce). Fairness also may include identifying and taking the best advantage of natural potentials in various parts of a state, and also helping to compensate for lack of advantage in other parts of a state so that the benefits of economic development do not bypass certain locations. Similarly, the federal government has a role to play with respect to fiscal disparities among the states and the effects of federal policies on the relative competitive positions of states and localities.

8. Some conflicts arise among the international activities of the state, local, and federal governments.

The three important areas in which intergovernmental conflicts tend to arise are (1) taxation and regulation of business, (2) the exercise of foreign policy, and (3) the negotiation of international agreements and treaties.

In the taxation and regulation of business, there is concurrent jurisdiction by the federal, state, and local governments. Each may take a different approach. Yet, with the increasing internationalization of markets, businesses press harder for uniform treatment. This desire of business may become an increasingly significant issue in international trade negotiations and may lead to calls for federal preemption of some state and local practices held to be incompatible with agreements among nations.

Where conflicts in the field of foreign policy are significant enough, the federal government has the means to protect its constitutional prerogatives. However, given the impacts of foreign affairs on domestic affairs and the blurring of foreign and domestic policies in today's world, there will be many points of intersection between the interests of the federal government and the interests of state and local governments that will occasion initial disagreements or conflict.

With respect to treaties other than those covering taxation and regulation, state and local governments will be affected increasingly by international agreements involving environmental issues and cross-border problems. Because state and local governments have direct and different interests in such issues as acid rain, water pollution, global warming, foreign investment, immigration, tourism, drug trafficking, human rights, and trade restrictions, they often want their views to be considered in the treaty-making process. State and local governments cannot achieve the results they want without federal negotiation of appropriate international agreements and treaties.

Intergovernmental tensions are a normal feature of federalism. They need to be resolved, and there are political, legislative, administrative, and judicial means for doing so. What is new is the emergence of additional tensions associated with state and local international activities.

Recommendations

Recommendation 1
Educating the Public for the Global Era

The Commission finds that in the United States, as elsewhere, the daily lives of citizens and operations of government are being affected increasingly by the internationalization of our modern world, and that national boundaries are being permeated by global forces at a rapid pace. For more than a decade, state and local governments have been moving into the international arena, and they can be expected to continue expanding these activities. Yet, many citizens are insufficiently aware of the meaning and consequences of globalization, schools need to catch up with the demands of the global era, the public and its elected officials need to work together to carve out appropriate roles for state and local governments in the international arena, and the nation as a whole needs to guard against hasty reactions to internationalization that would undo our federal system. If the nation is to adjust to the demands—environmental, economic, political, and cultural—of a more interdependent world, the federal, state, and local governments will need to work together with citizens to improve public awareness, respond to globalization, and adapt the federal system to change in a manner consistent with our constitutional principles.

The Commission recommends, therefore, that the federal, state, and local governments, as well as the private sector and the news media, establish and support programs to promote citizen awareness of the growing impact of international affairs on environmental and domestic well-being, prepare citizens to participate more fully in international affairs that affect daily lives, and explain to citizens the need for appropriate federal, state, and local government involvements in the international arena that can help create a sustainable economy and environment for the future.

Recommendation 2
Supporting Effective Federal, State, and Local Decisionmaking and Program Implementation in the International Arena

The Commission finds that sound decisionmaking and program implementation by American state, local, and federal governments in the international arena require (1) complete, accurate, and up-to-date information on such matters as exports, imports, foreign investments, and tourism; (2) highly trained personnel in the state, local, and federal governments familiar with the domestic and intergovernmental ramifications of international activities; (3) sound evaluations of state, local, and federal programs being pursued in the international arena; and (4) appropriate intergovernmental cooperation and coordination. The Commission finds deficiencies in all four areas. Information about international activities is inadequate and in some cases inferior to information that was available previously; some opportunities are being lost for training federal, state, and local personnel engaged in international programs; evaluations of federal, state, and local international activities are inadequate and underutilized; and opportunities for joint activities have not been pursued fully.

The Commission recommends, therefore, that:

(A) The federal government, through its Foreign Service Institute, Federal Executive Institute, Pearson Act program for refreshing foreign service officers while on home assignment, and Intergovernmental Personnel Act mobility assignment program, take steps to educate its foreign service officers and other relevant personnel about the American federal system of government and the specific activities and needs of state and local governments in the international arena. The federal government should open its training programs in foreign affairs to participation by appropriate state and local officials under the provisions of the Intergovernmental Personnel Act for purposes of improving the knowledge of the state and local personnel who staff the international activities of the governments they represent. In addition, university programs for training foreign service officers and other officials of the federal, state, and local governments should provide more course work on the appropriate roles of state and local governments in the international arena. Research should be encouraged to build such programs and to explore the ways in which other federal nations manage their international affairs activities, with a view toward improving U.S. practices.

(B) The President and the Congress support programs of the U.S. Department of Commerce and U.S. Export-Import Bank that work cooperatively with state and local governments to expand the outreach and improve the effectiveness of trade and export promotion efforts. These federal agencies should continue to tailor their cooperative programs to the needs of evolving state, local, and regional trade activities. Given that the federal government is in the best position to collect and disseminate much of the data needed by both the private and the state-local sectors to monitor developments and enhance competitiveness, the Commission recommends, further, that federal data collection be improved and dissemination be made in forms directly useful to state and local policymakers and their private-sector partners.

(C) State and local governments, with the assistance of their national associations, collect comparative information, develop better means for evaluating their international activities, and use these improved evaluation methodologies to track more systematically over time the successes and failures of their programs. These steps should include an identification of the public objectives being sought by each program, a clear specification of quantitative as well as qualitative criteria selected to measure progress toward the chosen objectives, careful cost-benefit analysis, and examination of the extent to which program benefits accrue to all citizens.

(D) The state counterpart organizations to ACIR, in those states that have them, or the governors and legislatures in other states, should take the lead in examining state-local relationships in programs of international activity, with a view toward establishing more productive state-local cooperation within their states to enhance their ability to compete internationally.

(E) A series of regional conferences involving federal, state, and local government officials and citizens should be organized to identify appropriate coordination and cooperation opportunities. Such conferences should explore the means by which destructive interstate competition and "bidding wars" for foreign and domestic investments might be moderated, and the means by which opportunities for beneficial joint activities, such as the co-location of overseas offices and joint funding or regional coordination of promotional activities for exports, imports, international investment, and tourism, might be realized more fully.

Recommendation 3
Intergovernmentalizing the Process for United States Participation in Reaching Certain International Agreements and Assisting Local Officials of Other Nations to Develop Democratic Institutions

The Commission finds that some international agreements entered into by the United States government significantly affect the vital interests of American state and local governments as well as the private entrepreneurs needed to help state and local governments compete in world markets for jobs and tax bases. These interests include economic development, environmental protection, the regulation and taxation of business, and other everyday responsibilities of state and local governments. The state and local governments as well as business firms must live with the outcomes of these agreements. These agreements may establish federal preemption of state and local authority, and may create unfunded federal mandates.

The Commission finds, furthermore, that the state and local governments, in their international roles, contribute uniquely to the vitality of the American economy, stewardship of the global environment, improvement of relations among peoples, and the development of democratic institutions in other nations. Thus, all governments in our federal system have concurrent roles to play in the nation's ability to live up to many of the international agreements entered into by the United States government.

The Commission recommends, therefore, that the federal government provide greater opportunities for state and local officials to participate in United States' delegations to international organizations and to contribute to the treaty-making process on international issues directly affecting the responsibilities of state and local governments. In addition, the Commission recommends that state and local officials engaged in international affairs (1) participate in the opportunities provided to advise the federal government and (2) bring to bear their expertise gained in working closely with businesses and local constituencies affected or potentially affected by the issues under consideration in the international forums and negotiating processes associated with the international issues directly affecting responsibilities of the state and local governments. Furthermore, the Commission recommends that state and local governments, working through the U.S. Department of State, assist local officials of other nations in developing democratic institutions.

Recommendation 4

Guarding against Destructive Competition and Hasty Preemption

The Commission finds that the innovative efforts of state and local governments to attract foreign investment to their jurisdictions make valuable contributions to our nation's economic prosperity, but that these efforts sometimes produce destructive interjurisdictional competition, especially when tax abatements and other public fiscal incentives are used to attract investment.

Consistent with its earlier findings and recommendations on preemption, the Commission also expresses concern about pressures for increased federal government preemption of state and local authority in response to globalization of the American economy and to such events as the emergence of the European Community.

The Commission recommends, therefore, that state and local governments move away from forms of interjurisdictional competition based on publicly funded fiscal incentives that benefit particular investors, and that state and local governments work assiduously to develop rules of competition that level the playing field, distribute benefits broadly to all citizens, and produce a healthy, beneficial form of competition for economic development.

The Commission also reiterates its recommendations adopted on December 2-3, 1982, and March 20, 1987, to limit federal preemption of state and local authority. The Commission encourages the nation to consider carefully the benefits of a federal system in a global economy and to examine closely proposals to preempt state and local authority simply out of fear of international economic competition.

(see page 47 for order form)

GATT, NAFTA and State and Local Powers

Conrad Weiler

The global economy and trade agreements loom large as factors shaping the American economy and our society and federal system. As international commercial agreements become increasingly important to American economic life, they will play a greater role in determining the level and character of state and local policies.[1] The General Agreement on Tariffs and Trade, created after World War II, has been quite successful in reducing national barriers to world trade. Now, with passage of the North American Free Trade Agreement (NAFTA), the United States is about to embark on a major regional economic partnership with Canada and Mexico. How these trade pacts may legally override or modify some state and local statutes, ordinances, regulations, or even constitutional or charter provisions is an important consideration for all citizens.

Federal Supremacy

The supremacy clause of the U.S. Constitution subordinates state and local government to valid federal law. Federal law includes formal treaties made by the President with the approval of the Senate, international executive agreements made by the President with or without congressional approval, and implementing regulations. Because the Congress has the power to regulate both interstate and foreign commerce, international commercial agreements, such as NAFTA, must have congressional approval under the foreign commerce power.

Consequently, any commercial treaties or international agreements approved by the Congress, or any legislation or regulations pursuant to such agreements, are superior to inconsistent state or local laws. The international commercial agreements discussed here have, or would have, this superior status, except where state and local governments are or may be specifically exempted. Of course, through the Congress and the President, state and local governments have opportunities to influence the terms of international commercial agreements.

In addition, even without explicit congressional legislation, the Supreme Court prevents state and local governments from passing laws affecting foreign or interstate commerce where the Congress has shown an intent to occupy the particular legislative field, or where the state and local laws would unduly burden interstate or foreign commerce regardless of whether the Congress has acted in the particular area. State courts also tend to defer to the foreign commerce power and to the President's foreign policy power when state or local laws appear to conflict with international agreements.

The General Agreement on Tariffs and Trade

Following World War II, the United States and its allies sought to create a new world economic order along with the new political order symbolized by the United Nations. Believing that protectionist currency manipulation, tariffs, and other trade barriers had contributed to political instability and eventually to world war, and that free trade and economic growth would promote peace, the Allies created the Bretton Woods System, including the General Agreement on Tariffs and Trade (GATT).

GATT was designed to reduce national tariff barriers to world trade. GATT operates chiefly through the "round," a process lasting years, whereby member states negotiate tariff and quota reductions for individual products with their chief trading partners and then extend the reductions to all other members. GATT has been quite successful in this, and has prevented the kinds of tariff "wars" that often occurred in the past. GATT has just completed the Uruguay Round (named after the host country).

GATT also provides a growing body of international trade rules that govern the approximately 115 member nations' rights. For example, the rules control rapid increases in imports, deal with violations of tariff agreements, control government subsidies for exported goods, provide the same or similar administrative procedures for imported goods as for domestic goods, and end discrimination against imported goods.

When members have a trade rule dispute, they can attempt to resolve it through GATT procedures. These dispute-resolution procedures begin informally, but may culminate in the creation of a panel of experts that hears evidence and legal arguments and issues a ruling and an opinion. Although panel rulings are not directly enforceable, member nations avoid open disregard of them because failure to comply allows other GATT members to impose trade sanctions.

Success in reducing world tariffs and preventing tariff wars led GATT to turn, in the 1970s, to nontariff barriers (NTB). NTBs comprise a somewhat imprecise array of national laws, procedures, regulations, permits, standards, and other government requirements that treat imported goods differently and less advantageously than domestic goods. In the American federal system, many NTBs also result from the exercise of general police and welfare powers by state and local governments in such areas as insurance, health and safety regulation, banking, procurement, professional licensing, and promotion of economic development.

In its attack on nontariff barriers, GATT has developed several "codes" or sets of rules in specialized trade areas. GATT codes dealing with public procurement and technical standards are of particular importance to state and local governments. In addition, a proposed General Agreement on Trade in Services (GATS) is being discussed, and has been partially concluded in the Uruguay Round. GATS also has substantial implications for state and local government.

GATT Government Procurement Code

The 1979 GATT Procurement Code obligates member national governments to purchase goods for their own needs with no discrimination against foreign products. However, procurement contracts worth less than about $165,000 are not included, nor is purchasing for national defense purposes. Furthermore, regional (i.e., state and local) governments are not obligated to follow nondiscriminatory procurement procedures. National governments are only required to "inform" state and local governments of GATT's overall goals and benefits. Working with the National Governors' Association (NGA), the U.S. Trade Representative, who negotiates trade agreements, began a program in 1990 of promoting voluntary state compliance with the procurement code.

So far, the federal courts have upheld the exemption of state and local government from the code's nondiscrimination requirements. The federal courts generally have shielded such discrimination behind the "market participant" exception to what might otherwise appear to be a burden on interstate or foreign commerce. Under this exception, state and local governments buying or selling goods or services more or less similarly to the private market may extend certain preferences to their own or U.S. goods or residents without violating the interstate or foreign commerce clauses.

In a 1990 case dealing with a Canadian corporation's challenge to the Pennsylvania Steel Products Procurement Act, the U.S. Court of Appeals for the Third Circuit declared that the GATT procurement code, while binding on the United States as a valid international agreement, did not, by its own terms, bind the states. The court exempted the Pennsylvania law under the market participant exception and essentially left it to the Congress to decide if and how the states should be brought under the code.[2]

The European Community (EC), however, has been pressuring the United States to eliminate state and local discrimination in procurement (and the United States has been pressuring the EC to open up more of its national government procurement). In 1988, the EC completed a study of U.S. state and local government barriers to free trade in government procurement and in other areas of economic regulation, including state and local "buy American" requirements.[3]

The Community pressured the United States in the Uruguay Round to include state and local procurement under the GATT mandatory nondiscrimination requirements. The EC argued that reductions in federal domestic spending, combined with the substantial functions performed by state and local governments, reduced the federal share to only 30 percent of the nondefense procurement covered by the code, thus excluding or hindering the Community from fair competition for a vast market.

The EC has published a list of 40 states that have anti-foreign procurement laws in one form or another, and has proposed that these laws all be eliminated.[4] The Uruguay Round does cover state and local government procurement and, if approved by the Congress, would change discriminatory practices.

GATT Standards Code

Setting standards and certifying products are major sources of nontariff trade barriers. Standards cover health and environmental effects, safety, durability, labeling, processing, utility, and other aspects of thousands of products. In the United States, many standards are set by private industry groups, and many others are set by federal, state, and local governments.

The 1980 GATT Agreement on Technical Barriers to Trade—the standards code—obligates member national governments to ensure that technical regulations and standards do not discriminate against imported goods or create unnecessary obstacles to international trade. Members are required to use international standards where they exist. International standards are often different from U.S. standards. State and local governments are exempted from strict compliance with these requirements, but the national governments are required to take reasonable measures to ensure state and local compliance.

The European Community has identified "more than 2,700 state and municipal authorities in the U.S." that it feels should be brought more fully under the standards code. In its 1992 *Report on U.S. Trade and Investment Barriers*, the EC identified as violations of the standards code a 1986 California voter initiative (Proposition 65) that required a warning label on all products containing substances known to the state to cause cancer and birth defects, a 1992 California law requiring a minimum percentage of recycled glass in glass food and beverage containers, and widespread state and local electrical products safety requirements.[5]

While any modifications that might bring state and local government more fully under the standards code must await the details of the Uruguay Round agreement, the code already allows any GATT member to bring an action against another whose regional governments enforce standards in a way that creates an unnecessary barrier to international trade. Although it cannot be determined in advance whether such a challenge against a state or local food-safety standard, for example, would be successful, the possibility must be kept in mind.

Proposed General Agreement on Trade in Services

In 1989, the U.S. Trade Representative proposed a General Agreement on Trade in Services (GATS). The United States and the more developed nations are interested in such an agreement because the proportion of total world trade in services is increasing and the developed nations dominate the field. GATT does not presently regulate services in any significant way.

GATS addresses trade in insurance, banking, securities trading and related services, shipping and transport, telecommunications, tourism, education, and professional services.[6] Of these, insurance, banking, ground transport, tourism, education, and professional services are substantially and traditionally under state control. Under the virtually unlimited congressional power to regulate commerce, a valid international agreement on services could subject much state regulation to preemption, with the likely exception of education.

State regulation of lawyers, accountants, engineers, physicians, and architects would likely be affected by GATS to the extent that such regulations are involved in interstate or foreign commerce. The Uruguay Round did reach some agreement on services, but largely excluded banking, insurance, and telecommunications. Thus, there will be some impact on state and local regulation of services, if the Congress approves. In addition, more negotiations are planned on services.

GATT Panel Rulings

Only one GATT panel ruling has addressed state government directly—the 1992 *United States Measures Affecting Alcoholic and Malt Beverages*. On a Canadian challenge to U.S. state and federal laws governing the taxation and distribution of alcoholic beverages, the panel ruled that a variety of state tax and distribution preferences for in-state beer and wine producers violated GATT requirements of nondiscrimination against imported goods. Consequently, the federal government is working with the affected states to eliminate the laws found to violate GATT. This first GATT ruling on state laws "may well be a harbinger of future trends."[7]

The North American Free Trade Agreement

While GATT provides a worldwide framework for trade, the North American Free Trade Agreement, approved by the Congress in November, builds on the existing United States-Canada Free Trade Agreement by creating a free-trade area among the United States, Canada, and Mexico for investment, goods, and services originating in any of the countries.

NAFTA offers the potential for the United States to import cheaper goods from Mexico, sell goods more readily to the growing Mexican market, stimulate U.S. investment in Mexico, and promote Mexican economic development in such a way as to reduce immigration pressures on the United States. NAFTA also poses potential problems, for example, lower wages and loosely enforced health and safety standards and less stringent environmental protection requirements in Mexico, which may encourage some U.S. firms to move there. Side agreements were worked out on some of these and other NAFTA problems.

There are three types of major impacts that NAFTA could have on state and local governments.

First, NAFTA covers trade not only in goods but also in services and investments. For services, NAFTA resembles GATS. It will cover banking, insurance, advertising, legal services, motion pictures, engineering, transportation, construction, tourism, accounting, telecommunications, securities, equipment leasing, and franchising. Thus, NAFTA will affect many state and local regulations of services, especially banking, insurance, and transportation. State governments may exempt certain services from NAFTA coverage within two years of the effective date. Local governments may retain existing discriminatory service regulations, but may not adopt new ones. In professional licensing, U.S. citizenship may no longer be required.

Truck transportation, which is of great interest to states, is divided into two categories—traffic crossing national boundaries and domestic carriage. The latter is excluded because it is regulated by the states in the United States and because Mexico opposed opening up its domestic carriage. NAFTA will allow cross-border traffic according to a staged process. Three years after NAFTA is approved, Mexico and the United States will allow cross-border truck traffic to their respective border states. After six years, the countries will open their entire territories to cross-border trucking. Canada will follow the same schedule with Mexico. The United States and Canada have separate cross-border trucking arrangements.

The NAFTA partners will also endeavor, over a six-year period, to develop compatible standards for medical and non-medical testing and licensing of truck drivers, and vehicle weight, dimensions, equipment, maintenance, repair, and emissions. These provisions, while keeping intact the present extent of state regulation of trucking, raise questions about how states will deal with (1) cross-border traffic, (2) costs of increased inspection and highway usage, and (3) resolving disputes involving state trucking regulations.[8]

Second, NAFTA does not presently include state and local government procurement under free-trade requirements, but proposes to do so in the future. Programs for small business, minority business, and economic distress (e.g., enterprise zones) will be exempt. Consequently, some state and local economic development policies in the future may conflict with NAFTA. Such policies may also conflict with the GATT procurement code regardless of what NAFTA may provide.

Third, in the areas of standards and environmental protection, NAFTA contains some highly complicated and controversial provisions. On one hand, NAFTA allows each member country to maintain higher standards than the others. Hence, U.S. standards would not necessarily be governed by Mexican or Canadian standards. State and local governments would apparently be free to exceed federal standards.

On the other hand, NAFTA food-safety standards must be based on "scientific principles" and "risk assessment." Given that it is not yet clear who will determine the scientific principles, critics say it is possible that international standards will be used. These are sometimes lower than U.S. state and local standards. In addition, the requirement of risk assessment and scientific principles might eliminate more general public policy concerns or consumer demand as acceptable bases for enacting food-safety standards.

Further, food-safety standards can be applied under NAFTA only to the extent "necessary" to achieve a certain level of protection. In GATT panel decisions, necessary has been construed to mean the least trade-restrictive alternative. Critics worry that GATT interpretations may well apply to NAFTA language. For example, state or local or even national prohibition of certain pesticides on food could be seen as not the least trade-restrictive alternative. A challenger could well argue, for example, that providing warning labels, adopting less restrictive international standards, or limiting pesticide residues on food would be less trade restrictive than a total prohibition.[9]

However, the Statement of Administrative Action released by the administration following approval of NAFTA asserts explicitly that state and local protection of public health and safety will not be affected by the agreement. Even if a state or local law should run afoul of NAFTA, it would not be automatically preempted or invalidated because each country decides for itself how to conform to NAFTA rules.

Moreover, the statement says, NAFTA clearly allows states and local governments to adopt higher food and safety standards than the federal government. It does not require lowering of such standards or adoption of least trade-restrictive measures. Nor can any party except the federal government enforce NAFTA rules on states.[10]

Finally, the role of the states or local governments in resolving disputes under NAFTA is not substantial. Only the federal government or, in some cases, individual investors have formal standing to utilize NAFTA dispute resolution mechanisms. NAFTA does establish an extended consultative process with states under a "NAFTA Coordinator for State Matters." This office will work with states to (1) identify state laws to be grandfathered, (2) exchange information on NAFTA working committees (e.g., subcommittee on land transportation standards) and on other matters, and (3) work with state attorneys general in dispute settlement proceedings. The implementing legislation also authorizes states to establish self-employment assistance programs to benefit workers who may be displaced by NAFTA.[11] NAFTA cannot preempt states' rights to file suits under the Constitution or other federal law, and NAFTA would surely spawn litigation to clarify its relation to other U.S. law. In the area of environmental protection, in fact, NAFTA emphasizes the need for each country to have effective domestic legal remedies.

Conclusion

The future of American federalism is increasingly bound up with the global economy. The more we demand rules of fair and free world trade, the more we will become subject to those rules. It is likely that NAFTA will have a substantial effect on many state and local laws and policies, so there must be more awareness that their interests are integrally related to international trade policies. On this point, it is worth noting that the office of the U.S. Trade Representative promotes participation of state and local officials in its policymaking through its Intergovernmental Policy Advisory Committee (IGPAC). NGA is particularly active in international trade policy.[12] However, these activities are but a modest beginning compared to the need.

Finally, international trade rules do not necessarily cherish federal principles. While federalism is vitally bound up with the diversity of American society and the freedom of our governing institutions, federalism is increasingly under pressure as a source of nontariff barriers to trade. Federalism scholars and public officials alike must develop new theories to support and explain the role of U.S. state and local government in the global economy.

Notes

[1] See, for example, *Intergovernmental Perspective* 16 (Spring 1990), entirely devoted to the topic of "State and Local Governments in International Affairs."

[2] Trojan Technologies, Inc. v. Commonwealth of Pennsylvania, 916 F. 2d 903 (1990), cert. denied, 111 S. Ct. 2814 (1990). See generally James D. Southwick, "Binding the States: A Survey of State Law Conformance with the Standards of the GATT Procurement Code," *University of Pennsylvania Journal of International Business Law* 13 (Winter 1992): 57-99.

[3] Jacques Pelkmans and Marc Vanheukelen, *The Internal Markets of North America: Fragmentation and Integration in the U.S. and Canada*, Research on the "Cost of Non-Europe," Basic Findings, Vol. 16 (Brussels: Commission of the European Communities, 1988). This study cites several ACIR publications.

[4] Commission of the European Communities, *Report on United States Trade and Investment Barriers 1992: Problems of Doing Business with the U.S.* (Brussels, 1992), pp. 33-36.

[5] Ibid., pp. 65, 69-72.

[6] See Jeffry C. Clark, "The United States Proposal for a General Agreement on Trade in Services and its Preemption of Inconsistent State Law," *Boston College International and Comparative Law Review* 15 (1992): 86 and generally.

[7] Charles S. Colgan, *Forging a New Partnership in Trade Policy between the Federal and State Governments*, Staff Working Paper (Washington, DC, National Governors' Association, 1992), p. 5.

[8] Office of the United States Trade Representative, *Description of the Proposed North American Free Trade Agreement* (Washington, DC, August 12, 1992), pp. 25-28; and *Report of the Intergovernmental Policy Advisory Committee to the U.S. Congress, the President, and the U.S. Trade Representative on the North American free Trade Agreement* (September 15, 1992), pp. 35-37.

[9] See Patti Goldman, "The Legal Effect of Trade Agreements on Domestic Health and Environmental Regulation," *Journal of Environmental Law and Litigation* 7 (1992): 11-98; and Lori Wallach, Affidavit in the Case of Public Citizen et al. v. Office of the United States Trade Representative, U.S. District Court, District of Columbia, June 30, 1993.

[10] Office of the United States Trade Representative, "The North American Free Trade Agreement Implementation Act, Statement of Administrative Action" (Washington, DC, 1993), pp. 95-98, 101-103, 129-130.

[11] ________, "Statement," pp. 9-15, 227.

[12] See Colgan, *Forging a New Partnership*; and Office of the U.S. Trade Representative, *Report of the Intergovernmental Policy Advisory Committee to the U.S. Trade Representative on the North American Free Trade Agreement* (Washington, DC, September 10, 1992). The National Conference of State Legislatures is also active in this area.

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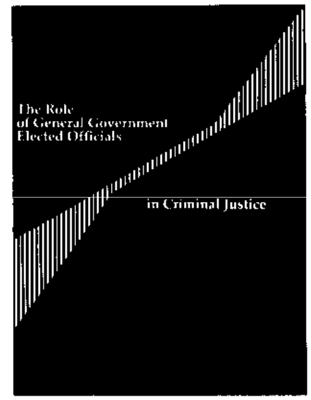
The Role of General Government Elected Officials in Criminal Justice



General government elected officials play a crucial role in every aspect of criminal justice—from shaping policy to holding an administrator accountable for the cost of a new building; from listening to a grieving relative plead for tougher sentencing to sorting out the statistical claims of program performance; from using political leverage to requiring interagency collaboration in making hard budget decisions. This report spells out the intergovernmental, policy, and management issues facing general government elected officials in dealing with the effects of explosive growth in the system during the last 15 years and with the challenges of the next decade.

A-125 1993 **$20**

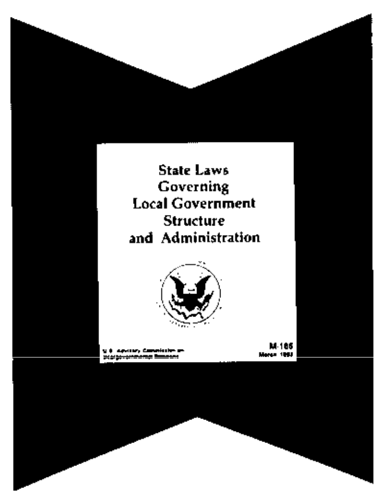
Guide to the Criminal Justice System for General Government Elected Officials

The guide is intended to assist general government officials—elected chief executives, legislators, and administrators and advisors—in their oversight of the criminal justice system. The guide focuses on system actions after crime occurs, emphasizes the role of state and local governments (the federal justice system handles only about 6 percent of criminal cases), focuses on concerns that have major cost impacts across agencies and governments and over time, and provides basic tools to help officials improve the functioning of criminal justice agencies.

M-184 1993 **$8**

Set (M-184 & A-125) **$23**

State Laws Governing Local Government Structure and Administration



Local governments are key partners in our intergovernmental system, legally established in conformance with state constitutions and statutes. This report surveys state laws and constitutional provisions affecting municipal and county governments, specifically, form of government and home rule, alteration of boundaries, local elections, administrative operations and procedures, financial management, and personnel management. The laws of the 50 states are compared for 1990 and 1978.

M-186 1993 **$10**

(see page 47 for order form)

American State Offices in Europe: Activities and Connections

Jerry Levine
with Fabienne Vandenbrande

The emergence of global economic competition, especially from Europe and Asia, has drawn many states—as well as cities, counties, and port authorities—into the international arena, where they have sought to promote state and local exports, attract investment, and encourage tourism.[1] One vehicle for carrying out these activities has been to open state offices in Europe, Asia, Latin America, and elsewhere. Here, we focus on state offices in Europe.

New York opened the first state office in Europe in 1953, followed by Virginia and Illinois in the late 1960s. A wave of openings occurred in the 1970s, and another burst came in the late 1980s. Although growth has slowed in the last few years, 30 states now have 36 offices in Europe, compared to 21 states with 26 offices in 1985.

Of the 28 offices contacted for this study, 23 are operated by the state, while five are contract representative offices. There are no honorary offices.

Locations

Most of the state offices are clustered in a few major cities: 13 in Brussels, 11 in Frankfurt, 3 in London, and 2 in Dusseldorf (see Table 1). European cities having only one American state office include Amsterdam, Berlin, Hannover, Paris, Rijsbergen, Warsaw, and Budapest. In addition, nine states have port authority offices, of which four are located in Belgium.

Table 1
State Offices in Europe

State	Office Location
Alabama	Hannover
Arkansas	Brussels
California	London
	Frankfurt
Colorado	Brussels
Connecticut	Frankfurt
Florida	London
	Frankfurt
Georgia	Brussels
Illinois	Brussels
	Warsaw
	Budapest
Indiana	Amsterdam
Iowa	Frankfurt
Kansas	Brussels
Kentucky	Brussels
Louisiana	Rijsbergen
Maryland	Brussels
Massachusetts	Berlin
Michigan	Brussels
Mississippi	Frankfurt
Missouri	Dusseldorf
New York	London
	Frankfurt
North Carolina	Dusseldorf
Ohio	Brussels
Oklahoma	Frankfurt
Pennsylvania	Frankfurt
	Brussels
Puerto Rico	Brussels
South Carolina	Frankfurt
Texas	Frankfurt
Utah	Waterloo
Virginia	Brussels
Washington	Paris
Wisconsin	Brussels

The reasons given for these locational choices are often fuzzy. The directors of almost all the offices justified their location as being in the center of Europe. Office directors in Brussels cited the fact that it is the capital of Europe because it is the headquarters city for the European Community and NATO. The directors acknowledged, however, that they have little contact with the Community and none with NATO. In fact, there is a slight but definite trend of movement away from Brussels.

Recently, the state of Washington opened an office in Paris, winning the advantage of location in a major market and having that market all to itself. Frankfurt is a favored location because it is a major commercial and air center for Europe.

Export Promotion and Other Activities

All of the state offices engage in trade promotion, and all but one also seek foreign direct investment. In addition, 15 engage in some tourism promotion.

The average state office devotes 52 percent of its time and 55 percent of its budget to export promotion. Eighteen of the 27 office respondents said that they spend half or more of their time on state product exports. In contrast, a 1985 Mentor International study found that investment promotion accounted for 70-80 percent of state office activities. In another survey of 11 state offices in 1985, John Kincaid also noted the emphasis on inward investment.[2]

Eighteen state offices do not charge for their services to exporters; seven impose a fee for assisted trade show participation; and four have some other form of charge. There is widespread reluctance to impose fees, although states that do so have not experienced adverse effects.

Attracting foreign investment to their states is now the second major office activity, accounting for about 37 percent of expenditures. Promoting tourism accounts for 6 percent, and all other activities account for 2 percent of state office budgets.

Visits to state offices by Europeans and Americans, whether from business or government, are infrequent. On average, an office receives six visitors per month, but some get as few as one. Offices in London, followed by those in Frankfurt, report the most visitors, while there are few in Brussels. Only three offices require visitors to sign a register, however, so the responses were based on imprecise recollections. Also, business is ordinarily conducted by telecommunications and directors in the field.

Office Personnel

Although staff sizes vary from one to ten people, the median is three. Typically, these offices include two professionals, one American and one European. Fourteen offices have no secretary or clerical staff; eight have one clerical position; and five have two or more.

Altogether, the 27 responding offices have 67 professionals, 22 clerical staff, and nine interns, for a total of 98 employees. All of the interns are Americans, indicating, perhaps, an overlooked opportunity to also obtain low-cost multilingual assistance from European university students.

Directors were asked what they would do if given an extra $100,000. Most expressed a desire for another staff person. Hiring a secretary was the usual wish for those without one.

Office Budgets

Budgets range from as little as $50,000 per year to more than $600,000, with more than half of them between $150,000 and $350,000. Most budgets held steady in 1993, with 9 offices reporting an increase, 5 reporting a decrease, and 13 reporting no change. In contrast, Kincaid's 1985 survey reported a typical two-person office with a budget of $120,000.

Territories Covered by State Offices

Most state offices cannot serve their full territory adequately, so they focus on their immediate surroundings. The prime target of state efforts is Germany, followed closely by Britain and France. Together, these three countries consume over half of the state efforts in Europe. This focus does not directly correlate with office locations, due to the large number of offices in Brussels and only one in France. Only 5 percent of state efforts are directed toward Eastern Europe, in part because of the difficulties of doing business there (see Table 2).

Table 2

Regions Covered by State Offices

(Percent of Effort Per Region)

Regions	Percent
Germany	27.3%
United Kingdom	17.2
France	16.2
Benelux	13.1
Italy and Spain	8.1
Scandinavia	8.1
Eastern Europe	5.0
Other	5.0

Most state offices devote a major portion of their work to the country in which they are located. In fact, the local concentration appears to be excessive, although interesting patterns were found for the three states that have offices in both London and Frankfurt. While each office expends most of its effort in the host country (the tendency is stronger in Frankfurt), the London office typically covers Scandinavia and is likely to include Benelux and France in its turf. Italy and Spain are more usually covered (though inadequately) from Germany.

The United States and Foreign Commercial Service

The United States and Foreign Commercial Service (US&FCS) in the Department of Commerce has the primary U.S. government responsibility for helping

American exporters enter foreign markets.[3] The federal policy on soliciting foreign direct investment is hands off. Investment attraction is left to the states and local economic development agencies.

Why, then, do U.S. states engage increasingly in export assistance when comparable governments (e.g., Swiss cantons, Australian states, British counties, and German Laender) typically focus on investment and leave export promotion to their national government?[4] As noted above, the most common function of state offices is to locate suitable importers and effective distributors for state companies. This is also a major function of U.S. embassies and consulates. However, states tap the embassy data bases of European importers for only about 8 percent of their needs because the data are obsolete, limited, and costly (see Figure 1).

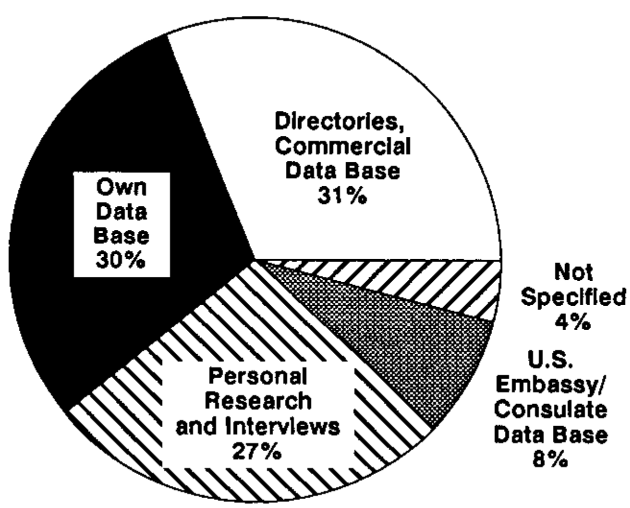
A recent letter from U.S. Secretary of Commerce Ronald Brown stated:

> It is clear that export promotion must be a high priority in this Administration. According to studies by the General Accounting Office and others, the United States lags behind competitor nations in the level of export support for its manufacturers. I believe we can do more to strengthen . . . our export promotion programs. . . . As part of this effort, we clearly need to improve our trade contact databases. These need to be substantially updated to make them more useful. We are working on this and expect to complete a major overhaul . . . by the end of the year.

In early 1993, a cable was sent to overseas commercial posts, stating, in part:

> There is a critical need to update the FTI (Foreign Trader Index). . . . The FTI is badly out of date. Now that many overseas posts have new CIMS Plus, or will shortly get it, the means are available to begin the process. (As of December 1, 1993, only six posts have advised that they will not be able to meet the target date.)

Figure 1
State Sources of Information on European Importers



This will entail deleting companies that are no longer valid or appropriate; collecting updated information on the remaining companies; entering the updated information into the CIMS record; adding worthwhile new companies to the local client file; and transferring the records to headquarters.

This is an important initiative that holds promise of facilitating the export promotion activities of the states. However, it is only a beginning, as shown by the cable's further instructions:

> To minimize the burden, posts may, at their discretion, limit their data entry for this major undertaking just to the following critical fields:
>
> A) Company name
>
> B) Complete mailing address
>
> C) Primary international contact and title
>
> D) Telephone number
>
> E) Fax number
>
> F) Number of employees
>
> G) Sales range
>
> H) Year established
>
> I) Primary bank reference
>
> J) For each product (code, description, activity)

These limits are probably necessary until sufficient funds are appropriated for the Department of Commerce and allocated to US&FCS. Meanwhile, states may be able to make greater use of the new US&FCS database.

There are also other reasons for state use of federal facilities. For one, US&FCS has 45 posts in Europe (48 including Kiev, Moscow, and St. Petersburg). State offices exist in only 11 European cities, with 28 of them clustered in Brussels, Frankfurt, and London. Clearly, the states cannot match the geographic scope of US&FCS coverage. Yet, cooperation between the states and US&FCS is limited and has apparently diminished since the mid-1980s. Further, as Marcella Marchesi, a US&FCS officer in London, points out, there are six trade specialists at the U.S. Embassy in London, permitting a degree of trade specialization that even the New York and California offices cannot match, each with its three professionals split between investment and trade activities.

A promising new initiative will allow a small number of states to share an export promotion officer housed in a consular post, with access to US&FCS facilities and resources. This program, organized for the states under the administrative guidance of the National Association of State Development Agencies (NASDA), is a step in the right direction. Unfortunately for the states in Europe, the most likely candidates for the first trial are reportedly Singapore and/or Saudi Arabia.

The most extensive and effective cooperation is on USA Trade Days, which are cosponsored by US&FCS and the Council of American States in Europe (CASE). CASE, which has operated for 22 years and includes all of the official U.S. state representatives, is the main vehicle for interstate cooperation. Its major activity is to conduct USA Trade Days to promote U.S. exports and Investment Conferences to attract direct investment in the United States. Over the years, CASE has cosponsored more than 200 of these events in many European cities.

Trade Days have always slightly outnumbered Investment Conferences, but in 1993, there were four times as many Trade Days, reflecting a shift in state emphasis. At a typical Trade Day, about 20 state representatives each present the catalogs of about 50 of their state's companies that are new to the market and seeking distribution. A brochure summarizing the offerings is widely distributed in advance by embassies, state offices, and cooperating organizations, such as banks and chambers of commerce. On a good day, a state representative will interview 50 or more potential distributors. Interested parties are referred to the prospective exporters.

The program is considered highly cost effective by most state representatives, although it is denigrated by some of the larger states, which believe that displaying catalogs is not an effective way to market products. A catalog display is indeed a relatively ineffective selling tool, but for states or companies unable to afford more (the fee varies from state to state, but is rarely more than $100), the display at least provides some exposure to potential buyers.

These USA Trade Days, however, suffer from a lack of consistent support from embassy to embassy, apparently depending on the enthusiasm of the commercial officer or the local resources available. Perhaps a directive for stronger cooperation should be sent from Washington.

Concluding Thoughts

The state offices perform beneficial services. In the past, their performance was often impaired by having officers appointed as a political reward. This is no longer prevalent. However, there is minimal cooperation among the state offices and with federal offices. The state offices also tend to lack clear guidance from home and adequate techniques to evaluate their work. Hence, they are often underappreciated at home. One result is a lack of consistent budget and personnel support which, in the worst cases, leads to a merry-go-round of office openings and closings.

Performance evaluation could be enhanced by logging activity levels, measuring results, and conducting user-satisfaction surveys. There also is a need for more precise definitions of objectives and priorities. The state offices could benefit further from sharing more information and resources, especially market and importer data. Some rational division of labor, by country or by industry sector, could benefit all cooperating states.

US&FCS needs to keep the Foreign Trader Index current and to include more useful information to help state offices provide optimal representation for U.S. exporters. Only then could a charge for access to the service be justified or increased in proportion to its actual value.

There are many ways to divide responsibilities as well. One might be for US&FCS to maintain a thorough and current data base so that each state need not compile its own. Another way might be for US&FCS to drop the FTI and use the savings to purchase or contract for commercial data bases.

US&FCS, with many more commercial officers in such major posts as Frankfurt, London, and Paris, is able to have industry specialists, which the states cannot afford. If the ranks of these specialists could be enhanced so that embassies had not only a superior data base of importers but also a firm grasp of industry sectors, then perhaps states could concentrate on recruiting experienced business persons able to counsel U.S. firms effectively on how to succeed in Europe.

A typical commercial section in a U.S. embassy has a number of officers who have not been in the country long enough to have learned the intricacies of doing business there. Each embassy also has a staff of nationals who know the territory, but are rarely experienced business/marketing people.

States should tap the ranks of executives with service in Europe who might see a few years working with a state office as a career stepping stone. In addition, states could recruit senior business people who have completed their commercial careers, retain high energy levels, and are not ready to retire to the United States. Many might welcome an assignment in a state office in a European city where they are already at home.

Notes

[1] See, for example, "State and Local Governments in International Affairs," *Intergovernmental Perspective* 16 (Spring 1990), entire issue.

[2] John Kincaid, "State Offices in Europe," *Comparative State Politics Newsletter* 6 (August 1986): 22-28.

[3] See also Susan C. Schwab, "Building a National Export Development Alliance," *Intergovernmental Perspective* 16 (Spring 1990): 18-20.

[4] See also Brian Hocking, ed., *Foreign Relations and Federal States* (London, Leicester University Press, 1993); and Hans J. Michelmann and Panayotis Soldatos, eds., *Federalism and International Relations: The Role of Subnational Units* (Oxford: Clarendon Press, 1990).

Jerry Levine is president of Mentor International. Fabienne Vandenbrande is an intern from the Brussels Business University, ICHEC. This article is based on a survey of state offices in Europe conducted by Mentor International from June through October 1993. Thirty-three of the 37 offices in Europe were contacted; 25 were visited; and 28 completed a detailed questionnaire. Much of the interviewing and data analysis was done by students at ICHEC. A full report of the survey is available from Mentor International, 442 Post Street, San Francisco, CA 94102 (415-421-8789).

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