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Intergovernmental

# PERSPECTIVE

1980  
SPOTLIGHTS  
REBALANCING

FEDERALISM



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

# View From The Commission



Dear Reader:

Much of the country will cite the election of Ronald Reagan and the turnover in control of the United States Senate as the most important events of 1980. And, indeed, these were important.

But to us at the Advisory Commission on Intergovernmental Relations 1980 also means something else, something very significant. For it was in 1980 that the ACIR adopted what I feel is an extremely important set of recommendations relating to the federal role in the federal system. These recommendations—and the research effort of some three years that preceded them—made a vital contribution to making American federalism a frontburner issue in the press, in national meetings of public

interest groups, and in the Presidential campaign. ACIR's work documented what many of us have long suspected—that American federalism is in trouble, largely as the result of the bigger, broader, and deeper role Washington now plays in our intergovernmental lives.

It remains to be seen, of course, whether the spotlight will continue to be on what ACIR calls "rebalancing" federalism in 1981 and beyond. Some of us could muster our optimism and say that the time is right. All indications are that people—the voters—are fed up with massive government and its effect on their lives. Whether they will be satisfied with less is one of the most troublesome questions facing those of us who are on the "firing line" every day providing basic governmental services.

Each year, the ACIR uses this issue of *Intergovernmental Perspective* to undertake an assessment of significant intergovernmental developments of the previous year. Since we feel that ACIR's federal role study and recommendations were certainly an important, if not the most important, intergovernmental event of the 1980s, the title and introduction to the two main articles reflect this study and some of the interest in federalism it has engendered. The other two articles in this issue of *Intergovernmental Perspective*, by ACIR Federal Relations Associate

Michael Mitchell and State-Local Relations Associate Jane Roberts, describe and analyze actions at the federal and state levels in 1980 and how they affect and are affected by intergovernmental relations. These articles also draw some conclusions and cite trends we can expect over the next few years.

*Washington Post* political columnist David Broder has suggested that 1981, not 1980, should be considered the beginning of the new decade, representing a fresh start for the nation in a way that 1980 did not. One can understand the argument and indeed as the decade advances, it may well turn out that 1980 was not the key threshold year. However, I feel that if 1980 did nothing else, it did promote the cause of federalism and urged a rethinking about the basic issues of federalism more than any year in the recent past. This alone qualifies the year as something special.

A handwritten signature in cursive script that reads "Tom Moody".

Tom Moody  
Mayor, Columbus, Ohio

# Intergovernmental **PERSPECTIVE**

## **2 View from the Commission**

### **4 1980 Spotlights Rebalancing Federalism**

This overview of the events of 1980 also looks ahead to 1981 and includes a thumbnail description of ACIR's Agenda for the 1980s.

### **8 Washington Grapples with the Budget Crunch**

ACIR Federal Regulations Associate Michael Mitchell highlights the activity—and inactivity—in Washington as it impacts on the intergovernmental system.

### **19 Fiscal Issues Dominate as States Meet the Eighties**

In state houses across the country, elected officials struggled with the "era of limits." State-Local Relations Associate Jane Roberts describes how they fared.

### **30 And Briefly: Books**

During 1980, ACIR produced 18 publications. They are highlighted in this section.

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# 1980 Spotlights Rebalancing Federalism

American federalism, in most years a subject mainly for historians, emerged as a campaign issue in 1980. Candidate Reagan's "new states' rights" position was heralded by many state and local officials as a serious commitment to decentralize power away from Washington, restructure functional and fiscal roles, and restore balance to what has become a top heavy federal system.

The "new states' rights," according to many of the actors in our tripartite system of governance, is neither a conservative nor liberal issue, just a way of making government work in so vast and varied a nation. Gov. Richard Snelling (VT), spokesman for the Republican Governors, said: "The federal system has reached a crossroads. The role of the states has been eroded to the point that the authors of the Constitution would not recognize the intergovernmental relationships they crafted so carefully in 1789." The Governor of Arizona, Bruce Babbitt, a Democrat and self-proclaimed liberal, agreed: "It is long past time to dust off the Federalist Papers and to renew the debate commenced by Hamilton, Madison, and Jefferson. They would ask not only whether a proposal is a good program but also 'is this a federal function?'"

In 1980, the Advisory Commission on Intergovernmental Relations undertook a thorough examination of the federal role within the federal system and found that federalism's most trumpeted traits—flexibility and workability—were seriously endangered. ACIR concluded that the federal government's activities have become more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and above all, more unaccountable. As a way of restoring balance to this overloaded system, ACIR adopted an Agenda for the 1980s, outlined on pages 6–7, which calls for both fundamental changes and "enthusiastic tinkering" of an incremental nature.

The National Governors' Association and the National Conference of State Legislatures in 1980 adopted similar platforms calling for a major realignment of powers among the three levels of government. Governors and legislators persisted with their efforts to reclaim the Tenth Amendment to the Constitution which reserved all nonenumerated powers to the states. The Governors resent having become administrative agents for the federal government, left to carry out the often nebulous goals of the numerous narrowly defined and heavily regulated federal categorical assistance programs. They are resisting what they see as the worst possible federal aid scenario—fewer dollars and more strings. The Governors argued for trade-offs in 1980, less federal money in exchange for more flexibility in the use of intergovernmental fiscal transfers. Instead, they got cutbacks in dollars including the termination, at least for the current fiscal year, of the states' share of General Revenue Sharing, and no reduction in conditions and number of categorical programs.

Federal mandates and regulations, now over 1,200 in number, were another key bone of contention between Washington and state and local officials in 1980. Quieted by federal largesse in earlier years, voices against federal rulemaking were raised as the Congress and the executive branch increasingly used mandates and cross-cutting regulations—applicable to most federal grants—to implement policies without providing federal money to carry them out. Gov. John Dalton (VA) withdrew his state from a federal grant program due to, in his words, "burdensome regulations by overzealous federal administrators." In New York City, the Metropolitan Transportation Authority voted to forego \$400 million a year in federal transit aid rather than comply with laws requiring special access for the handicapped. The MTA's objection to federal rulemaking was not directed at intentions but to costs, estimated at \$1.5 billion. New York Mayor Edward Koch said: "My concern is not with the broad policy objectives that such mandates are meant to serve, but rather with what I perceive as the lack of comprehension by those who write them as to the cumulative impact on a single city, and even the nation. . . . We cannot allow the powerful diversity of spirit that is a basic characteristic of our federal system to be crushed under the grim conformity that will be the most enduring legacy of the mandate millstone."

## Why Act Now?

The question then arises: Why now? Why did the states and localities begin to stand up to Washington in 1980? One answer, discussed in more detail later in this issue of *Intergovernmental Perspective*, is the declining fiscal health of the federal government and its impact on intergovernmental relations.

For perhaps the first time in 1980, the generous uncle in Washington began to say "no" to state and local pleas for

money, even to pleas to keep intact their most treasured of all grant programs, General Revenue Sharing. In 1980, it became more evident to states and localities that Washington was no longer in a position to provide financial assistance to help them make up for local revenue shortfalls or to supplement existing or proposed new efforts. In fact, the opposite may occur—some federally funded programs may soon fall into their laps for full local funding or termination, a mixed blessing at best, as they see it.

In the short-term there is little doubt that the 1980 national fiscal bind launches a difficult—perhaps sometimes traumatic—period for policymakers at all governmental levels faced with balancing continued high taxpayer expectations against tighter and tighter budgets. Unlike “more flush” earlier years, in the 1980s we are nearing a “zero sum game” where for every winner, there will be a loser, depending on which grant programs are slated for cutback or elimination and the methods used for returning resources to states and localities.

Furthermore, the conflict among the nation's regions, which surfaced in debates over the allocation of federal resources between Frostbelt and Sunbelt, is likely to continue, albeit in a slightly altered form. Rather than a division based solely on rates of economic growth, the new battle lines may reflect access to energy resources. States having oil, gas, and coal have the potential to realize large revenue gains through severance taxes and production royalties. As a result, their citizens' tax burden will be reduced and their prospects for growth further enhanced. Consumer states have already begun to seek recourse both through Congressional action and court challenges to state severance tax practices.

### **Intergovernmental Forecast: Partial Clearing**

In spite of these “dark clouds” on the intergovernmental horizon in 1980, the forecast for 1981 may cautiously be termed partial clearing, thanks to several hopeful signs.

One of the most hopeful is the new Administration's commitment to devolve certain functions and revenue sources back to states and local governments. Although detailed proposals in such fields as welfare, education, and transportation have not been released yet, their announced intentions promise a strong effort to “decongest” the “overloaded” federal aid and regulation system.

The strong and vocal support of state and local elected officials and their apparent willingness to make the hard choices necessary to help Congress and the President sort out the various functional roles feeds the hope that significant progress will be made toward rebalancing federalism.

There are some indications that states will use the current fiscal bind facing governments at all levels to bring about real change such as that envisioned by ACIR and others. For example, Georgia Gov. George Busbee in his 1981 State of the State address said he was not going to “wail and moan” about the estimated \$124 million in federal aid Congressional budget cutting cost his state in FY 1980. Saying that Congress passed the tough budgetary decisions down to state and local officials, the Governor promised to recover the federal fumble, and in so doing the “state government can not only earn the respect of our people (but) can also collectively begin to straighten out the federal government.”

Another optimistic sign is that the states themselves are now generally better equipped to exercise the stronger role envisioned in the Constitution. ACIR research reveals that a largely unnoticed revolution in state government has

been occurring over the past 25 years. Most states have modernized their constitutions and their legislatures, strengthened the Governor's role, and achieved fiscal muscle.

Yet, caveats remain. Local governments, the workhorses of the federal system in terms of direct provision of services to the public, have grown increasingly dependent on federal and state aid. While many local officials voice their enthusiasm for consolidation of categorical programs into block grants, and a simplified federal aid system, they also wonder how they can provide essential services, repair streets, bridges, water lines, and the other elements that comprise the infrastructure of a community, and at the same time encourage economic development. Faced with inflation, voters' go-slow attitudes on taxing, and declining federal aid, local governments face uncertainty and painful choices.

And, finally, the problems federal aid programs were designed to address in the 1960s and 1970s will not disappear in the 1980s. As the 1980 Congressional budget process revealed, the new “era of limits” has heightened competition and tensions. Yet, as we go into 1981, we do go forearmed with expanded knowledge of the federal role, a growing consensus to restore balance and restraint to federalism, and an agenda to accomplish some of the most difficult tasks.

S.J.B.

# An Agenda for the Eighties: ACIR's Recommendations to Restore Balance and Discipline

American federalism—the tripartite system involving shared and separate powers among the federal, state, and local levels of government—is in trouble, the Advisory Commission on Intergovernmental Relations concluded in 1980 following a three-year study. At the root of the problem, the Commission advises, is the federal role in the federal system which has become more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and more unaccountable. The enumerated powers set forth in the Constitution in 1789 have indeed become today's unlimited activities. The time has come, as we approach our nation's Constitutional Bicentennial, to restore balance and discipline to what has turned into an overloaded system. The Commission approach for restraining the federal role is outlined below.

## **A Convocation on Federalism**

The Commission recommends that the President, at the earliest possible date, convene a Convocation on Federalism, an assemblage of federal, state, and local elected officials as well as leading representatives from the public to identify problems in our federal system and to chart paths of reform.

## **Decongesting the Grant System**

The Commission urges full federal assumption of fundamental social welfare functions, starting with welfare. Concurrently, the number of categorical intergovernmental aid programs, now nearly 500, should be drastically reduced through consolidation, termination, or devolution. Candidates for termination include the 420 small programs, which together comprise only 10% of federal aid, and those functions like fire protection and libraries where the federal share is relatively small. Further, the Commission affirms its support for sunset review of all legislation. Decongestion is but one aspect to ending the "pass now, pay later" philosophy of the past two decades. Federal regulations and mandates—over 1,200 of which are now imposed on states and localities—often entail heavy costs. The Commission urges that these costs be estimated, through fiscal notes and regulatory impact analyses, for every proposed federal law and regulation.

## **Improving Grants Administration**

The Commission urges swift passage in the 97th Congress of the "Federal Assistance Reform Act" to (1) encourage consolidation of related grant programs, (2) simplify federal requirements broadly imposed as a condition of most grants (the "cross-cutting" regulations), (3) streamline federal audit procedures, (4) strengthen the joint funding process, and (5) provide grant recipients with regulatory flexibility. ACIR supports the enhanced authority of the Office of Management and Budget in overseeing the administration of the federal grant-in-aid system and supports efforts such as that represented by the draft OMB Circular dealing with national policy requirements.

## **General Revenue Sharing**

The Commission strongly believes that General Revenue Sharing should be the last—not the first—federal aid program to be sent to the austerity chopping block. GRS remains the best means of providing flexible assistance which is well targeted on poorer jurisdictions and central cities. The Commission reaffirms its support for continued inclusion of the states' share and further suggests that upward adjustments in entitlements should be made to compensate for inflation.

## **Indexing Federal Taxes**

Federal income taxes, rated as the "least popular" type of tax in the ACIR annual poll on public attitudes toward government and taxes, should be indexed against inflation, the Commission has urged since 1976. Indexation, it has been shown in the nine states where it has been tried, does improve political accountability, strengthen fiscal discipline, and enhance equity.

## **Clarifying the Amendment Process**

The Commission recommends swift adoption of the proposed "Federal Constitutional Convention Amendment Act," which would clarify and implement the state legislatures' petition approach to amending the Constitution as provided under Article V. While five major efforts, including the balanced federal budget drive, have been mounted over the past 20 years, none has been successful to date.

## **Revitalizing the Parties**

Special interest groups may have sprung up like dandelions after a spring rain, but the vast majority of the population is still unrepresented by them. The political parties, which have traditionally served in a representational role, are now in a weakened state and need, in the Commission's view, to be strengthened. Towards this goal, the Commission advocates a reduction in the number, dates, and duration of Presidential primaries, the elimination of open primaries, and the convening of mid-term conventions by each of the two major parties.

## **Renewing State-Local Authority**

The Commission finds that greater autonomy for states and local governments is a necessary ingredient for a balanced federal system. Groups representing state and local elected officials in Washington have already begun to reorder their priorities concerning federal aid and accompanying regulations; the Commission applauds their efforts and urges their continuance. States and local governments must also maintain a vigilant posture against coercive federal actions. A "legal defense fund" for states and localities is needed to identify and inform about excessively coercive or intrusive federal actions and, if necessary, to institute litigation. States have come a long way in recent years in recognizing their responsibilities to local governments and this trend should continue. Local governments should be granted adequate taxing authority and/or state aid to perform vital public services.

# Washington Grapples With the Budget Crunch

by Michael C. Mitchell

National events in 1980, more than in most years, were not marked by strong trends and clear labels. The effort to come to grips with a deteriorating economy, instability overseas, and the anticipation of the Presidential election outcome conditioned most aspects of national life, including intergovernmental relations. In Washington, the key intergovernmental question throughout most of 1980 was the longstanding one of how dollars and power should be distributed in our intergovernmental system. The stakes were dearer and the bidding more shrill than ever before, however, as economic concerns forced reductions in federal expenditures.

Attention to the game of power and money shifted, however, with the year's most important intergovernmental event—the decisive election of former Governor Ronald Reagan to the Presidency. The Republican takeover of the Senate and the increasingly conservative nature of the House of Representatives provided additional signals to Washington that the American people are ready for a change. Equally clearly, for many, the message of change is the desire for less governmental intrusion into people's lives and the devolution of power and resources from Washington to state and local governments.

The post-election period, as is usual, was an hiatus marked by much unfinished business being shelved temporarily, and great uncertainty as to what will unfold under the new Administration. Yet, at the same time, there was in Washington in December 1980 a strong sense of anticipation; an awareness that the results of the November election signified not merely a pendulum swing in voter mood, but the beginning of a new era in governmental direction. This article will review the major intergovernmental events of 1980 within this context of uncertainty and anticipation and will offer some speculations about what the next year might hold for American federalism.

## Fiscal Issues Continue to Hold Center Court

Intergovernmental relations in 1980 cannot be understood apart from broader economic issues. They were the dominant concern of the Administration, and the focal point of Congressional debate, as tough alternatives were considered concerning where to reduce government spending to help ease inflationary pressures. At the state and local level, the prospect of fewer federal aid dollars presented officials there with the Hobson's choice of tax increases or service cutbacks. Moreover, these fiscal developments raised the irritant level of state and local officials over federal policy dictation, stimulating increased pressure for a reordering of power within the federal system.

While the nature of the reasons for our current economic decline are both complex and not fully agreed on, the results are the now familiar symptoms of economic stress including built-in inflation, declining productivity and growth, high unemployment, unstable exchange rates, and stagnating international trade.

Related to these economic concerns in 1980 was the increase in world-wide political instability and the growing belief that our national defense capability must be stepped up dramatically. The thrust for increased defense spending in a time of strenuous efforts to cut the budget caught domestic spending in a strong pincer. The efforts to cut expenditures and the classic guns versus butter debate which ensued in the second session of the 96th Congress dominated the legislative agenda and threatened to derail the entire Congressional budget process.

## The Budget Process

As described in the box on p. 9, the Congressional budget process, designed to help make rational, knowledgeable policy decisions, was almost undone by the lengthy Congressional deliberations over where to cut federal spending and the inability of the members to pass appropriations bills before the end of the fiscal year.

Development of a budget, and thereby of the nation's fiscal policy, was extraordinarily difficult in the circumstances which characterized 1980. Goals were clear but the means were less than certain, as the remedies put forward for the various economic maladies were to some extent



contradictory. For example, a reduction in the budget deficit is likely to have a beneficial effect on the inflation rate. But decisions to increase taxes, or lower spending, were both politically difficult (especially so in an election year) and carried with them the likelihood of prolonging the economic recession and thereby paradoxically, further worsening the budget position. At the same time, Congress was considering proposals to *reduce* taxes as a means of spurring investment and addressing long-term productivity problems. Such a course of action, however, is likely to be inflationary at least in the short run.

Budget formulation is ever more difficult as the uncontrollable portion of the budget increases. Largely responsible for this situation are the formula-based entitlement programs which guarantee recipients a certain level of

benefits. Social Security is the largest of the entitlement programs. Equity arguments, the political clout of special interest groups, the desire of some authorizing committees to end-run the appropriations committees, changing demographics (the aging of the population) and difficult economic conditions, have combined to result in a two-thirds growth in the entitlement programs' share of the budget in 13 years—from 36.1% in 1967 to 59.1% in 1980.

In reality, however, entitlements are not truly an uncontrollable aspect of the budget. Despite the political obstacles, Congress can alter an entitlement law to reduce eligibility and/or benefit levels, thereby producing budget savings. In the 96th Congress Senator Biden (DE) introduced S. 1434, legislation that if enacted would have ended the entitlement status of all programs except Social

## Budget Process Under Stress

The budget President Carter submitted to Congress in January 1980 included more money for defense, modest continued growth in social programs but higher taxes. The pledge of a balanced budget was forsaken, but the deficit figure was relatively small at \$15.8 billion. This plan, however, soon ran afoul of economic facts. To paraphrase Irving Kristol, the first budget offering was "mugged by the reality" of an ailing economy. Inflation wreaked havoc with the early estimates, sparking a flurry of meetings between Administration officials and the leaders of Congress in early March.

Following the lengthy and much publicized March deliberations, President Carter in mid-month announced his revised budget for fiscal 1981, including \$13 to \$14 billion in budget cuts and \$13 billion in new revenue measures, resulting in a \$15.8 billion deficit being transformed into a \$16.5 billion surplus. The interest groups representing state and local governments recognized the need for spending reductions and were generally supportive as long as the reductions were meted out in an even-handed manner. But there was great concern, too, because in March the state share of General Revenue Sharing was slated for elimination and it was unclear where remaining cuts actually would be made. Stephen B. Farber, Director of the National Governors' Association, was prescient when at this point he declared, "I think this is just the beginning of a long process."

Armed with the President's revised budget and a Congressional Budget Office report indicating 75 ways to cut the budget, the Congress set to work. Their efforts were ill-starred, however, as the first budget resolution was not passed until June 12, nearly two months after the March 15 deadline. Additionally, all hope for the small surplus written into this agreement was dashed when the mid-year economic statistics were issued, indicating that the recession was deeper than expected. With inflation and unemployment figures up, and productivity down, the deficit estimate leapt upward. Protracted budget negotiations ensued once again, with the result that the second and binding budget resolution due on September 15 was not delivered until mid-November. Moreover, the *Budget Act* requirement that all spending and tax bills be enacted by the week after Labor Day had been flouted as well. By September 15, the House had passed 11 of 13 appropriations bills and the Senate only one.

Possibly a greater threat to the future of the process is

the growing gap between the Congressional budgets and the outlay and revenue figures. In the first three years of the budget process, actual outlays fell within the Congressionally set spending ceilings. In 1980, however, they exceeded the limits by billions of dollars and in all likelihood this will be repeated in 1981. Should Congress continue to disregard its own limits on spending, tougher approaches may be taken to reassert discipline in the process. While some in Congress have suggested making the target spending ceilings binding, others would prefer to limit federal spending to a gradually declining percentage of the gross national product.

An important element in the deliberations again last year was the process of reconciliation, whereby the House and Senate budget committees can order the reduction of already passed appropriations bills to conform with the budget resolution. The Senate attempted the process in 1979, but the House balked and the tool was not used. Last year, both houses employed it. Advocates of reconciliation point to the discipline it imposes on the development of the budget by forcing decisions on all budget reductions simultaneously, rather than the traditionally incremental approach. Additionally, it encourages a healthy debate over future spending choices, a debate some say would not have occurred otherwise. Critics of the process say it is inefficient and shifts too much fiscal power from committee chairmen with expertise in their program areas to budget committee members who lack such sophisticated understanding.

While the practical effect of reconciliation at this juncture is to slow the budget process drastically, passage of the *Reconciliation Act* in November bodes well for the future. A precedent was established that the Budget Committees could direct the tax-writing and authorizing committees to change laws so as to bring expenditures in line with chosen budget parameters. This is a crucial step toward controlling the "uncontrollables" and exercising budget discipline.

Because of repeated delays and missed deadlines, most of the appropriations bills had not passed the Congress by the end of the last fiscal year. A continuing appropriations resolution to fund the operations of the federal government wasn't passed until 16 hours after the beginning of the new fiscal year, technically leaving most federal departments without funding for that period of time. This resolution expired on December 15, necessitating adoption of another continuing resolution based largely on House-passed appropriations levels to carry programs into the new calendar year.

Security and Medicare. Despite the fact that the Biden bill did not receive much attention, and that Congress did not alter the entitlement picture, in the 97th Congress there will be increased pressure to modify certain entitlement programs.

### **The Balanced Budget**

With the spotlight on budgetary gymnastics and the attendant economic concerns, the concern for a balanced budget, so strong in 1979, was forced from the center stage. Legislation sponsored by Senator Byrd (VA) and passed by Congress in 1978 required a balanced budget for fiscal 1981, but this was ignored in the face of the recession. On March 18, a proposed Constitutional amendment to balance the federal budget was voted down 9-8 by the Senate Judiciary Committee. Similarly, a measure proposed by Senator Roth (DE) to limit next year's spending to 21% of gross national product failed in Budget Committee. Those in Congress urging a budget balancing amendment approach did slacken their support in 1980 in the light of revised deficit estimates and the threat to important programs like the state portion of revenue sharing. But the sense of the importance of balancing the budget is strong and this issue, like a review of entitlement programs, should resurface in Congress next year.

### **General Revenue Sharing**

While the exact content of the fiscal 1981 budget remained one of the primary unanswered questions at the end of last year, state and local governments had ample reason for concern about their future funding levels. The Administration's March revision of the budget for fiscal year 1981 pegged intergovernmental aid at \$91.1 billion, a slight increase over the \$89.8 billion for fiscal 1980 but an 8.3% reduction in purchasing power or real dollar terms.

No issue better captured these budgetary concerns of state and local officials than the struggle to renew the General Revenue Sharing (GRS) program. This general purpose program, first passed in 1972 and renewed in 1976 in a slightly modified form, was up for reauthorization again in 1980. Supporters of GRS, describing it as the most desirable of all intergovernmental aid transfer mechanisms, began to push hard in early 1979 for its renewal. Their efforts to secure early passage failed, however, as the program became embroiled in the larger battle over the federal budget.

The first Carter budget proposal contained the state share but provided for a more targeted approach. Additionally the continuation of each state's participation in the program was made contingent on its creation of a broadly based, independent commission to assess two fundamental sources of local fiscal problems—disparities in access to fiscal resources relative to service responsibility and imprudent financial management practices.

When economic and political conditions forced a revision of the Administration's budget proposal, plans for the revenue sharing program changed. To save funds, it was proposed that state governments be eliminated from the program's purview. Thus began a series of proposals and counterproposals, some including the states and others not. The rapidity of these changes by year end had left observers of the process a bit dizzy.

When Congress finally acted in December, it reauthorized the program for three years in roughly its present

**“No issue better captured these budgetary concerns of state and local officials than the struggle to renew the General Revenue Sharing program.”**

form with one glaring exception. It excluded state governments from participation in the first year. In fiscal years 1982 and 1983, the state share is authorized, but funding is dependent upon the appropriations process. Furthermore, the Congress accepted an amendment authorized by Representative Levitas (GA) which requires that in order for states to receive GRS funds in FY 1982 and FY 1983, they must return to the federal treasury an equal amount of categorical grant funds. The Levitas proposal was accepted in lieu of a Senate amendment calling upon the ACIR to study this concept of funding trade-offs and to report to the Congress on its desirability and feasibility.

Local governments will continue to receive funds on an entitlement basis. The revenue sharing legislation specifies that \$4.6 billion—the same amount as in past years—be distributed in fiscal years 1981, 1982, and 1983. Of course, in inflationary times, this implies a cut in real terms. Indeed in FY 1981, local governments will be able to purchase only two thirds as much with their revenue sharing dollars as they were able to in FY 1976, the year in which this funding level was first reached. The Congress authorized \$2.3 billion in both FY 1982 and FY 1983 to cover state participation. This amount too is the same as authorized in past years.

Congress failed to include any provision for antirecession fiscal assistance in the GRS renewal legislation. Committees in both the House and the Senate felt that some form of stand-by assistance in times of economic downturn was desirable, but the programs they backed looked somewhat different. In later deliberations, the concept was dropped entirely.

State and local officials ranked the reauthorization of GRS as their preeminent legislative goal. While disappointed at the exclusion of state governments, they were relieved that Congress finally passed the renewal legislation in time to ensure a continuous flow of payments to local governments. While requirements added in 1976 mean that GRS is no longer a truly no-strings program, it still allows greater flexibility to state and local officials than any other federal program. As such, it represents an important symbol of state and local autonomy and identity in the intergovernmental system.

### **Value Added Tax**

One means of alleviating the fiscal difficulties by increasing revenue was suggested by House Ways and Means Chairman Al Ullman who urged adoption of a value added tax (VAT). The VAT is a multistage sales tax on consumer goods and services. A tax is applied at each successive stage in the production process or, in other words, whenever value is added to the product. The consumer ultimately bears the burden of the tax by paying higher prices for the final product. Advocates of VAT argue that it would provide a more rational, ordered tax system and would permit a reduction in income and Social

Security taxes. Opponents of the consumer tax point out that while the corporate income tax is mildly progressive, the VAT is a regressive tax because lower income taxpayers spend a higher portion of their income on taxed items than do middle and upper income taxpayers. Additionally, the public interest groups generally view the VAT with disfavor because it would increase the difficulty of making sales tax increases in states and localities. The National Governors' Association is on record against VAT because it would compete directly against state sales taxes in 45 states. The point that finally determined the fate of VAT, however, was its projected inflationary impact. The European experience with this consumer tax indicates that when it replaces an income tax it spurs inflation. As one journalist pointed out in 1980, this reason alone was enough to pull VAT off the back burner and into the freezer.

#### **Mortgage Revenue Housing Bonds**

Late in the session Congress enacted a limited extension of tax-exempt mortgage revenue bonds, a topic recently studied by the ACIR. Mortgage revenue housing bonds are used by state and local governments to finance residential housing at below existing market rates. Because the interest on such bonds is exempt from federal taxation, investors are willing to purchase them at relatively low interest rates. These savings can be passed on to eligible home buyers in the form of lower mortgage rates. The cost of the subsidy is borne by the federal government.

Contention over the bonds arose between, on the one hand, those who want to use them to support the nation's housing industry and help individuals needing mortgage interest subsidies, and on the other hand, those who seek to limit the federal deficit. Treasury officials have estimated that unrestricted use of these bonds would have resulted in revenue losses of \$9.2 billion by 1984.

The compromise reached between these opposing views, as contained in the *Omnibus Reconciliation Act of 1980*, permits a three-year extension of the bonds to December 31, 1983, at which point they would become taxable. Additionally, restrictions were placed on the bonds' usage. The new measure places a state cap for bond issuance of \$200 million or 9% of the preceding three years' mortgage activity, whichever is greater, and apportions between the state and localities. It also places restrictions on the kinds of mortgages that can be granted to ensure that funds are used to help low and moderate income families or to assist the housing market in distressed areas. The extension contains no limit on the income of home buyers, but does limit the price in a nontargeted area to 90% of the average purchase price in the SMSA for the previous year and 110% in the targeted area. These provisions generally reflect the recent ACIR mortgage revenue bond recommendations calling for continuation of the bonds with program and volume limitations.

### **Programs, Proposals Fall to the Fiscal Ax**

#### **Law Enforcement Assistance Administration**

If the future of GRS was clouded at year end, that of the Law Enforcement Assistance Administration (LEAA) was far clearer—and bleaker. This agency, which administered the sizable block grant, in addition to categorical programs over the last 12 years has sent \$7.7 billion to state and local governments to help fight crime and improve the justice system. The January budget included \$571 million for

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a restructured LEAA, but when the budget crunch came in March, the \$400 million for the agency's grant programs to the states was completely eliminated. In early November, Congressional conferees settled on a Justice Department appropriations bill including only \$148 million for LEAA. The juvenile justice program is to receive \$100 million of this funding and \$48 million will go to reduced research and statistics programs. Nearly 500 employees will remain with the agency to tend to the nearly \$1 billion already appropriated for criminal justice projects nationwide. Thus, while LEAA retains its authorization, it is just barely alive and is a far cry from the agency that at one time administered nearly \$900 million annually. Even if the Reagan Administration retains the LEAA-type of federal role in the criminal justice system, as his spokesmen have said it would, LEAA in all likelihood will not be administering a large block grant program in the foreseeable future.

#### **Welfare Reform**

Recession concerns reflected in the budget fight and the push for defense spending increases moved a number of other issues of intergovernmental significance off the legislative agenda. Welfare reform, which had shown some signs of progress in early 1980, became an early casualty when President Carter removed \$859 million targeted for welfare reform from his March budget. The two primary spending provisions deferred by this move were the substitution of federal funds for a portion of the matching funds states must pay for the Aid to Families with Dependent Children program, and guaranteed benefit levels in all states to at least 60% of the poverty line.

#### **Energy Mobilization Board**

Another legislative casualty was the Energy Mobilization Board (EMB), the third part of President Carter's energy program, which also included the windfall profits tax and the synfuels program, both of which were passed. The intent of the EMB was to speed the development of needed new energy sources and facilities by eliminating unnecessary procedures and modifying regulatory requirements. While some business interests viewed the proposal as a salve to the energy industry, others predicted it would become one more example of ineffectual and bloated government. State and local officials opposed the board because they favor their existing relationship with energy interests and because they were very leery of provisions in the legislation allowing the board to waive state and local statutes and regulations in order to expedite energy projects. It was on this last issue that the proposal faltered when the House sent the legislation back to conference on June 27. While the concerns over the nation's energy independence are crucial, the loss of the EMB with its waiver provisions is a victory for advocates of intergovernmental balance.

## Regulatory, Grant System, and Mandates Reform

Last year Congress considered an array of measures designed to control governmental growth and simplify various aspects of administering the system. In addition to topics examined in earlier years such as regulatory reform, grant reform, and a sunset process, Congress in 1980 also considered a proposal requiring cost estimates for mandates imposed by Washington on state and local governments.

### Regulatory Reform

Regulatory reform legislation received a generally favorable treatment in Congress, but not all proposals moved. Those measures that did advance dealt primarily with the alleviation of regulatory requirements placed on specific private sector activities. Building on earlier successes providing for economic deregulation in the airline, fossil fuel, and banking fields, Congress in 1980, with strong Administration support, passed trucking deregulation and neared an agreement on railroad deregulation.

The *Regulatory Flexibility Act* is one measure approved by Congress which deals with the regulatory process rather than a specific economic activity. This measure too had strong Administration backing. The law requires federal agencies to assess the impact of their rules and paperwork requirements on certain government jurisdictions as well as small businesses and to publish advance notice of proposed rules, including alternative regulatory approaches to minimize the burdens placed on smaller units.

Other proposals aimed at improving the regulatory process did not fare as well. A trio of regulatory reform bills (S. 262, S. 755, and H.R. 3263) were the subject of lengthy hearings in the 96th Congress, but in the last months of the second session, efforts to alter the proposals diffused their support and the bills were stalled. As proposed, these bills collectively would have put a legislative stamp on the President's 1978 regulatory reform Executive Order 12044 and would have extended the order to the independent regulatory agencies. They provided for sunset review of existing regulations, the semiannual notice of forthcoming major regulations, and the performance of regulatory analyses that would weigh alternative approaches and the costs of the proposed regulations. Additionally the bills would have reduced regulatory delays by curtailing some appeals procedures, expedited some less formal administrative law procedures, and required deadlines for agency decisions on cases. These measures received strong Administration support until amendments were added to increase court power to overturn rules and to permit a legislative veto. When this occurred, the momentum slowed. The Reagan victory sealed the fate of the legislation for the year, since many legislators felt the President-elect would want his views represented in the reformed regulatory process.

### Paperwork Reduction

On December 11, 1980, the President signed into law H.R. 6410, the *Paperwork Reduction Act of 1980*. The new legislation requires a 25% reduction in government paperwork within the next three years. The Office of Management and Budget is delegated authority in the act to review and approve all reporting requests placed on state and local governments, to review all federal information requests to avoid duplicative requirements, and to deny agency requests for information which are unwarranted.

All approved information requests are now to bear a control number, an expiration date, and a statement explaining the need for the information, how it will be used, and whether a recipient response with information is voluntary or mandatory. The act also requires the designation of a senior official within each agency to organize the information system and to cooperate with OMB on the paperwork reduction effort.

### Grant Reform

Like regulatory reform, the effort to improve our massive federal aid system made uneven progress in 1980. Those in favor of grant reform noted that reduction of the complexity and fragmentation in this system would complement the various regulatory reform strategies and, by reducing administrative costs, would free up more funds for actual service delivery. The centerpiece of this effort was companion legislation, S. 878 and H.R. 4505, "The Federal Assistance Reform Act of 1980." The provisions of the bill included processes for grant consolidation and simplification of national policy requirements attached to aid programs, simplification of audit procedures, renewal and strengthening of the 1974 *Joint Funding Simplification Act*, and a group of miscellaneous provisions to improve information on aid availability and to permit greater regulatory flexibility for state and local governments. The bill passed the Senate on December 1 after lengthy negotiations over the consolidation and national policy requirements provisions of the bill. While the House did not advance the legislation, Senate passage of the bill may bring increased pressure to bear on the lower chamber to consider the measure in the 97th Congress.

While a strong joint funding process such as was included in S. 878 and H.R. 4504 was not created, the 1974 *Joint Funding Simplification Act* which expired in February of 1980 was renewed last year. Joint funding is a process which permits a grantee to pool federal aid funds from separate funding sources which are used for a common project, and treat those funds as though they came from a single source. The intent of the process is to permit cost savings through simplified administrative requirements. While the concept has worked better in theory than in practice throughout much of its six-year existence, the number of joint funded projects increased rather dramatically in the last two years. The Senate passed the simple renewal legislation in December 1979. House passage of the bill on December 2, 1980, assured that the joint funding concept will be kept alive in 1981.

### Sunset Legislation

While grant and regulatory reform proceeded slowly last year, the sunset process, an apparent sure legislative winner at the outset of the session, faded in the stretch. As initially proposed, sunset provided for the periodic review of all federal programs and the automatic termination of all programs not specifically reauthorized by Congress.

“Like regulatory reform, the effort to improve our massive federal aid system made uneven progress in 1980.”

The intent of this process is to encourage Congress to exercise its oversight prerogatives and to slow the growth, if not diminish the number, of federal aid programs. Riding a tide of support for this concept, the Senate Governmental Affairs Committee near mid-year cleared S. 2. A sequential referral, however, sent the bill to the Committee on Rules and Administration where the environment was not as friendly. Here the automatic termination provision and the requirement that committees review similar programs at the same time were removed. The Rules Committee substitute also eliminated the minimum criteria for all sunset reviews and the special criteria for the detailed review of some programs. The regulatory impact portion of sunset, which would have initiated a cooperative executive and legislative branch examination of all federal regulatory agencies over a ten-year period, was done away with as well.

House activity further dimmed hope for a viable sunset process. The primary proposal there, H.R. 5858, contained no automatic termination procedure and designated authorizing subcommittees to select from their own jurisdiction the programs to be reviewed. The cumulative effect of these changes in both houses was a major legislative setback for the sunset process, which many feel is a desirable tool for halting governmental growth and eliminating outdated and marginal programs.

#### **Mandate Proposals**

As the sunset proposals faltered, however, another reform issue dealing with federal mandates gained stature in Congress. The proposal responds to the high costs and loss of autonomy experienced by state and local governments in doing business with Washington.

The issue of mandates was of paramount importance to states and localities in 1980, for as federal aid dollars became scarcer the number and intrusiveness of federally imposed regulations became more burdensome. Too often, say states and localities, the federal government uses regulations attached to federal grants to penetrate into the policy process, the organizational structures, and even the personnel systems at the state and local level. Although attention in 1980 was focused primarily on several particularly expensive mandates, such as those requiring extensive changes in transportation facilities to permit equal opportunity for access for the handicapped and certain requirements relating to education of non-English speaking children, the sheer numbers of these types of requirements were also at issue. According to a recent study conducted by Catherine D. Lovell and her associates at the University of California (Riverside), the federal government between 1971 and 1979 imposed 1,079 mandates upon local governments, either as direct orders or as conditions of aid. Between 1941 and 1970 the federal government applied only 178 such mandates and prior to 1960 only 14.

Concern over the implications of mandates for costs and shifts in intergovernmental power fueled efforts in Congress to evaluate these requirements. The focus of this push was legislation to require a cost estimate, or fiscal note, on all proposed federal laws that would impose substantial financial burdens on state and local governments. H.R. 3697, introduced by Representative Holtzman (NY) in 1979, had gained 142 co-sponsors by 1980 and had been joined by similar legislation in the Senate (S. 3087) sponsored by Senator Sasser (TN). The modified Senate version established a threshold of \$200 million of prospective costs to state and local governments before the Congressional

Budget Office would be required to perform a fiscal note analysis. Threshold exceptions would be permitted if a proposal imposed disproportionate costs on one type of government or one region of the country.

The states have pioneered in the development of the fiscal note concept and several of the major public interest groups last year lent strong support to the efforts to secure federal fiscal notes and reimbursement for future mandates.

As the budget negotiations heightened and the Presidential election neared, the momentum of both versions of mandates legislation stalled. While the Sasser bill was moved to the Senate floor, the Holtzman proposal did not get out of the Rules Committee. Despite this disappointment, many observers feel this is a key intergovernmental issue to watch in the 97th Congress. Continued fiscal constraint will maintain the pressure for cost estimates and could lead to calls for federal reimbursement of the costs incurred by state and local governments in complying with national requirements.

#### **Payment In Lieu of Taxes**

ACIR in 1980, at the request of nine Congressmen, conducted a study of the federal government's immunity from state and local property taxation. Late in the 96th Congress legislation based largely on the ACIR research was introduced by Representative Fisher (VA). H.R. 8231, the proposed "National Payment-In-Lieu-of-Taxes Act of 1980," would make federal grants to local governments for property exempt from property taxation, when that property is owned by the United States, a foreign government, or an international organization. The proposal is designed to confront the inadequacy of the current ad hoc approach to payment-in-lieu-of-tax (PILOT) programs and the need for full tax equivalency as cited in ACIR's forthcoming PILOT report. The program would supplant ten of the 57 existing PILOT programs and would be administered by the General Services Administration. Despite Congressman Fisher's unsuccessful reelection bid in November, similar PILOT legislation will be introduced in the 97th Congress.

#### **Convocation on Federalism**

Much of the legislation discussed to this point deals with fairly specific imbalances or friction points that have been identified in our intergovernmental system. One set of proposals introduced last year, however, would take a more comprehensive approach. Joint Congressional Resolutions introduced by Commission member Senator Roth (DE) and Congresswoman Snowe (ME) would establish a National Conference on Federalism to, in Senator Roth's words, "assess the roles of the federal, state, and local levels of government." The concept stems directly from the recently completed ACIR research on the federal role in the federal system. One recommendation from that study calls for the creation of such a convocation, including on the panel elected and appointed representatives from all three levels of government. It would be the charge of this group to develop an intergovernmental agenda for the next decade which, through legislative, administrative, and possibly Constitutional changes, would restore order, balance, and flexibility to our federal system. Congressman Bolling (MO) introduced similar legislation in the 96th Congress. The convocation concept received healthy support from several of the major public interest groups, including the National Governors' Association, the National Conference of

State Legislatures, and the National Municipal League. Senator Roth has indicated that as chairman he will make the convocation a priority item on the agenda of the Governmental Affairs Committee.

### Urban Policy

Several programs targeted for the nation's cities, a primary focus of activity throughout the Carter Administration, were among the legislative success stories in 1980. The year ended with signs of some innovation in urban policy and with an ironic twist in the proposed recommendations from a Presidential commission. In early October, the President signed into law S. 2719, the *Housing and Community Development Act of 1980*. The measure reauthorizes the community development block grant program for three years and provides \$675 million for the urban development action grant (UDAG) program. The UDAG grants are combined with private sector funds leveraged by the grants and are used for job creation and revitalization in distressed communities. Additionally the law authorizes funding for up to 290,000 new Section 8 and public housing units and creates a program to modernize 1.2 million existing units of public housing.

The Administration was again unsuccessful last year in gaining Congressional approval for its proposal to greatly expand the business loan program of the Economic Development Administration (EDA). This step had been urged in place of the National Development Bank initially proposed as part of the President's 1978 urban policy. While the House and Senate passed different versions of the bill, the conference committee was deadlocked for more than a year. Ultimately the EDA programs were re-authorized in current form and at current funding levels through 1982.

Late last year an alternative strategy for luring business back into depressed areas began to collect national support. The concept is that of urban enterprise zones which would involve a series of tax write-offs by federal, state, and local governments to encourage businesses to move into distressed communities. In return for the tax breaks these businesses would be required to hire a portion of their employees from the surrounding neighborhood.

Specifically, as proposed in the "Urban Jobs in Enterprise Zone Act" (H.R. 7420, S. 2823), a local government could apply to have portions of its jurisdiction designated a jobs-and-enterprise zone, depending on tests of poverty and unemployment and on the reduction of the local government property taxes within each zone by 5% a year for four years. Other incentives for business relocation are found in the provisions for a 50% reduction of Social Security payroll taxes on employers for workers 21 years and older, and by 90% for those under 21. To aid the expansion of businesses already in the zone, the proposal would reduce their corporate tax rates by 15% and would accelerate depreciation of the first \$500,000 of capital investment by each business each year. The urban enterprise zone concept received bipartisan support in Congress last year and is part of President Reagan's strategy for dealing with the knotty problems of our nation's cities.

Politicians and policy analysts have criticized many of the existing urban programs for what they view as meager and often exaggerated returns on the enormous amounts of money poured into our decaying cities. Recent studies at Princeton and the University of Michigan indicate that older American cities are in a worse state of decay than they were in the early 1960s. This, despite the fact that in fiscal 1979, nearly one-quarter of nondefense federal

**“Several programs targeted for the nation's cities, a primary focus of activity throughout the Carter Administration, were among the legislative success stories in 1980.”**

spending was in central cities. Others have questioned statistics cited for the UDAG program that \$8.6 billion of private investment has been leveraged and 234,000 permanent private sector jobs have been created in qualifying cities.

Such criticisms led to some rather provocative conclusions and recommendations late last year, from the Commission for a National Agenda for the Eighties, a group appointed by President Carter in October 1979. While the Commission's final report had not been issued at year-end, its draft report recommended in part the reversal of current policy directed toward saving our central cities, and instead advocated assisting the migration of their residents to developing areas, particularly in the south and southwest. The Commission staff characterized this as a "people-to-jobs" rather than a "place-oriented" strategy which will inject a free market concept into the development and decline of urban centers. These recommendations, which constitute a stark disavowal of much of the conventional thinking on urban affairs, have been highly criticized by some members of the National Agenda Commission as well as by members of the Carter Administration.

Earlier in the year the President signed S. 643, the *Refugee Act of 1980* which will alleviate some of the pressure on the racially tense and fiscally hard pressed cities most affected by the recent influx of refugees. The multifaceted problem of assimilating these refugees is complicated by the doubling of their numbers from 7,000 to 14,000 a month last year, by the relatively low socioeconomic status of these recent arrivals, and by the fragmented approach taken by the federal government in dealing with the problem. The legislation is designed to remedy a portion of these problems by centralizing authority in the hands of the President to admit individuals, and by authorizing an annual appropriation to fund resettlement efforts. While the legislation will lend some stability to what at times in the last year was a highly unstable process, major questions dealing with the geographical distribution of the refugees, jobs, housing, and special treatment for the mentally ill still remain.

In March 1980, the National Consumer Cooperative Bank began operation. The Cooperative Bank will receive \$300 million from the Treasury Department which will equip it to borrow up to \$3 billion privately for lending to nonprofit consumer and producer cooperatives. The bank could be of particular benefit to cooperatives in distressed neighborhoods redlined out of the credit market. Housing, food, home maintenance, and employee owned factory cooperatives are among the operations the Cooperative Bank might support.

The Carter Administration also devoted attention in 1980 to legislation dealing with rural concerns, and in September the President signed into law S. 670, the *Rural Development Policy Act of 1980*. The law includes a process for consultation among federal, state, local, and private agencies on economic, health, and other servicing needs in rural areas.

This consultation process would produce by September 30, 1982, a rural development strategy including annual budget recommendations to Congress. The measure also established a position of undersecretary of agriculture for small community and rural development, extended for two years authorizations for information and other Title V programs of the 1972 *Rural Development Act*, and authorized grants totaling up to \$15 million annually to government agencies or other entities for development related activities. Perhaps the most intergovernmentally significant aspect of the legislation, however, is the authority it delegates to the Secretary of Agriculture to collect information governmentwide on federal aid programs and to provide this information and technical assistance to applicants for these programs. The law authorizes \$1 million annually for this information system.

### **Administrative Actions**

In early April Congress extended the President's reorganization authority under the *Reorganization Act of 1977* for one more year until April 6, 1981. Although the Carter Administration did not achieve the reduction in the number of federal agencies or the size of government through reorganization as promised during the 1976 campaign, substantial use of the tool was made in the last four years. President Carter used his reorganization power to effect ten changes in governmental structure during his term, most notably in creating the Departments of Energy and Education. In 1980, the Energy Department continued its troubled existence and seemed marked for substantial change, if not elimination, by the Reagan Administration. Similarly, the Department of Education got off to a troubled start as factionalism within the education community slowed the organizational process, including key appointments. One item of intergovernmental importance, however, was completed. The Intergovernmental Advisory Council on Education was created, as required by Sec. 213(a) of the authorizing legislation. The purpose of the Council will be to provide a forum for federal, state, and local government officials, and representatives from public and private educational organizations to discuss intergovernmental aspects of educational issues. Additionally the group is charged to make recommendations on the improvement of federal education policy in reports to the Secretary, the President, and the Congress to be issued no less frequently than biannually.

In 1980, the President exercised his reorganization authority only once, to upgrade the operation of the Nuclear Regulatory Commission. The plan, to improve safety measures in the aftermath of the Three Mile Island nuclear accident, was approved by Congress, becoming the tenth such proposal by the Carter Administration to receive Congressional sanction.

### **Regulatory Reform**

By year-end, the Carter forces could take some satisfaction in their intergovernmental accomplishments through certain administrative actions in the realm of regulatory reform, building on efforts made in 1978 including promulgation of Executive Order 12044, and creation of the Regulatory Analysis Review Group and the U.S. Regulatory Council. Although these developments inevitably receive scant attention in the media and elsewhere, they have significant impact on policy direction and on the complexion of intergovernmental relations.

On June 27, the President renewed Executive Order 12044 through April 30, 1981. This order capsulizes the

Administration's regulatory reform strategy, including steps requiring agencies to analyze the economic consequences of all major new regulations and to ensure that compliance costs, paperwork, and other burdens are minimal. The order also expands the opportunity for public participation, requires that rules be written in clear and simple English, and stipulates that unnecessary rules be eliminated.

The Regulatory Analysis Review Group has responsibility for ensuring federal agency compliance with the provisions of the circulars and for preparing reports on alternative methods considered in developing particularly important proposed rules. This group in 1980 maintained a low profile on compliance issues as well as on its reviews of major proposed rules. The Regulatory Council instead took the lead on administrative action in this area. The Council, comprised of the heads of 35 regulatory agencies, was created to deal with conflicting or overlapping regulations and to develop a semiannual calendar of all proposed major regulations. In October the Council submitted to the President a report on innovative regulatory techniques which had significance for public as well as private sector entities. The report highlighted innovative approaches being adopted by federal agencies, including more flexible performance standards, compliance reform, information disclosure, voluntary standards, and tiering—a process whereby regulatory standards are tailored to the size and complexity of the unit being regulated. While most tiering to date involves small businesses, it could have beneficial consequences for small communities.

The Council also proceeded with its regulatory calendars, with each successive edition improving on the previous one by expanding agency coverage, and the number and types of regulations reviewed. Several weaknesses in the calendar concept remain, however. These problems reduce the impact of these reviews and at the same time expose a limitation common to much of the regulatory reform process. Most importantly, the Regulatory Council to date has not received from the federal agencies consistent data on the costs and benefits of the proposed regulations. Without this comparable data, the Regulatory Council will not truly be able to determine aggregate costs for a group of regulations or, more importantly, who wins and who loses in a given regulatory action.

One proposal to meet this need for comparable cost/benefit data is that of a federal agency regulatory budget. This concept gained some currency when it was promoted by a Joint Economic Committee report and reviewed favorably in the 1980 annual report of the Council of Economic Advisors. OMB has circulated a draft of the "Regulatory Cost Accounting Act," which would establish a regulatory budget, but the federal agencies threw cold water on the idea arguing insurmountable logistical problems. Nevertheless the idea retains support and may reappear in the 97th Congress.

### **Paperwork Reduction**

The goal of reduced administrative complexity through the elimination of unnecessary federal paperwork continued to receive attention last year. Here again an executive order was the basis for action. Executive Order 12174, issued in late 1979, created a Federal Information Locator System to identify all types of information collected by the federal government, required agencies to give special attention to reducing paperwork burdens placed on small units of government and small businesses, and established a "sunset" process terminating each federal form every

fifth year unless the decision was made to retain it. Last year OMB used the executive order as the basis to institute a paperwork budget requiring each federal agency to submit annually to OMB a plan for information collection from the public. OMB has authority to accept or reject any provisions in these plans. This policy seeks to save \$50 million a year through elimination of unnecessary paperwork.

### The Courts

In recent years, the thrust of pertinent court cases on intergovernmental relations has enhanced federal government growth by breaking down the judicial and Constitutional barriers to its expansion. With the courts' sanction, a wide range of functional areas, traditionally the responsibility of state and local governments, have either been coopted by the federal government, or must be shared with it. In 1980, the judiciary gave no indication that the consequences of this trend would be assessed or its direction reversed. In 1980, intergovernmentally related cases served to underscore the legitimacy, at least in a legal sense, of an expanded federal role.

One of the most intergovernmentally disturbing aspects of this period of judicial activism is the courts' practice of reading private remedies into the language of federal grant statutes and the regulations that guide their implementation. This development has great consequences for American federalism, precisely because of the breadth and depth of federal grantor activity. Decisions related to federal grants automatically affect the actions of state and local governments and nonprofit organizations which are frequently the administering agents for these programs. Generally these effects are prescriptive and coercive in nature. The net result is further imbalance in the intergovernmental system, as more power accrues to the federal level.

One 1980 Supreme Court decision, in particular, captures the essence of this problem, and provides a good example of this brand of judicial activism. On June 25, 1980, the United States Supreme Court, in its 6-3 decision in the *Maine vs. Thiboutot* case, handed down a landmark decision relating to state liability for attorney's fees. In this case, respondents claimed that the Maine Department of Human Services violated a section of an 1871 Civil Rights law when it denied them Aid for Families with Dependent Children (AFDC) benefits. They claimed further that they were entitled to reimbursement for their attorneys' fees under provisions of the *Civil Rights Attorney's Fee Award Act of 1976*. The high court ruled that all federal statutes unless specifically exempted are covered by the code cite for the Civil Rights law. Moreover, the Court held that defendants are liable for attorneys' fees under the *1976 Fee Award Act*.

The decision clearly broadens the scope of liability for actions taken by state and local officials, as they in one more way are to be held legally accountable for violations of federal statutes. Justice Powell, who authored the dissenting opinion, termed the decision "a major new intrusion into state sovereignty under our federal system." The Justice noted that he could detect no Congressional intent in the statutes "to authorize [such] . . . pervasive judicial oversight of state officials." Those dissenting submitted with their opinion a list of 28 laws, including some unrelated to equal or civil rights, under which suits might be brought against the states. Among these were laws such as the *Noxious Weed Act* and the *Wild Horses and Burros*

*Act*. When viewed from the perspective of the proper federal role, these say as much about misguided federal legislative energy as they do about the issue of state liability. This issue notwithstanding, the *Maine* decision represents yet another example of the Court's apparent disregard for the institutional effects of its actions.

In a July 2 decision in *Fullilove vs. Klutznick*, the Court upheld 6-3 the Constitutionality of the minority business enterprise (MBE) set aside provisions of the 1977 *Local Public Works Act*. This act requires that 10% of the \$4 billion in the program be set aside for qualified minority business firms. The decision on the case, which began in the U.S. District Court for the Southern District of New York, upholds the power of Congress to use racial quotas to overcome the effects of past acts of discrimination in the use of federal funds.

Individuals' civil rights were also at issue when Judge

## OMB Initiatives

Apart from actions based upon various executive orders, in 1980 the Office of Management and Budget proceeded with a number of initiatives to improve various facets of the federal assistance system.

### Circular A-95

The procedures pertaining to the initial stages of the assistance process were dealt with in an extensive review of OMB Circular A-95. This circular provides the authority and opportunity for state and local officials to affect proposed federal assistance actions through a comment procedure directed to recipients and to federal agency officials.

As an outgrowth of a 1979 national conference to assess the Circular's performance, OMB last year produced an outline of proposed changes to the A-95 process. The major changes deal with problems relating to the generally poor federal agency performance record in their portion of the A-95 reviews, and the expansion over the past ten years of programs covered from 30 to over 270. The important problem of insufficient federal funds to support the review process, however, has not as yet been dealt with in the A-95 revision. OMB currently is reviewing comments on the proposed changes and drafting a revised Circular slated for issuance in the spring of 1981.

### Urban Impact Analyses

Related to the planning function of A-95 reviews are the Urban and Community Impact Analyses (UCIA) established by Executive Order 12074 and OMB Circular A-116, both of August 1978. The purposes of these impact analyses are to review administrative budgetary, legislative, and regulatory actions in terms of their likely impact on urban and rural areas and to make certain that these effects are weighed before a final decision is made. The UCIA process also is intended to encourage greater targeting of federal funds to the communities with greatest need. While OMB has used this tool on a limited and cautious basis, it is continuing to use the process having submitted 19 UCIA's as part of the 1982 budget review process.

### Federal Assistance Award Data System

OMB at the same time moved to create a computer-based information system on federal assistance awards.



Louis Oberdorfer ruled last year in *American Public Transit Association et al vs. Goldschmidt* that the government regulations requiring subway and bus systems to be made accessible to the handicapped were properly issued under the statutory direction of Congress. This suit was brought in Federal District Court for the District of Columbia by the American Public Transit Association and 12 mass transit systems for injunction to prevent the Department of Transportation rules from being enforced. The plaintiffs based their arguments on the environmental effects of the rules as well as the capital costs and increased operating costs which they will require. Transit authorities place these capital costs at between \$3 billion and \$5 billion, largely for elevators and subway station retrofitting. Transportation Department officials and organizations representing the handicapped, however, believe these figures to be greatly exaggerated. The case is now on ap-

peal before the U.S. Court of Appeals for the District of Columbia Circuit.

The power of the federal government over public lands was affirmed by the Supreme Court in two decisions handed down in the spring. In *Andrus vs. Idaho*, a case which emanated from the U.S. District Court for the District of Idaho, the Court in an 8-1 decision upheld the broad discretion of the Secretary of Interior in decisions affecting desert land in western states. In *Andrus vs. Utah*, a case which began in the U.S. District Court for the Southern District of Utah, the Court in a 5-4 decision affirmed the power of the Secretary of Interior to refuse to grant states mineral lands within federal grazing districts which the state had requested in lieu of original school grant lands of far less value.

Late in its session the Supreme Court refused to review *Los Angeles vs. Marshall*, a case challenging the Constitu-

This Federal Assistance Award Data System (FAADS) is an outgrowth of the aid information study required of OMB by the *Federal Program Information Act of 1977*. After running a 13-state test of the system, OMB in July of 1980 issued reporting instructions to 23 federal agencies for the collection of uniform information on federal agency funding actions. Information will be submitted on a quarterly basis to the Community Services Administration, and the first FAADS report will be available in February 1981, covering assistance awards made during the first quarter of fiscal 1981. One of the primary benefits of the FAADS system will be the uniform nature of its data. Furthermore, because it will replace the manual notification to states of grant awards required now by Treasury Circular 1082 and partially replace reporting requirements in Circular A-95, FAADS should simplify the confusing overlay of agency information systems.

### Single Audits

The budget side of OMB last year worked to simplify one of the last steps in the grant process by easing the burdens imposed on recipients by federal audits. The vehicle for this improvement, the single audit concept, is Attachment P of Circular A-102, first published in October 1979. This attachment is intended to encourage the conduct of federal audits of recipients on an organization-wide basis rather than in the traditional grant-by-grant fashion. The single audit strategy also encourages greater federal reliance on qualified independent audits obtained by recipient governments. While some concern has been expressed by recipients of federal funds over the nature and timing of payment for independent audits, once fully implemented, Attachment P will realize sizable savings through the elimination of costly and duplicative federal audits.

### OMB and Managing Federal Grants

The most comprehensive set of proposed OMB administrative actions to improve the federal assistance system occurred as an outgrowth of the *Federal Grant and Cooperative Agreement Act* (P.L. 95-224). This legislation required that OMB study the federal assistance system and report its findings to Congress, and in March 1980 this report, "Managing Federal Assistance in the 1980's," was delivered. The study recognized the inadequacies of the current system of assistance management and established a 13-point agenda for strengthening the OMB role as the

central unit for managing federal grant funds, and for simplifying and standardizing the assistance management procedures used throughout government. Included in this agenda are:

- 1) establishing a management network;
- 2) establishing a governmentwide policy on managing generally applicable requirements for assistance programs;
- 3) setting agency management performance standards;
- 4) establishing guidance for agency/recipient dispute resolution procedures;
- 5) creating a decentralized system for multiagency conflict resolution;
- 6) improving the overall guidance for agency's implementing P.L. 95-224;
- 7) establishing a uniform procedure for assistance competition;
- 8) setting administrative requirements for grants to for-profit organizations;
- 9) establishing a uniform assistance procedure for the payment of fees and profits;
- 10) creating a procedure for the certification of recipient systems;
- 11) improving assistance information;
- 12) improving consultation with assistance recipients; and
- 13) support for legislative proposals to improve assistance management, such as S. 878, H.R. 4504.

These agenda items are in varying stages of study, planning, or action. In addition to the activity described earlier to improve assistance information, OMB has prepared an issue paper on conflict resolution and drafted proposed circulars on competition, agency/recipient dispute resolution, and national policy requirements. The first two draft circulars are going through OMB clearance. A draft circular describing a guidance system for the national policy requirements has been published in the federal register for comment.

To aid OMB in the development of its policy in these four areas, the ACIR is sponsoring a series of federal assistance roundtables in Washington and in the regions to inform potential recipients of the policy proposals and to gather comments and reactions from all such affected parties. An ACIR analysis of information collected in the grant seminars will be submitted to OMB for consideration prior to the final promulgation of the new grant initiatives.

tionality of a 1976 federal law requiring state and local government employees to be covered by unemployment insurance as a condition for state participation in the national program for private employers.

The challenge arose over the issue of tax credits that may be taken by private employers in states that participate in the federal unemployment insurance program. These credits reduce the federal tax on the first \$6,000 of earnings from 3.4% to 0.7%. If the state is not a participant, the employers must bear the full cost themselves, and such a state is ineligible for federal aid to administer the insurance program or for employment services.

Los Angeles County, seven states and 1,750 local governments in 44 states challenged the 1976 legislation as an infringement on state powers protected by the Tenth Amendment. Specifically, they argued that the law was tantamount to mandatory coverage for public employees and inferred further that implementation of the 1976 amendments could lead to "federal destruction of the economic existence of their private industrial base through imposition of a federal penalty on their private-sector taxpayers." The U.S. Court of Appeals decision, held that because public sector participation in the federal program technically is voluntary, the Tenth Amendment argument is not valid. This decision was permitted to stand when the High Court denied *certiorari*.

In *Young vs. Klutznick*, the U.S. District Court for the Eastern District of Michigan on September 25 ruled that in the final 1980 census report a statistical adjustment to the raw head count figures is required to correct the undercounting of blacks and Hispanics. The suit, brought by the city of Detroit, was supported by affidavits from ten other major cities and the U.S. Conference of Mayors. The thrust of their argument was that blacks are four times as likely to be undercounted as whites. The black undercount for the 1970 census has been estimated at 7.7%, with the count for certain age groups of blacks believed to be as much as 20% low. The undercount for the growing Hispanic population is believed to be similarly low. The white undercount in 1970 is estimated at 1.5%. The census figures, of course, are used to determine not only political representation, but the formula-based distribution of over \$50 billion in federal aid. Large cities with significant minority populations would be particularly affected by an undercount.

In reading the Constitution to require "as complete and accurate a count as it is reasonably possible to make," the Federal District Court Judge ordered the Census Bureau to adjust the 1980 census to correct the undercount, to report to the Court within 30 days on the method of correcting the count and on the estimated timing for the adjustment.

While all of these 1980 legal decisions hold some degree of intergovernmental significance, clearly *Maine vs. Thiboutot* was the most important. Once again the Court expanded individual rights at a potentially high and uncalculated cost to the general taxpayer and the governmental entities that administer the programs.

### Conclusion

Events in 1980 had one very clear and constructive impact in that they impressed upon the American people the reality of the new era of fiscal constraint. The ill-health of an economy so greatly affected by foreign oil prices, and the need for increased defense spending in response to political instability overseas, graphically displayed to our people the fiscal bind in which governments at all levels

are caught. Perhaps the most beneficial effect of this experience will be a conducive environment for bringing about real change in our governmental system.

Several strong signs of this environment for change are evident now. At the national level, the outcome of the November elections spoke loudest. The Reagan victory, the Republican takeover of the Senate, and the conservative gains in the House of Representatives all reflect the desire for new policy direction, and at the same time provide a more unified philosophical base from which to bring this change about.

Less conspicuous but still of high importance was the appearance in 1980 of a state and local governmental sector far more united than ever before in its desire to change its relationship with Washington. State and local officials as individuals and through their national organizations in 1980 became much more assertive about their displeasure with federal laws, regulations, and officials that dictate policy decisions at the subnational level. The states were particularly vocal in pointing to their improved fiscal, administrative, personnel, and programmatic capabilities as they argued for reduction in federal intrusion in their operations.

In the forthcoming period of reduced federal expenditures, this line of argument will not abate, but will be amplified. Moreover, the new Administration, which has expressed interest in state and local governments shouldering more administrative responsibility, is likely to encourage the devolution of authority and responsibility to subnational units of government. While the exact nature of these policies has yet to be defined, in all likelihood there will be fiscal and programmatic tradeoffs between Washington and governments at the state and local level, slower expansion of categorical grants, the consolidation of some grants, the elimination of other programs, and some cutting back on the regulations accompanying federal money.

Those in favor of these intergovernmental strategies will be confronted, however, with the traditional strong obstacles to change. The iron triangles of Congressional committees, federal agencies, and special interest groups will continue to protect their programs and regulations. Additionally, the courts show no sign of curbing their tendency to limit state and local fiscal autonomy and decisionmaking authority.

Governmental decisions as well as the state of our nation in the next year perhaps will be affected most of all by economic factors which in turn will be influenced as much by international circumstances as by events at home. For many Americans these developments in the foreseeable future will mean a decreased standard of living, including fewer government services and benefits. Such sacrifice, however, appears to be essential for the economic recovery that will stabilize many other aspects of our national life. The essence of leadership in this period of austerity will be to encourage the acceptance on the part of the American people of this decreased living standard, including reduced governmental programs, to achieve the desired economic recovery. In other words, we must live with short term pain in return for long term gain. This is the message that began to be transmitted in 1980. Its reaffirmation will be a fundamental task of public officials at all levels of government in the coming years.

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# Fiscal Issues Dominate As States Meet The Eighties

by Jane F. Roberts

As the decade of the 1980s opened, a sluggish economy, inflation, escalating expenditure burdens, and citizen tax resistance comprised a formidable combination of forces facing state and local governments. As a result, policymakers and administrators were confronted with unusually serious fiscal issues and decisions with long-term political implications. One voter's sentiments described a not uncommon attitude: "I voted for it (a tax lid) to watch the politicians squirm. They deserve it."

A year-end analysis by the *Congressional Quarterly* suggested: "Reagan may have served as the catalyst for the Republican surge November 4, but the party's sweeping gains at all levels of government went far beyond his personal appeal. Both he and his successful ticket mates seem to have benefited from widespread voter frustration and a desire for a change."

Of particular interest during this first year of the new decade were the continuing effects of a national economy beleaguered by both recession and inflation, and the realization by policymakers at all levels that the era of limits would be with us for some time to come. The intergovernmental fiscal system again was on center stage during 1980, and the fiscal capacity of, and constraints on, state and local governments were prominent concerns. This article highlights those major fiscally related developments, as well as many of the key actions in the areas of state and local governance, institutions, and processes.

## The Voters Speak

The Republican landslide at the national level in November also was reflected in the races for Governor. Republicans won seven of the 13 races, picking up four new governorships. In just three years, the number of Republican Governors almost has doubled from a low of 12 to 23. The new states in the GOP gubernatorial column are Arkansas, Missouri, North Dakota, and Washington.

November's state legislative elections also took on additional significance because redistricting will be the responsibility of the state legislatures in all states but Hawaii, Maryland, New Jersey, and Pennsylvania, where a board or commission has the reapportionment responsibility. As a result, both major parties watched the legislative races with more than normal interest.

Nearly 6,000 legislative seats were contested in the states. However, the Reagan landslide did not appear to have a heavy impact on their outcome, as Republicans picked up only slightly more than 200 seats. Because these gains were distributed throughout the country, only a small number of the legislative bodies changed control. In four state legislatures (Maine, Vermont, West Virginia, and Wyoming), Republicans actually registered a decline in members.

Republicans now control about one-third of the state legislative chambers, gaining the majority in the Illinois, Montana, and Washington houses of representatives. Losses in Alaska and gains in Pennsylvania produced ties in those states' senates. The Republicans now control both chambers in 13 states.

## The Fiscal Dimension

### The Tax Revolt Fever Cools

*Time* magazine described the nature of the November balloting this way: "Not since the 1930s, when the Depression brought a spate of voter initiatives to the ballot, have citizens themselves proposed so many new laws—and limits—for government. . . . Many of the initiatives reflected an impatience with politicians and an eagerness by the electorate to take matters into their own hands."

Over 40 referenda were placed on state ballots dealing with such diverse issues as nuclear power, smoking in public places, equal rights, returnable bottles, dove hunting, and bingo. More significantly, however, 18 included statewide proposals addressing almost every kind of state and local tax. In five of these states (Arizona, Nevada, Or-

egon, South Dakota, and Utah) the measures were patterned after California's trend-setting Proposition 13. The tax revolt fever seemed destined to spread even further.

While it often is risky to make predictions in the public policy and opinion arenas, the 1980 elections seemed to support at least one observation: expect the unexpected. Although over 35% of the states considered tax-cutting proposals (by far the most states to do so in a single year) most of the measures were defeated, including all five Proposition 13 look-alikes.

In the aftermath, analysts debated whether or not the tax revolt had come to an end or perhaps had entered a new and more mature phase. The National Governors' Association suggested that the revolt was "winding down" and observed: "Although hasty generalizations from balloting in widely diverse states can be risky, one clear pattern emerges: Every Governor who opposed a tax relief or fiscal control measure on his state's ballot was supported by the voters. In general, the Governors who opposed such measures did so on the grounds that the cuts were too drastic and inflexible, particularly during a recession that already threatened vital public services."

Among the measures defeated in November were:

- an Arizona proposal that would have negated earlier tax relief enactments and imposed a more severe 2% limit on property tax assessments;
- a Nevada Prop 13 amendment that had been approved by a 3-1 margin in 1978;
- Oregon, South Dakota, and Utah initiatives which would have limited real property taxes to 1% of true cash value, using 1977 as the base year;

- four tax measures in Michigan, including the Tisch amendment to rollback property tax assessments and halve property taxes; and
- an Ohio initiative that would have increased tax rates on personal incomes over \$30,000, reduced property taxes for low income homeowners, and eliminated business tax incentives.

In every instance, these measures were rejected by sizeable margins. Interestingly, California voters had provided a "preview of things to come" when they overwhelmingly defeated the Jarvis II amendment to cut the state income tax by half earlier in the year.

The notable exceptions to the rejection movement occurred in Missouri and Massachusetts. Missourians approved a constitutional amendment that imposes two different types of lids: one on state tax collections and another on local tax rates. In Massachusetts, overburdened taxpayers gave a resounding show of support for the very restrictive Proposition 2½.

#### States, Localities Put Brakes on Spending

Some analysts attribute the defeat of so many tax and expenditure limits to the fact that state and local officials already had begun to cut taxes and reduce the size of government. While the cutbacks often were in direct response to taxpayers' demands, reductions in many instances were necessitated by a recessionary fact of life—dwindling revenues.

For example, Idaho Gov. John Evans ordered state agencies to hold back spending by 3% because revenues fell short of projections by \$11 million; and Indiana Gov. Otis

## Massachusetts and Proposition 2½

Voters in Massachusetts overwhelmingly approved Proposition 2½ that will reduce property tax levies by 75% in Boston, and from 30% to 40% in many other communities. The new tax law was so named because it limits the property taxes a jurisdiction may levy to 2.5% of the full market value of its real estate in 1979.

Communities now exceeding the 2.5% will be required to reduce their property taxes 15% each year until the limit is reached. Approximately half of the state's 351 communities have tax rates higher than 2.5%. The statewide average is 3.4%, with Boston at 10.2%. Once the mandated levy limit has been reached, property taxes only may be increased by 2.5% annually regardless of the growth of valuations. Municipalities thus will not be able to expand tax levies to quickly cover new properties and people or the services they will need. The levy limit can be lowered by a majority of voters, but a two-thirds vote will be required to approve a levy increase.

Local property taxes are the only source of revenues for localities aside from small amounts of state aid. Many jurisdictions may be left without funds to pay for essential services, even after substantial layoffs and budget cutbacks. For example, the City of Cambridge may lose one-third of its tax revenues from cuts, especially if the tax cuts are implemented as planned over the next two years. Local officials believe they may have to lay off one-third of

the city's employees: 250 teachers, 100 firemen, 100 policemen, and 175 public works employees. The city also may have to close health clinics, branch libraries, and community schools.

Court action already has been initiated by a union representing 100 Worcester policemen. One of the issues cited in the lawsuit is that the referendum violated the U.S. Constitution by impairing the operation of union contracts with cities and towns.

Proposition 2½ also reduced the uniform tax rate on automobiles. The tax will now be \$25 per thousand dollars of assessed value, instead of the present \$66 per thousand dollars of assessed value. This tax reduction will be reflected in tax bills due early in 1981, and is expected to result in a \$70 million decrease in revenues over the next six years.

In addition, the new tax law provides tax relief to apartment renters by allowing them to deduct half their annual rent from state income tax returns. This significant change is expected to cost the state an additional \$30 million in revenues.

Also included in Proposition 2½ is a provision prohibiting the state from imposing mandates on local governments which are not funded. The prohibition covers administrative as well as legislative mandates, but allows mandates to be imposed where local governments vote to accept them.

One state legislator who was a leading opponent of the measure predicted that enactment of Proposition 2½ would provoke the most severe fiscal crisis in the state's history. It is expected that efforts to amend the new law will be made during the 1981 legislative session.

Bowen ordered a halt to new state hiring to avoid fiscal problems later in the year.

**Kentucky** estimated revenues to be \$217 million less than projected. Gov. John Y. Brown, Jr., earlier had ordered the number of state jobs reduced by 5%. **Michigan**, hurt by the auto slump, passed legislation to loan cities up to \$5 million for financial emergencies.

In **Ohio**, welfare rolls rose sharply, the ratio of municipal debt to cash on hand was four times the national average, tax revenues declined, school districts were running out of money, and the state faced a deficit of over \$350 million. One state senator termed the situation the "worst fiscal crisis in the history of Ohio." And in Boston, **Massachusetts**, the nation's oldest transit system ran out of money and was perilously close to shutting down until an emergency funding arrangement was worked out by the state government.

In **South Carolina**, the legislature defeated a proposal for a constitutional amendment to link state spending increases to increases in state personal income. However, the legislature did approve a measure proposed by Gov. Richard Riley to impose a statutory ceiling on state spending increases. A statutory spending lid also was enacted in **Hawaii** that ties increases in general fund expenditures to the growth in the state's economy as measured by averaging the percentage change in total state personal income for each of the three preceding calendar years.

Even though **Alaska** is enjoying a very favorable revenue position attributable to oil production, Gov. Jay Hammond announced his support for a constitutionally mandated spending limit as a vital way of "holding government to levels which can be funded through recurring revenue sources." Hammond also proposed an increase in noncategorical aid to localities to help build, operate, and maintain capital facilities or to reduce property taxes; that voter approval be required for capital improvements which cost more than could be funded under the ceiling imposed by a spending lid; and that the new permanent fund dividend program be used as an alternative to continued government growth. (See page 22.)

Given the degree of economic distress on both the national and international fronts, it is unlikely that the generally favorable state and local revenue picture of the 1970s will be duplicated in this decade. For example, many new state and local spending programs were made possible by the availability of federal aid during the last ten years. However, the growth of federal aid has nearly ceased, and indeed has been reversed in real terms. State and local governments will have to bear more of the burden for some of these programs or scrap them. Added fiscal stress also will result from the elimination of the state share for the 1981 fiscal year and the continuing shrinkage of the local share of the federal General Revenue Sharing program.

Additionally, many state and local units, as well as businesses and individuals, will be confronted with increased payments to the Social Security system. Current projections indicate a nearly four-fold increase in state and local contributions to the system, rising from about \$50 million in 1979 to over \$184 million by 1990. Costs associated with state and local retirement programs also will increase during this time.

Given popular sentiments and fiscal conditions, perhaps one of the changes that will take place in the 1980s will be in the way elected officials respond to the perennial budget problem of making ends meet. In the "good old days" of government expansion, a projected budget gap typically

was viewed as a *revenue problem* to be solved by raising more taxes or by obtaining more aid from state and federal sources, or both. The fiscal realities of the 1980s increasingly may force policymakers to view a projected gap as an *expenditure problem* to be resolved by revising service priorities and increasing cost effectiveness.

#### **Income Taxes and Inflation**

While a recession erodes revenues, inflation automatically increases tax revenues, to the benefit of the state treasury but at the expense of the taxpayer. One approach to help offset these unlegislated increases for the taxpayer and windfalls for the state coffer, now used in nine states, is to index the income tax. Under an indexation policy, personal exemptions, tax brackets, and standard deductions are adjusted automatically by the increase in the consumer price index or by some other inflation measure. ACIR has recommended indexation for both state and federal income taxes.

Three states acted in 1980 to index their income taxes: **Montana, Oregon, and South Carolina.**

In **Montana**, the voters approved a measure that had been vetoed by the Governor in 1979. The measure will take effect in 1981, and will apply to personal income brackets, exemptions, standard deductions, and minimum filing requirements.

**Oregon** enacted legislation that indexes personal exemptions beginning with the 1981 tax year and permanently thereafter. Immediate implementation of the measure, that received the required voter approval in November, currently is in doubt because of bleak fiscal forecasts for the state. The new **South Carolina** law indexes income brackets, personal exemptions, and standard deductions for the 1982 tax year (and permanently thereafter) by the change in the state consumer price index as determined by the state's budget and control board, but not to exceed 6%.

In addition, **Arizona** acted to make its indexation program permanent. As a result, the tax bill confronting Arizona's citizens will be reduced by about \$66 million. **Iowa** also made its program permanent, but added a trigger mechanism feature that will require a \$60 million surplus in the state treasury for indexing to go into effect. **Minnesota** modified its law by dropping indexation for all features except marginal rate brackets. And in **California**, a measure making indexation a permanent program was vetoed.

#### **Taxes and the Courts**

Several judicial decisions which were issued in 1980 affected state taxing authority on various fronts. The nation's High Court upheld the power of a state to base its corporate income tax on a multistate corporation's entire income rather than just on the income earned from local operations. The Court's unanimous decision affirmed a ruling of the **Wisconsin** Supreme Court in that state's nine-year tax battle with the Exxon Corporation. Exxon had contended that since it conducted only marketing operations in the state, Wisconsin should not tax the company for other operations such as refining or exploration because they are treated as "separate profit centers." The Court, however, ruled that Exxon was in fact a "unitary business" of interdependent operations and subject to taxation wherever the company operated. Earlier in the year, the Court released a 6-1 decision in favor of a **Vermont** tax that covered dividend income of the Mobil Oil Corporation's foreign subsidiaries and affiliates.

In a related development, the **Colorado** Supreme Court

upheld the state revenue department's right to require multinational and multistate companies doing business in the state to file tax returns indicating both in and out-of-state income. It is expected that Colorado may receive as much as \$5-10 million as a result of the decision.

State energy taxes also were the subject of state and federal court challenges. A suit challenging Montana's 30% severance tax on coal was brought by the Commonwealth Edison Company, an Illinois utility, on the basis that the tax unconstitutionally burdened interstate commerce and interfered with federal policy. The State of Texas also filed a friend-of-the-court brief in opposition to the tax. At mid-year, however, the Montana Supreme Court upheld the constitutionality of the tax. The U.S. Supreme Court has agreed to hear the case.

In another action, a federal district judge declared a portion of New York's gross receipts tax on oil companies unconstitutional. The case challenged a provision preventing the tax from being passed on to consumers and was brought by three major oil companies—Mobil, Atlantic Richfield, and Gulf. Over 85% of the expected revenues from the tax—or about \$200 million—had been earmarked for the New York City transit system to help hold down fares. Earlier in the year, another federal district court had ruled that a similar law in Connecticut also was unconstitutional. Both cases are under appeal in federal circuit court.

### Intergovernmental Relations: The Local Focus

#### Local Government Modernization

Actions to revise significantly or to extend local government functions and authority are an important element of intergovernmental relations. Yet, most times, they are the most difficult to accomplish. During 1980, major developments in at least three states were especially noteworthy.

A major three-year effort in Kentucky to make changes in local government statutes culminated in 1980 with the enactment of many of the recommendations proposed by the Local Government Statutes Revision Commission. Some 2,000 statutes were repealed and replaced by a consolidated set of 134 local laws. The legislature also contin-

ued its work in refining the functions and structure of the state's already reformed county governments through the enactment of several technical measures, and provided for uniform fiscal management and reporting procedures for virtually all special districts and authorities.

One of the most productive local government study commission efforts was undertaken in Indiana. Established in 1978, the 20-member bipartisan panel was given a broad mandate to study local government service areas, special taxing districts, regional organizations, the transfer of functions, and the financial and general authority of local governments. The panel submitted its report to the 1980 General Assembly, together with a 14-part legislative package. The proposals dealt with such areas as: a complete revision of home rule law for counties, cities, and towns; revision of interlocal cooperative agreement laws; recodification of local laws affecting the structure of county, city, and township governments and the Indianapolis Unigov; and the repeal of over 100 laws (or parts of laws) which were obsolete, superseded, or replaced by home rule.

All of the proposals were enacted into law and will take effect September 1, 1981. This "success story" is a particularly amazing accomplishment because the General Assembly met only in short session during 1980. The commission now has turned its attention toward preparations for the current legislative year.

Regional planning and management were given a significant boost in Florida with the passage of the *Regional Planning Council Act of 1980*. Among its major provisions are that regional comprehensive plans are to be adopted as standards for state-mandated regional activities; all councils must adopt uniform procedural roles; and one-third of the boards' members are to be appointed by the Governor. Currently, there are 11 regional planning councils in the state.

Limited progress also was made on the county modernization front during the year. For example:

- Citizens in Wayne County, Michigan, under intensive financial pressure to modernize their operations, elected a 27-member charter commission that will prepare proposals for an executive form of govern-

## Alaska's Windfall Results in Massive Tax Relief

One state—Alaska—implemented the ultimate tax relief program in late 1980 by repealing the state's income tax and refunding an estimated \$185 million in 1979 and 1980 tax payments. The action eliminating the 31-year old tax was made possible by the vast amounts of oil revenues now coming into the state treasury.

Earlier in the year, the legislature had passed two "share the oil wealth" measures, both of which were challenged in the state courts. The first program, that eventually was struck down by the state supreme court, called for a taxpayer's liability to be reduced by one-third for each year he had filed a return. The court held that the law violated the equal protection clause of the state's constitution by discriminating against short-term residents. The law enacted by the special session treats all taxpayers equally.

The second measure, that eventually was upheld by the state's high court, creates the Alaska Permanent Fund Dividend Plan. This program will provide residents over

18-years of age with an annual dividend payment—\$50 for each year of residency since statehood in 1959. The maximum payment during the first year of the program will be \$1,050. However, the base amount will increase over time as Alaska's oil wealth grows. Some estimates show annual dividends reaching \$10,000 for long-time residents by the end of the decade.

In describing the impact of these large-scale tax relief measures, Gov. Jay Hammond observed: "I believe the permanent fund dividend plan is the ultimate in grass seed—rather than grass roots—revenue sharing. I believe it holds the greatest chance of promoting the wisest and fairest investment of state wealth. . . . Teamed with tax relief finally granted during the special session, the fund will inject into the economy as much as would the creation of 20,000, \$20,000-a-year jobs, yet there is no commensurate increase in costs to the state to provide services for 20,000 new job holders. The plan will boost far more the state's economy than would either a comparable selective subsidy used to create more jobs or the equivalency in tax relief."

Distribution of the dividends was stayed in early November by U.S. Supreme Court Justice William H. Rehnquist, pending further action.

ment. Results of the commission's work are due in mid-1981.

- Counties in **Maine** began to implement the provisions of the new county statutes, although only one jurisdiction opted to form a new charter commission.
- In **Iowa**, a county home rule study committee was created to develop a new "county code."

Several other actions on the local intergovernmental front warrant mention:

- A legislative committee in **Montana** developed a seven-part package to change annexation laws.
- The **Connecticut** legislature enacted a measure creating an 18-member local government commission that is to study and recommend improvements in both general statutes and special acts relating to local governments. An interim report is to be submitted in 1981, with a final report to follow in 1982.
- Three **Utah** localities successfully merged and incorporated as West Valley City—that state's third largest city. Three other unincorporated areas also have announced their intentions to initiate similar actions.
- The **Kansas** Supreme Court clarified home rule powers for cities early in the year in a ruling that confirmed the broad interpretation that cities have given to home rule since its adoption in 1961.
- The **Michigan** appeals court upheld the *Unified County Governments Act* that provides for an elected county executive, as well as the executive veto power.
- The U.S. Supreme Court overturned a voting rights decision by lower courts and upheld the at-large system for electing city council members. In *Mobile vs. Bolden*, the Court held that the at-large system had not been adopted or maintained for discriminatory purposes. And,
- In June, the U.S. Supreme Court unanimously ruled that local jurisdictions may use zoning ordinances to protect open space areas from development. The Court's decision in *Agins vs. City of Tiburon* upheld the **California** high court's ruling in the matter. Supporters of the city's position had feared that an adverse decision would result in compensation being paid to property owners who were adversely affected by local zoning laws, and would force localities to abandon land use planning.

There were, however, at least two state court decisions which represented setbacks for local jurisdictions in those states.

As the new year opened, most **West Virginia** cities possessed essentially only two powers: a procedural choice from among four statutory forms of government and the option of selecting election dates. This major reduction in local authority was the result of an eleventh hour landmark decision in 1979 by the state's high court that effectively ended local discretionary authority for the state's municipalities. The case involved the appointment power of a mayor who attempted to name the local parks director over the objections of the city council and parks board. While the local charter vested administrative appointment power with the mayor, state statutes provide for control of parks personnel by the local board. In denying the mayor's claim, the court observed that "... it is apparent that in

“The limited degree to which states have assisted distressed areas reflects, in part, the significant divergence of opinion amongst state and municipal policymakers regarding appropriate policy.”

recodifying the state municipal law in 1969 in order to achieve uniformity . . . the legislature intended that the provisions of the state municipal law should have primacy over conflicting provisions in a municipal charter." Study efforts are underway to determine the extent to which other conflicts between state statutes and local charters exist.

The **Connecticut** high court ruled that cities may not sue the state over state constitutional questions because they are creatures of the state. The decision nullified a case in which the cities and the Conference of Municipalities had attempted to overturn a 1975 state law that requires cities and unions to submit unresolved collective bargaining issues to binding arbitration.

Voters in at least two other states also dealt blows to local government reform efforts. In **Colorado**, voters statewide approved two measures designed to limit government powers—one restricting the ability of cities to annex new territory, and the other calling for an elected rather than locally appointed regional transportation district board. Additionally, citizens in Denver and in Portland, **Oregon**, decisively rejected measures which would have strengthened regional governance in their metropolitan areas. (See page 24.)

#### Urban and Rural Development Actions

In 1980, the states continued to develop and implement a variety of approaches for addressing the needs of distressed urban and rural communities. However, most states have yet to develop a consistent strategy or policy for strengthening local governments and utilizing state fiscal grants, services, taxing and regulatory powers to influence urban and rural growth and development.

In *The States and Distressed Communities 1980 Annual Report*,\* state-local assistance to distressed areas was surveyed in five policy areas: housing, community development, economic development, fiscal reform, and enhancement of local self-help capabilities. Within these five areas, 20 state activities were identified by state and local officials as significant indicators of state urban performance, ranging from multifamily home construction and customized job training to state mandate reimbursement programs and local sales or income taxing authority. Overall, the survey showed that while the states are emerging as the architects of urban and rural development policies, few states have made extensive use of the full range of powers and tools at their disposal. Thirty-four states provide nine or fewer of the 20 survey indicators on a targeted basis.

The limited degree to which states have assisted dis-

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## Regional Governance A Victim of Anti-Government Sentiments

While Florida strengthened its regional planning councils during 1980, voters in Denver, Colorado and in Portland, Oregon decisively defeated measures which would have strengthened regional governance in their areas.

In Denver, voters turned out in record numbers to reject a series of proposals to establish and fund a regional service authority that would have replaced the existing council of governments (COG). This is the second time in seven years that the proposal has been defeated at the polls.

Currently, the Denver COG is a voluntary association of local governments directed by a 42-member policy board composed of local officials from each member jurisdiction. Its areawide planning responsibilities cover a broad spectrum, however it has no operating authority. Funding relies upon membership dues and federal and other grant moneys.

Under the Metro Council proposals, the new unit would have been directed by a 15-member directly elected board whose planning activities would be funded by a .2 mill increase in the property tax. The council would have been empowered to assume responsibilities in 18 service areas, subject to voter approval and supported by additional taxes. In addition, the council would have had the authority to review all local comprehensive plans to assure their consistency with regional plans.

In Portland, a measure to provide a permanent and independent source of funding for its 22-month old regional government (METRO) was rejected by a 57%-43% vote.

METRO is the only directly elected regional government in the country.

The proposal provided a \$5.2 million tax base for METRO and the zoo that is owned and operated by the regional government. The tax base funding would have replaced two tax levies that had been approved earlier in 1980 for zoo operating and capital expenses, as well as dues now collected from local governments to support METRO's other planning and coordinating responsibilities. Rejection of the tax base did not jeopardize any of METRO's programs, at least in the short-run.

Officials in both Denver and Portland have attributed the defeat of their regional government proposals to essentially the same factors: the complexity of the issue and the wave of antigovernment and antitax sentiment that prevailed in their areas. In Denver, for example, a poll taken by the *Denver Post* only a few days before the election revealed that the Metro Council proposals were not well understood by voters, and that most voters remained undecided as election day neared. The council proposals also had been the subject of litigation earlier in the year, and it wasn't until late summer that ballot wording and district boundaries had been resolved. Denver voters defeated virtually every statewide and local ballot measure that provided for more government or increased taxes. It is unclear when—or whether—an effort will be made to bring the matter to the voters again.

Portland officials, however, remain more optimistic about future hopes for strengthening their regional government. As Rick Gustafson, METRO's executive officer, observed: "The election results show that we still have some work to do in building a constituency for ourselves. But they also showed that we've come a long way. Given the antitax, antigovernment mood in the country today, it is a very positive sign that 43% of the people in our area recognize the importance of regional government."

tressed areas reflects, in part, the significant divergence of opinion amongst state and municipal policymakers regarding appropriate policy. Where small town officials emphasize the importance of state actions enhancing local self-help capabilities, representatives of central cities favor development activities to spur revitalization of depressed metropolitan neighborhoods. By contrast, urban county officials support general purpose housing and development programs which might be used to good effect in either central cities or small towns.

These differences in local opinions suggest that state officials likely are to be hard-pressed to formulate policies and programs which equally are acceptable to county, municipal, and central city officials. The indicator preference findings also suggest that while state urban policy preferences paralleled the preferences of all local officials to a great degree, state priorities match those of smaller municipalities and distressed central cities only weakly.

Florida was one of the most active states in 1980 in providing assistance to its distressed communities. The legislature passed six major pieces of legislation to target housing, and community and economic development aid to distressed areas. In housing, the legislature authorized the creation of a housing finance agency with powers to issue revenue bonds to provide loans to low, moderate, and middle income persons, as well as to developers for multifamily apartments.

In the area of economic and community development, the legislature enacted the *Community Improvement Act of*

1980 that offers tax credits to encourage business firms to contribute to eligible community development projects. It also offers an economic revitalization tax incentive credit, and an economic revitalization jobs creation incentive credit. These programs use corporate income tax credits to encourage private businesses to assist distressed communities—the former policy through firm location and the latter through creation of jobs. Additionally, the legislature authorized the Community Development Corporation Support and Assistance Fund. This fund provides financial assistance to community development corporations which aid in the establishment of a new business or in the purchase of an existing venture in a distressed area. Finally, the legislature approved the *Economic Development Transportation Projects Act* that is intended to defray the initial costs involved in transportation projects designed to expedite or facilitate local economic development.

Several other states initiated significant actions to assist urban and rural communities. The following are some highlights:

- Alabama, Louisiana, Mississippi, and North Dakota** also authorized the creation of housing finance agencies;
- South Dakota** implemented a new housing improvement program;
- New Jersey** expanded a 1979 program to effectuate industrial development projects and facilities through the creation of urban industrial parks;



- Kansas** awarded grants-in-aid to 18 jurisdictions as part of its community resource program;
- New York** authorized the creation of a rural preservation program to parallel the state's neighborhood preservation program;
- Kentucky** created a state urban development office to assist communities in revitalization efforts;
- State rural development councils were established by executive order in **Alaska, Idaho, and Minnesota**;
- Massachusetts** enacted a package of bills that will facilitate local revitalization efforts by expanding the authority of the state's industrial finance agency to help finance downtown market-rate housing and by aiding localities with the construction of parking and convention facilities which are part of redevelopment programs;
- Nevada** set up a \$5 million special assistance fund to aid small, economically depressed counties; and
- In **Illinois, Tennessee, and Wisconsin**, those states' high courts upheld tax increment financing laws which allow cities to finance improvements in blighted areas.

#### **Fiscal Aid and Financial Management**

Developments in the fiscal aid and financial management arenas also indicate that states and their citizens are continuing to address the important issues of local fiscal health and accountability.

In 1979, Saco, **Maine**, became the only city in that state to enact its own property tax lid. However, by the beginning of 1980, the city had defaulted on a \$2.1 million bank loan, and balanced the year's budget by eliminating nearly 60 city and school jobs, ambulance service, and trash pickups. Last year, a proposal to repeal the lid was overwhelmingly approved by residents. An effort may be mounted for another lid referendum but with a higher spending figure.

**Richmond, Virginia**, residents also defeated an eight-part plan that would have ended a utility use surcharge, cut property taxes, and limited future spending and tax increases. Each of the eight proposals was defeated by a margin of nearly 6,000 votes.

According to the **California** Assembly Revenue and Tax Committee, nearly half of the property taxes which local governments lost with the passage of Proposition 13 have been recovered as a result of assessment increases. In 1978, the total of assessed property was around \$106 billion; in 1980, the reassessed value was around \$155 billion. As a result, many local governments and schools appear to have avoided the full impact of the measure, in part because property tax collections have increased much faster under Prop 13 than officials had anticipated. The increase is attributed to new construction and a provision in the law that allows taxes to rise when a property is sold. State officials also have revised their predictions for the 1981 fiscal year, withdrawing a prediction of a \$12 million deficit and now forecasting a \$60 million state surplus.

**New York** municipalities faced a December 31 court-ordered deadline to complete revaluation for assessments at 100% of the market value of properties. However, in late November, Gov. Hugh Carey signed legislation extending the deadline to May 15, 1981. The measure, he explained, would "provide the time necessary to review all appropriate information and to formulate a program that will most effectively protect our state's property owners and still meet the financial needs of our communities."

**““ Developments in the fiscal aid and financial management arenas also indicate that states and their citizens are continuing to address the important issue of local fiscal health and accountability.””**

**Nebraska** voters rejected a constitutional amendment that would have required the legislature to find new means of financing public education and make it less dependent on the property tax. However, voters in both **Oregon** and **North Dakota** endorsed ballot proposals to earmark energy tax revenues for education. Also in the school finance area, the **Rhode Island** General Assembly enacted a comprehensive school finance and governance act that provides an additional \$3.9 million in state aid to local schools and created a commission to study the school finance issue.

In other actions:

- Arkansas** approved a measure that required a rollback whenever property tax revenues increase at least 10% as a result of mandatory assessments. And,
- The **Nebraska** high court ruled that a 1978 constitutional amendment requiring uniform tax rates in multicounty taxing districts was unconstitutional.

**State Shared Revenues.** One of the most widely known federal assistance programs to aid state and local governments is General Revenue Sharing. It is not as widely known, however, that several states are not only complementing but exceeding the federal effort by aiding their localities through the use of state revenue sharing programs. As of 1980, 49 of the 50 states have at least one aid program that can be classified as a form of state revenue sharing. Additionally, in the 20-year period 1958-78, state revenue sharing increased nine-fold, from \$678 million to \$6.8 billion. Even after inflation is considered, this represents a 331% increase. This \$6.8 billion also represents over 10% of total state aid and is the third largest type of state aid for education and public welfare. When the federal pass-through component of state aid is not counted, state revenue sharing is the second largest program after education assistance.

The **Wisconsin** state revenue sharing program has a national reputation as one of the leading efforts to gauge local fiscal equity. However, as in many states, Wisconsin has been forced to make cutbacks in many areas. One such area that was targeted for reduction was the state revenue sharing program.

In October, the state supreme court ordered that the state department of administration could not cut funding to cities in order to help alleviate a state revenue shortage. The unanimous ruling held that while the department had the authority to order cutbacks in state agency budgets, it had no authority to trim aid to cities that is set by state law. Eight localities and the League of Wisconsin Municipalities had brought the suit in order to prevent a loss of about \$40 million in state revenue sharing funds.

On the financial management front, several states acted

during the year—continuing the trend toward strengthened fiscal practices during recent years. For example:

- Georgia** enacted a law setting minimum budgeting and accounting requirements; **Kansas** consolidated its local auditing requirements; and a pilot program was approved in **Minnesota** that is designed to sensitize state officials to local fiscal problems through strengthened and redirected state auditing procedures.
- Michigan** enacted three bills to help prevent and control local financial emergencies;
- Georgia** and **Arizona** enacted bills to allow the investment of idle funds. The Georgia measure is drawn largely from ACIR's model legislation dealing with the public deposit and investment of idle funds.
- Missouri** enacted a constitutional amendment to prohibit further state mandates without reimbursement.
- California** enacted a sunset provision for mandates enacted after January 1981, and added a requirement that the state get 50% of the savings due to the repeal of a mandate. And,
- North Carolina** imposed a fiscal note requirement.

#### **Intergovernmental Relations: State Governance and Processes**

During 1980, there was not a high level of activity in the area of comprehensive reorganizations or reforms in the executive or legislative branches of state government, although a number of states continued to address organizational issues along functional or administrative lines.

#### **Executive Highlights**

A package of proposals altering the organization and powers of state officials was adopted by citizens in **Utah**. Included were provisions for the Governor and Lieutenant Governor candidates of each party to run as a team; making the Lieutenant Governor a constitutional officer; removal of the Secretary of State's office from the constitution; determining gubernatorial disability and establishing succession to the office; and retention of executive authority by the Governor when traveling out of the state.

In other actions:

- Texas** rejected an amendment that would have increased the Governor's fiscal and budget powers, but approved a measure granting him the power to remove his own appointees with the concurrence of two-thirds of the senate.
- Voters in **New Mexico** disapproved a measure that would have permitted state executive officers to serve two consecutive four-year terms.
- South Carolina** citizens passed a constitutional amendment to allow the Governor to succeed himself.
- In **Kansas**, the state division of planning and research was abolished and its functions were transferred to other departments.
- The **Delaware** Supreme Court imposed limits on the Governor's pocket veto power by stipulating that such a veto only can occur after the legislature formally dissolves itself or goes out of existence on election day. And,

“One area of legislative authority that has gained increasing attention in recent years is the legislative veto of administrative rules.”

- A measure on the **Michigan** ballot to remove the Lieutenant Governor from serving as president of the senate was defeated.

On the state constitutional reform front, **Arkansas** voters rejected a revamped constitution that had been drafted by a state constitutional convention in 1979. **Iowans** also decisively defeated a proposed amendment that would require a vote every ten years to convene a state constitutional convention. The Iowa proposal received its greatest backing from interest groups favoring state budget limitations but which had failed in their attempts to win support in the legislature and thus hoped to fare better in a state constitutional convention.

#### **State Legislatures**

Perhaps the most newsworthy development in state legislative organization was voter approval in November of an **Illinois** amendment to substantially reduce the size of the General Assembly. The measure—and the first binding popular initiative to reach the ballot in Illinois—reduced the size of the house chamber from 177 to 118 members by cutting back from multimember to single-member districts and abolishing the state's unique system of cumulative voting. Under the cumulative system, the Democratic and Republican parties each presented only two candidates for the three house seats in a district. Voters then had the option of either casting three votes for one candidate, one and a half votes for two candidates, or one vote for three candidates. The proposal was opposed by a number of organizations, including the Illinois Municipal League, on the basis that the change would dilute local representation in the legislature.

In other developments, one area of legislative authority that has gained increasing attention in recent years is the legislative veto of administrative rules. Currently, 13 states empower their legislatures to exercise the veto. However, two significant court decisions during the year may help to impede the use of the veto in the future. In both instances, the courts ruled against the legislative veto on the basis that it violated the constitutional separation of powers doctrine.

The first ruling, decided by the **Alaska** Supreme Court in a 3-2 vote, held that the legislature's power to veto regulations violated the state's constitution that stipulates that a bill cannot become law unless the Governor has an opportunity to veto it. The court's judgment was that the legislative branch could not "exercise its power without following these enactment provisions." The chief justice, in his dissenting opinion, offered the following observation that may suggest the issue will surface again: "I believe that the legislative power to annul administrative regulations by concurrent resolution is constitutional. In my opinion, the majority reasoning is fallacious in equating regulations with laws passed by the legislature."

The second decision came from a local Connecticut court almost five years after the initial hearing was held in the matter. The issue involved in this case concerns the power of a legislative committee to permanently suspend a rule or regulation without further action by the legislature itself. In issuing his ruling, the judge declared that disapproval by the legislature's regulations review committee of a state traffic commission regulation constituted an "unpermitted incursion into the other two branches of government prohibited by the separation of powers doctrine enunciated previously by our Supreme Court." The legislature is appealing the decision to the state's high court, and is continuing its review of administrative rules in anticipation of a favorable court ruling.

Activities in the area of legislative oversight of federal funds also continued during the year. For example, Massachusetts enacted legislation requiring agencies to obtain legislative approval of all federal grants in the amount of \$100,000 or more prior to the receipt of the funds. The senate ways and means committee also included a comprehensive inventory of the federal grants received by state agencies in its fiscal year 1981 budget. A 1980 study of federal funds resulted in a series of recommendations, including one calling for the introduction of the ACIR model legisla-

tion on state budgeting and appropriation of federal funds.

In Virginia, the Joint Legislative Audit and Review Commission made an extensive study of federal funds that resulted in adoption of several procedures to improve the accuracy and timeliness of grant information provided to the legislature, including the preparation of quarterly reports summarizing nongeneral fund revenues in excess of appropriated funds.

According to a 1980 report of the National Conference of State Legislatures, 38 states now appropriate federal funds in some way.

Interestingly, one state reversed the trend of more legislative control by rescinding strong legislation in the area of state oversight of federal funds. In 1977, Maine enacted a measure calling for a federal expenditure budget detailing state agencies' anticipated amounts and uses of federal funds. Last year the legislature decided the effort was too great for the payoff, and rescinded the law keeping only that portion of the 1977 measure that requires a review of new federal grants.

The lone state court decision in the area during the year occurred in New Hampshire where the supreme court in *Monier vs. Gallen* upheld a 1979 statute that requires approval by a legislative committee prior to the creation of

## Sagebrush: Round Two

A critical area of state-federal relations that received a great deal of attention during the year involves a major state challenge to the land ownership policy of the federal government. Launched in 1979 in Nevada as the "sagebrush rebellion," the challenge now has spread to 13 western states, leading some observers to draw an analogy to the original 13 colonies and to rename the challenge the "second American revolution."

At issue is control of vast amounts of federally controlled lands, ranging from lows of about 10% in Hawaii and 29% in Washington to highs of 87% in Nevada and 96% in Alaska. In many of the western counties, the federal ownership level exceeds 95%. Proponents of the challenge maintain that their states and localities are suffering major financial losses and are being denied their rights to develop and utilize the lands' resources. Opponents claim that the states actually would lose money if they had responsibility for the lands and that the movement is being fueled by private entrepreneurs who see opportunities for major new investments and developments.

At a meeting of the Western Governors' Conference late in the summer, Nevada Gov. Robert List announced that his state would take further steps and seek a legal test in the federal courts of its 1979 legislation reclaiming the lands. This course of action may prove to be an impossibility since under the doctrine of sovereign immunity a state may not sue the federal government without federal agreement. Idaho Gov. John Evans indicated that he disagreed with the rebellion, and was joined by New Mexico Gov. Bruce King in calling for better state-federal cooperation in the development of land management policies. Evans co-chairs a National Governors' Association subcommittee on range management that was organized earlier in the year to aid the Department of Interior's Bureau of Land Management (BLM) develop policy in this area. BLM is the federal agency responsible for administering the lands in question.

Many observers believe that the complete transfer of the lands in question is unlikely to occur. However, they do agree that the controversy that has been generated has improved relations, at least to some extent, between the states and local land users and the federal landlords. To many of those involved in the controversy, the direct fiscal implications are secondary to the fundamental questions: who controls the lands for what purposes, and what policies should guide resource development and usage.

Washington State citizens struck a blow to the rebellion in November when they rejected a measure that would have authorized the state to take control of over 300,000 acres of federal land. It was expected that if approved, the state would have joined other western states in their legal challenge. In Arizona, however, the legislature overrode a gubernatorial veto of a measure that called for state control of public lands, and appropriated \$60,000 from the general fund to join in the suit to determine legal title to the contested lands.

Another dimension of the sagebrush rebellion involves the development of MX missile sites in Nevada and Utah. Serious questions have been raised by state and local officials about the impact that such facilities will have on the area. Gov. List has described the MX project as the "largest public works project ever," with estimates showing that 22,000 workers will be needed as well as one million tons of cement, electric power, water, asphalt, fuel, and rail transportation facilities—supplies which will be beyond the capacity of the states to furnish. In addition, the need for approximately 10,000 miles of roads over 10,000 square miles of land in the Great Basin Desert has led one official to dub the project the "MX dragstrip." Rep. James Santini (NV), who has introduced legislation to transfer federal lands back to the states, has observed: "If this is the federal government's idea of land use planning, I really wish they would take their environmental blueprints elsewhere."

A further demonstration against the MX deployment policy occurred in November when residents of 17 Nevada counties went on record opposing a local mobile missile installation.

new federally funded positions.

At the end of the year, the U.S. General Accounting Office (GAO) issued the results of a year-long study of state legislatures and federal funds. The report concluded that the federal government, through the grant system, has not been neutral in allocating power between state legislative and executive branches, but rather "through the assignment of legislative authorities to the state executive branch under most grant programs, the federal government may alter the traditional relationship between the state legislatures and the executive branch."

The GAO recommended that the *Intergovernmental Cooperation Act of 1968* be amended to ensure that, on a cross-cutting basis applicable to all federal grant programs, grant provisions delegating responsibilities to state

executive officials not be construed as limiting or negating the powers of state legislatures under state law to appropriate federal funds, to designate state agencies, and to review state plans and grant applications. The GAO also made several recommendations to the Office of Management and Budget relating to state legislatures' ability to receive federal grants and legislative involvement in OMB Circular A-95.

Among other developments related to state legislative powers:

- Delaware became the 35th state to enact a sunset law, while in Michigan a sunset measure calling for the legislative review of the operations, effectiveness, and expenditures of all state agencies and programs

## A Funny Thing Happened on the Way to the Census

What was described by the Director of the Bureau of the Census as the "most accurate census ever taken in this country" has emerged as one of the most controversial public policy issues in recent years. As Atlanta Mayor Maynard Jackson observed at a Congressional hearing in characterizing local concerns about the census procedures and products: "There are just two itty-bitty things at stake here—money and votes."

Urban areas in particular are concerned about the outcome of the census, especially where those areas believe serious undercounting occurred. The concerns were felt so deeply that the City of Detroit—joined by a number of other cities and the U.S. Conference of Mayors in friend-of-the-court briefs—filed suit in federal court charging that the Bureau of the Census had failed to include thousands of persons—especially Hispanics and blacks—in its count for the city.

In late September, a federal district judge ruled in favor of Detroit, and ordered the Bureau to develop statistical methods for adjusting its totals to reflect the uncoun­ted minorities. The judge's order also forbade the Bureau from reporting any of its findings to the President, as required by law, and prevented the counts from being used for reapportionment or determining federal assistance allocations until the adjustments are completed. The Bureau was given until the end of October to determine how it would comply with the judgment.

The federal government is appealing the landmark ruling in the Detroit case. In addition, the government and the court have worked out an agreement to postpone publication of final census data until late 1981 should the district court decision be upheld by higher courts. If the government wins the appeal, then census data will be released on schedule. In addition to the Detroit case, 12 other lawsuits challenging the census are pending in federal courts across the country.

At a mid-November meeting of the Republican Governors' Association, Census Bureau Director Vincent Barabba revealed that the national count now stands at 226.5 million people—about four million more persons than the Bureau had estimated in April. Barabba explained that it had been more difficult to estimate populations in areas of new growth, and that some of the Bureau's methods "had been flawed." These flaws, he

maintained, should aid the government in its appeal in the Detroit case because the new figures showed that the earlier estimates—on which much of the case was based—were not reliable.

On December 30, the U.S. Supreme Court resolved part of the census dilemma—at least temporarily. In an eleventh hour, 7-1 decision, the Court overturned the district court ruling in order to permit the Census Bureau to meet its year-end deadline for release of the population data. While the Court's action enabled the reapportionment process to go forward at this time, the Court neither ruled on the substance nor acted to accelerate the disposition of any of the 13 pending cases. The final population figures for cities and other local jurisdictions are scheduled for release by April.

The census data which were released at year's end confirmed earlier forecasts that the western and southern regions of the nation have grown dramatically and stand to gain 17 seats in Congress. Florida is the biggest gainer, adding four seats, followed by Texas gaining three positions and California adding two seats. The biggest losers are New York that will give up five seats, followed by Illinois, Ohio, and Pennsylvania, each of which will lose two seats. Overall, ten states are losers and 11 states are gainers.

While Barabba has acknowledged that the pending court cases might require "widespread adjustments" (upward) in some localities, the changes are not expected to affect the overall number of Congressional seats in each of the states. However, any major changes in the local figures will have a substantial effect on how Congressional district boundaries are drawn and state legislative seats are apportioned. In light of the significance of these issues, state and local officials have urged the courts to deal with the cases at the earliest possible date.

A study released by the Urban Institute during the year also deals with the 1980 census and the impact—or lack thereof—it will have on the distribution of federal aid to state and local governments. The study points out that over half of the federal funding formulas utilize nonpopulation elements, that states exercise a fair degree of discretion in allocating federal aid to their localities, and that nonformula issues such as annual appropriation changes also affect funding levels and patterns. As such, population shifts may not necessarily modify funding allocations significantly. The study concludes that the "use of inter-censal data, formula specifications, geographic specificity of allocations, and determinants other than formulas ensure that drastic funding changes will not occur" in formula-based programs.

was vetoed on the basis that the proposal was too broad in scope.

- Virginia and Utah voters approved a proposal to provide for special sessions for the specific purpose of considering gubernatorial vetoes.
- Oklahoma citizens endorsed a measure that will permit special sessions when requested in writing by two-thirds of the members in each house. And,
- The U.S. Supreme Court ruled that there is no common law "speech or debate" privilege for state legislators. The Court held that Tennessee state constitutional language, that provides that legislators are not answerable elsewhere for statements made on the floor of the legislature, does not prohibit federal prosecutors from introducing a member's voting record or other legislative acts as evidence against him. The opinion concluded that there was no indication that state legislators need the privilege afforded to members of Congress, and further that the federal interest in law enforcement outweighed legislative privilege.

#### Intergovernmental Relations at Year-End: Hard Choices Ahead

General Revenue Sharing, hazardous wastes, nuclear energy, distressed communities, refugees, reapportionment, Indian claims, state and federal mandates, taxing and spending lids, energy emergency planning, the sagebrush rebellion—the litany of issues focusing on the relationships between local jurisdictions, the states, and the central government seemed somewhat more troubled than usual. Never before had concerns about energy and resource scarcity been so great. But, on the positive side, there appeared to be a growing consensus among policymakers at all levels about the actions which must be taken to address many of these problems.

During the coming months and years, governments at all levels increasingly will confront the challenges presented by balancing demands for public services and tax cuts against eroding revenue bases. Clearly, one of the most important political issues is, and will continue to be, the financing of governments—particularly how and at what levels.

States in particular—as the middlemen in the federal system—will feel the crunch as surpluses disappear, federal aids shrink, operating costs rise, demands for local assistance increase, and the public cry for tax relief is heard. As the new year opened, the Governors of the nation's two largest states described the challenges in their messages to their legislatures. In Albany, New York Gov. Hugh Carey exhorted: "In the 1980s, as in the 1780s, we face a task that may lack the stark outlines of our previous struggle but is as dangerous and difficult and even more demanding. . . . Our achievements are not yet so permanently and firmly rooted that they can endure the recurring tremors of the national economy and ensure that the mistakes of the past will not be repeated." And in Sacramento, California Gov. Edmund G. Brown, Jr. admonished: "The moment of truth is upon us. . . . From an historic vantage point, we have reached a watershed. For the first time since World War II, state government spending will clearly not keep pace with inflation. This will challenge us to join together to take care of those most in need, maintain a reasonable level of services, and yet also invest in some new initiatives."

At the federal level, President Reagan has expressed his hopes for "creating a balanced, vigorous federal system in this country" by returning to state and local units governmental responsibilities which have become centralized in Washington. However, the President has acknowledged that "such a devolution of responsibility cannot be accomplished unless ways are found to restore to the state and local governments the tax sources to finance essential public programs. We cannot balance the federal budget by asking other governments to do the work, while the national government continues to preempt so much of the nation's tax base."

At the local level, politicians and administrators alike will be forced to devise even tighter spending plans and more creative financing alternatives in order to meet service demands and to decrease their dependence on diminishing outside aid. Local officials well know that in inflationary times, even retaining the status quo in assistance programs actually means reductions will be necessary.

An added dimension to the intergovernmental fiscal scenario is the growing role of the courts and the impact of their decisions on state and local jurisdictions, some of which have been chronicled in this issue of *Intergovernmental Perspective*. As noted in its comment about the U.S. Supreme Court's decision in the *Maine vs. Thiboutot* case discussed earlier, the *Wall Street Journal* observed: "The only gain in the *Thiboutot* decision may be that it will force such a crisis in state and local finance that the current system will collapse. . . . Grass-roots outcries may finally halt the Congressional mandate swindle, in which special interests win fine-sounding legislative rights and lower levels of government get the bill. Short of such a reaction (and we're not holding our breath), the Supreme Court has guaranteed an incredible intensification of the already massive strains on federalism and state and local finance."

It is the cumulative impact of all these many stresses and strains that promises to present the hard choices for public policymakers in the foreseeable future. And so the decade of the Eighties begins . . .

*Jane F. Roberts is State-Local Relations Associate at the Advisory Commission on Intergovernmental Relations.*

During 1980, the Advisory Commission on Intergovernmental Relations published 18 reports, ranging from an assessment of the federal role in the federal system to an analysis of state-local revenue sharing; from a discussion of the issues related to the courts and intergovernmental relations to an analysis of and recommendations relating to state-local pension systems.

Single copies of the volumes described below are available from ACIR, 1111 20th Street, N. W., Washington, DC 20575.

### **State and Local Pension Systems (A-71).**

Issuance of this report, supporting the Commission's December 1979 recommendation for a "hands off" federal regulatory role in state-local pensions, was prompted in large measure by the growing public alarm over the cost of government.

In addition to a discussion of the rationale for the Commission's policies in the pension area, the report contains a discussion of the diversity of state and local employee pension plans and some of the problems and practices they employ. It also describes the results of an ACIR-National Conference of State Legislatures study on the current status of state regulation and reform. The survey revealed that for the large state-administered systems, which contain about 90% of all state and local pension participants, state reporting and disclosure requirements are already extensive.

### **Citizen Participation in the American Federal System (A-73).**

This report, the result of a 1976 request by the Congress to study "the legal and operational aspects of citizen participation in federal, state, and local government fiscal decisionmaking," discusses the use of citizen participation requirements in federal grants, the impact of those requirements on state and local governments and methods used by state and local governments.

### **Regional Growth: Historic Perspective (A-74).**

The first of a three-volume series on regional economic growth, this report describes historic trends in regional economic activity and documents a convergence of regional disparities over time.

Rather than regional disparities, the major cause of concern, according to this report, appears to be the deep-rooted national economic problems. Disparities continue to exist within states and regions. The slowdown in economic growth has a disproportionate effect on the northeast and midwest regions.

### **Regional Growth: Flows of Federal Funds (A-75).**

The second volume in the series on regional growth discusses the narrowing of differences in the ratio of federal government expenditures to revenues in both interstate and interregional comparisons.

### **A Crisis of Confidence and Competence (A-77).**

This is the first of an 11-volume series which analyzes

the nature of the federal role in the federal system and makes recommendations for improvement. It is a quantitative analysis of the scope and character of the federal government's growth and provides an overview for the remaining volumes.

### **Public Assistance: The Growth of a Federal Function (A-79).**

This report discusses the growth of the federal role in public assistance in such programs as Social Security, Aid to Families with Dependent Children, and Food Stamps. The trend toward centralization of welfare services progressed slowly as people's attitude toward poverty and its causes changed and the burden of public assistance grew. The report discusses how each of these programs has developed over the years.

### **Federal Involvement in Libraries (A-84).**

The federal involvement in libraries is traced in this report beginning in the 1950s. Although public library service is still primarily an activity of local government, the federal role has increased. However, since library services continue to be viewed as primarily a state and local responsibility, major federal commitment is unlikely.

### **The Federal Role in Local Fire Protection (A-85).**

In 1960, the entire federal role in fire protection consisted of small-scale cooperative agreements between the U.S. Forest Service and state agencies. Today, in addition to General Revenue Sharing which is some-

times used to support fire services, 52 grant-in-aid programs handled by 24 separate administrative units are available to subnational governments. Thus, this report concludes, while the national government has not taken over the provision of local fire services, nor is it likely to, its participation in decisions concerning local fire service delivery is on the rise.

#### **Hearings on the Federal Role (A-87).**

This volume contains testimony presented to the Commission prior to its consideration of the staff report on the federal role in the federal system. Included are statements of Daniel Elazar, director of the Center for the Study of Federalism at Temple University; Neal Peirce, *National Journal*; Arthur Naftalin, former Mayor of Minneapolis and now professor at the University of Minnesota's Hubert Humphrey Institute of Public Affairs; and ACIR former executive director, William Colman.

#### **The Inflation Tax: The Case for Indexing Federal and State Income Taxes (M-117).**

This report discusses the effect of inflation on federal and state income tax burdens and the experiences of various states that have enacted indexation measures.

#### **Recent Trends in Federal and State Aid to Local Governments (M-118).**

A 97% increase occurred in the level of federal and state aid received by local governments between 1972-77, according to this report. A large part of this

increase can be traced to the emergence of substantial direct federal-local aids.

This study describes federal and state aids both in the aggregate and on a state-by-state basis.

#### **Central City-Suburban Fiscal Disparity and City Distress: 1977 (M-119).**

This report updates and expands earlier ACIR work in comparing central city and suburban fiscal disparities and includes a new section on cities in fiscal distress, looking at various fiscal, economic, and demographic indicators of municipal health in 131 cities, including 25 middle-size ones, showing how they compare in terms of various indicators of "fiscal distress."

#### **State Administrators' Opinions on Administrative Change, Federal Aid, Federal Relationships (M-120).**

This volume describes and analyzes the opinions of 1,400 heads or directors of 65 to 70 different agencies in the 50 states in three areas: administrative changes, federal aid, and federal relationships.

#### **The State of State-Local Revenue Sharing (M-121).**

Rather than reviewing state aid to localities in all states, this information report focuses on concepts of state revenue sharing with localities and on three case study states. It is the first in a series of reports being prepared pursuant to the Commission's decision to examine local governmental finances in the 1980s.

#### **Awakening the Slumbering Giant, Intergovernmental Relations and Federal Grant Law (M-122).**

These proceedings of ACIR's 1979 conference on federal grant law describe the importance of and issues related to the courts and intergovernmental relations.

#### **Significant Features of Fiscal Federalism 1979-1980 Edition (M-123).**

This latest edition of *Significant Features* contains a wealth of information about federal, state, and local taxing and spending, both historically and currently. Much of the material is presented on a state-by-state basis.

#### **1980 Changing Public Attitudes on Government and Taxes (S-9).**

This is the ninth annual survey of public attitudes on major intergovernmental fiscal issues. Results of this year's poll conducted by Opinion Research Corporation are organized in tables with explanatory notes. The results of previous polls are presented in appendix tables.

#### **In Brief: The Federal Role in the Federal System (B-4).**

This latest in ACIR's In Brief series describes the major findings of ACIR's work dealing with the federal role in the federal system.

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