BACKGROUND PAPER 95-7

STATE SOVEREIGNTY

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STATE SOVEREIGNTY

INTRODUCTION

"State sovereignty" is the current term used by states' rights advocates as shorthand for the complex issue involving constitutional interpretations of, and legal arguments about, the proper relationship between the states and the Federal Government. The term does not reflect a new discussion. The debate concerning the proper boundaries of this relationship began with the writing of the *Declaration of Independence* almost 220 years ago. It continued through the experimentation with the *Articles of Confederation* (1781-1787) and was central to the development of the *Constitution of the United States of America*. One of the most significant explorations of this issue is found in *The Federalist*, a series of 85 essays written by James Madison, Alexander Hamilton, and John Jay in defense of the proposed *Constitution*.

In the 207 years since the ratification of the *Constitution*, state sovereignty has been the subject of numerous decisions from the U.S. Supreme Court (a list of pertinent cases is provided in Appendix A) and many publications by legal scholars. The issue of states' rights even caused Americans to go to war against each other. Although the Union victory in the Civil War clarified some of the limits on a state's autonomy, the debate continues.

This background paper begins with a brief summary of the general concept of state sovereignty and reviews the two aspects of the issue that appear to interest most Nevadans: mandates to the State from the Federal Government and federal control over public lands within Nevada. It continues with an outline of pertinent legislation approved by previous sessions of the Nevada Legislature and a list of the relevant bill drafts requested for the 1995 Session. The paper then discusses germane actions taken in other state legislatures and Congress during 1994 and mentions some of the activities of additional organizations interested in the topic. Thirteen appendices provide supplementary information and examples of bills addressing state sovereignty.

STATE SOVEREIGNTY AND THE 10TH AMENDMENT

The concept of state sovereignty is based on the 10th Amendment to the *United States Constitution*. Added in 1791 as one of the provisions in the Bill of Rights, the amendment reads:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Supporters of state sovereignty argue that this amendment precludes the U.S. Congress from passing any laws that are not specifically authorized by the *Constitution*; consequently, these advocates contend that many congressional actions (such as social services mandates and natural resource requirements), whether funded or not, are unconstitutional.

State sovereignty has various supporters throughout the country, but, as yet, no central organization. Some promoters oppose federal involvement in interstate commerce and other business matters; some oppose federal immigration policies; and others oppose the federal bureaucracy. Recently, however, several national organizations have begun efforts to address state sovereignty in general. In Nevada, state sovereignty issues often concentrate on unfunded mandates to the states from the Federal Government and federal control of public lands.

FEDERAL MANDATES

In recent years, the number of mandates from the Federal Government and their costs to state governments have grown dramatically, according to the U.S. Advisory Commission on Intergovernmental Relations (ACIR). This organization concludes that unfunded mandates has become one of the most contentious intergovernmental issues.

The Impact of Federal Mandates on States

This issue, however, is not easily resolved. One of the main obstacles to a solution is the difficulty of defining mandates and determining their scope. Another problem is the lack of consensus about the cost of a mandate. In the Summer-Fall 1994 issue of ACIR's *Intergovernmental Perspective*, Bruce D. McDowell explores these and related topics. A copy of his article, "Federally Induced Costs: Mandate Relief Comes of Age," is included as Appendix B.

Despite the problems associated with definition and interpretation, several state and local governments have investigated the effects of federal mandates on their budgets. These efforts provide useful and interesting analyses of the problem while, at the same time, revealing gaps and unresolved issues that complicate such studies. Enclosed as Appendix C is a copy of an additional article from ACIR's periodical. Titled "Assessing Mandate Effects on State and Local Governments," this article summarizes the mandate reports from Tennessee, Ohio, and three cities in other states.

Nevada's Calculation of Mandate Costs

Nevada's Budget Division, in the Department of Administration, attempted to isolate federal mandate costs in the preparation of the State's 1993 budget. This effort was not entirely successful. During the 1994 interim, the Legislative Commission's Subcommittee on Establishing a Legislative Budget Office (Senate Concurrent Resolution No. 46, File No. 165, *Statutes of Nevada 1993*, page 3108) reviewed, among many other topics, the effect of federal mandates on the state budget. According to Mark Stevens, Assembly Fiscal Analyst and staff to the subcommittee, the members strongly urged the division to compile and report mandate data from the state agencies. This report should provide the total cost to the State of federal mandates and will be provided to the money committees of the 1995 Session. In addition, the Budget Division will identify budget items that correspond to newly-enacted federal mandates.

This project is not a continuing responsibility of the Budget Division, however. Neither the Legislature, through statutory action, nor the Governor, through executive decree, has required any state officer or agency to monitor, on a regular basis, mandates from the Federal Government.

PUBLIC LANDS

Nationally, most states are concerned about federal unfunded mandates. Although Western States are involved in that issue, they also are scrutinizing the Federal Government's management of public lands. With most of its land under federal control, Nevada has been the center of much of this discussion.

Public Lands in Nevada

"It is a fundamental fact of Nevada history that the state and federal governments have never developed a satisfactory land policy that has broad public support," wrote James W. Hulse in *The Silver State: Nevada's Heritage Reinterpreted.* The validity of this statement is supported by a quick review of the some of the significant historical actions concerning public lands in Nevada.

In 1979, the Nevada Legislature declared that Congress acted outside the scope of its constitutional authority when it required Nevada to include a clause in the *Constitution of the State of Nevada* to "forever disclaim all right or title to the unappropriated public lands lying within" its borders. However, the authors of the *Nevada Constitution* barely discussed the requirement in 1864; clearly, it was not controversial then. Sixteen years later, Nevada willingly participated in an exchange with the Federal Government that resulted in an increase in federal lands. In 1916, Key Pittman (Democrat), U.S. Senator from Nevada, sponsored congressional legislation that would have required the sale of 7 million acres of federal land in Nevada to the highest bidders.

Opposition to the "Pittman land scheme" was fierce in this state and included the Senator's rivals in that year's Primary (Democrat Patrick A. McCarran) and General (Socialist A. Grant Miller and Republican Samuel Platt) Elections. Although Pittman won, his legislation did not pass. As federal control over public lands tightened during the 20th century, beginning with passage of the Taylor Grazing Act in 1934, Nevadans often led the fight against that control, even though Nevada ranchers had earlier supported the enhancement of federal supervision over livestock grazing. In the 1940s, Senator McCarran, who had previously opposed the sale of federal lands, was the Nation's most fervent critic of the federal administration of public lands.

Currently, the opposition to federal control of the public lands in Nevada is promoted by two different proposals, the Nevada Plan for Public Land and the Sagebrush Rebellion. The continuing conflict among Nevadans about this issue is clearly demonstrated by the fact that neither claim has been resolved.

"The Nevada Plan for Public Land"

The supporters of the most restrictive definition of federal lands are led by Nye County Commissioner Richard L. Carver. With the distribution of his memorandum dated November 5, 1993, concerning "public lands and other matters relating thereto," Mr. Carver initiated the Nevada Plan for Public Land, which proclaims that "Nevada owns all public lands." The memorandum appears to base its conclusion on the argument that the Federal Government does not own the public lands within this state because the State did not grant to the U.S. title to most of these lands.

Explanation of Central Argument

The essence of the argument presented in the memorandum appears to be that the State owns all of the public lands, except for those specifically granted, sold, or exchanged to the United States by an act of the Nevada Legislature, pursuant to Article I, Section 8, of the *United States Constitution*. This section states that Congress has certain powers, including the power "to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." The memorandum contends that the Federal Government owns only that property acquired with the specific consent of the Nevada Legislature.

Based on this assertion, the Federal Government would own several, specified parcels, and the State of Nevada would own the vast majority of the public lands. Such land comprises nearly 87 percent (around 60 million acres) of the total area of Nevada and is currently controlled by the U.S. Departments of Agriculture, Interior, Defense, and Energy. Although the memorandum maintains that the State owns these lands, it insists that counties are the managing authorities for the public lands within their borders.

In 1965, the Nevada Legislature passed Assembly Bill 280 (Chapter 179, *Statutes of Nevada 1965*, p. 321), which declared valid all acquisitions of land by the United States on behalf of the Department of the Interior (DoI) "for the protection of natural resources." Although this language was repealed in 1981, the Nevada Legislature did not specifically repudiate the validity of the acquisitions. Consequently, it could be argued that the State consented to federal control of most of the public lands as DoI manages--through the Bureau of Land Management (BLM), the National Park Service, the Bureau of Indian Affairs, and the Bureau of Reclamation--the largest portion of land in Nevada (about 50 million acres). The other public lands, under the jurisdiction of the U.S. Departments of Defense and Energy and the U.S. Forest Service, consist of slightly over 9 million acres.

Opposition to Argument

The Nevada Plan for Public Land is supported by many people throughout Nevada and the West. Several experts, however, including Nevada's Attorney General and former Legislative Counsel, have asserted that the Plan's legal argument is weak.

On September 17, 1993, Nevada Attorney General Frankie Sue Del Papa provided her official statement on this issue. She explained that the Property and Supremacy Clauses to the *Constitution of the United States* (Art. IV, § 3, cl. 2 and Art. VI, cl. 2, respectively) "give federal land management agencies, acting pursuant to statute, a firm control on the management of public lands." She also pointed to the cases decided in both the U.S. and Nevada Supreme Courts that verify this conclusion. In a letter addressed to all legislators, district attorneys, and county commissioners, dated March 3, 1994, Attorney General Del Papa reiterated her position, stating that the Plan does not have a "theory with any measure of respect in the legitimate legal community." Copies of both of these documents are included in Appendix D.

In a detailed opinion dated November 5, 1993, former Legislative Counsel Lorne J. Malkiewich concurred with the Attorney General. In particular, this formal legal opinion notes that the argument upon which the Plan relies "would likely be rejected in court." A copy of this opinion may be found as an attachment to the 1995 report from Nevada's Legislative Committee on Public Lands (*Legislative Counsel Bureau Bulletin No. 95-11*).

"The Sagebrush Rebellion"

The fundamental difference between the Sagebrush Rebellion (begun with the 1979 passage of A.B. 413, codified as *Nevada Revised Statutes* [NRS] 321.596 through 321.599, inclusive) and the Nevada Plan for Public Land may be summarized in these two sentences: The Sagebrush Rebellion seeks to recover from the Federal Government land that was unfairly and arbitrarily withheld from Nevada when it became

a state. The Plan insists that the State does not need to recover the land because it was never ceded to the Federal Government in the first place.

Explanation of Supporting Argument

The argument in support of the Sagebrush Rebellion is outlined in NRS 321.596 and differs from the supporting argument of the Nevada Plan for Public Land. Essentially, the Sagebrush Rebellion maintains that the constitutional framers intended for new states to be admitted to the Union on an "equal footing" with the original states; consequently, control over public lands should have been granted to Nevada and other territories when they became states. According to NRS 321.596, Congress acted unconstitutionally by requiring Nevada to include in its state constitution a clause to "disclaim all right and title to the unappropriated public lands lying within" its borders.

Basically, the Sagebrush Rebellion defines the lands in question as the unappropriated public lands. Such lands are those not set aside for a specific purpose, such as a national park or national forest, and are primarily managed by BLM. Consequently, these state laws claim BLM's 48 million acres in Nevada.

The legislative history of A.B. 413 provides detailed information about the Legislature's consideration of this concept. It is available in LCB's Research Library.

Opposition to Rebellion

The Sagebrush Rebellion was, and continues to be, supported by many people throughout Nevada and the other Western States. However, the only litigation that attempted to test the theory was dismissed in 1981 by Judge Edward C. Reed of the Ninth Circuit Court of Appeals (*State of Nevada v. United States*, 512 F.Supp. 166). According to Nevada's Office of the Attorney General, the Court ruled that, essentially, Congress has unlimited authority over the public lands.

Other experts also maintain that the legal argument supporting the Sagebrush Rebellion is weak. During the legislative hearings on A.B. 413, one of the main opponents was then-Senator Clarence Clifton Young (R), currently a justice of the Nevada Supreme Court. Among other arguments, Senator Young asserted that the management of public lands was too expensive for the State's tax base. Recently, in a letter addressing the issue of public lands ownership, Governor Bob Miller indicated that Attorney General Del Papa had advised him that the constitutionality of these provisions is in doubt. He did not express any uncertainty about the Attorney General's advice.

The Sagebrush Rebellion laws are still in effect, but they are not enforced.

STATE SOVEREIGNTY LEGISLATION IN NEVADA

In past sessions, the Nevada Legislature has approved legislation that indicates its support for certain aspects of state sovereignty. One of the best-known measures in this category is the Sagebrush Rebellion bill (A.B. 413 of 1979). This section of the paper reviews legislation passed during the previous two sessions and bill drafts requested for consideration by the 1995 Session.

Legislation From the Past Two Sessions

Most of the Nevada Legislature's opinions on state sovereignty issues have been expressed in resolutions. Following is a list of several of these measures:

- Assembly Joint Resolution No. 8 (File No. 190, *Statutes of Nevada 1993*, page 3138), which urges Congress not to require the states to provide services or benefits unless it provides the related funding.

- Senate Joint Resolution No. 14 (File No. 53, *Statutes of Nevada 1993*, pages 2992-2993), which urges Congress to limit the acquisition of privately owned land and to return public land to private ownership. A similar resolution, S.J.R. 20, was approved in 1991.

- Senate Joint Resolution No. 27 (File No. 189, *Statutes of Nevada 1993*, pages 3136-3137), which proposes to amend the ordinance of the *Nevada Constitution* to repeal the disclaimer of interest of the State in unappropriated public lands. This resolution will be returned to the 1995 Session for consideration; it must be approved in identical form before it can be submitted to the voters for their consideration.

- Senate Concurrent Resolution No. 23 (File No. 33, *Statutes of Nevada 1991*, page 2504), which expresses the intention of the Legislature to maintain the primary enforcement responsibility at the state level for the program of safe drinking water.

- Senate Joint Resolution No. 25 (File No. 196, *Statutes of Nevada 1991*, pages 2655-2656), which urges Congress to consent to an amendment of the ordinance of the *Nevada Constitution* to remove the disclaimer concerning the right of the Federal Government to unappropriated public lands in Nevada.

The 1993 Nevada Legislature also approved a bill that addresses unfunded mandates from the State to local governments. Senate Bill 381 (Chapter 419, *Statutes of Nevada 1993*, pages 1349-1350) requires a specified additional source of revenue for local

governments when a new or increased program or service is established by the Legislature after July 2, 1994.

Anticipated 1995 Legislation

A review of the current bill draft request (BDR) list indicates that state sovereignty legislation will be considered during the 1995 Session of the Nevada Legislature. As of January 6, 1995, six BDRs concerning this topic had been submitted.

Two were requested by Senator Ann O'Connell (R-Las Vegas):

- BDR R-1118, which is a Senate Concurrent Resolution claiming state sovereignty over all powers not granted to the Federal Government in the *U.S. Constitution*; and

- BDR 17-1163, which creates the legislative committee on federal mandates.

The other BDRs were publicized on September 14, 1994, when Senator Dean A. Rhoads (R-Tuscarora), Assemblyman John W. Marvel (R-Battle Mountain), and Assemblyman John C. Carpenter (R-Elko) announced that they had requested the drafting of the following state sovereignty measures to be introduced during the 1995 Session:

- Constitutional Defense Council Act (BDR 19-427)
  This bill would create a council that would be empowered to examine and legally challenge, in the name of the State or its citizens, federal mandates; federal authority; and any laws, regulations, and practices of the Federal Government.

- Resolution to Restate State Sovereignty (BDR R-428)
  Through passage of this resolution, Nevada would claim sovereignty, under the 10th Amendment to the *United States Constitution*, over all powers not otherwise granted to the Federal Government by the *Constitution*. The resolution would demand that the Federal Government immediately cease those mandates that are beyond the scope of its constitutionally delegated powers.

  This BDR was prefiled on January 6, 1995, by Senators Rhoads, O'Connell, Mark A. James (R-Las Vegas), Sue Lowden (R-Las Vegas), and John B. (Jack) Regan (D-Las Vegas). It is now Senate Joint Resolution No. 1 and has been referred to the Senate Committee on Government Affairs.

- Joint Legislative Committee on Federal Mandates Act (BDR 17-945)
  This bill would establish an ongoing legislative committee that would review all congressional and federal actions that may require state compliance and take any necessary action to protect Nevada's constitutional rights and sovereignty against federal mandates.

- Federal Mandate/Federal Encroachment on State Sovereignty Act (BDR 17-946)
  This bill would require a state auditor to annually inventory and calculate the costs of all federal mandates and federal encroachments on the State. The auditor's report would also note the federal laws exceeding constitutional authority and the voting records of each member of Nevada's Congressional Delegation on these laws.

These four BDRs are based on model legislation developed by the American Legislative Exchange Council (ALEC). Copies of the proposals are in Appendix E.

In addition, the current BDR list includes two related measures:

- BDR R-278, requested by the Legislative Commission's Subcommittee on Public Elementary and Secondary Education (S.C.R. 52, File No. 166, *Statutes of Nevada 1993*, page 3109), which is a joint resolution urging Congress and the Federal Government to fund fully all federal mandates concerning education; and

- BDR 1045, requested by Senator Randolph J. Townsend (R-Reno), which would prohibit state mandates without appropriate funding.

STATE SOVEREIGNTY LEGISLATION IN OTHER STATES

According to ALEC, at least 24 states considered some type of sovereignty legislation during their 1994 legislative sessions. Some of these bills were based on ALEC's models, and some were concerned with federal mandates. This section of the paper summarizes some of the successful legislation in other states.

General State Sovereignty Legislation

At least five states (Arizona, California, Colorado, Missouri, and Oklahoma) approved some form of state sovereignty legislation in 1994. Most of these states adopted a "10th Amendment" resolution; one created a Constitutional Defense Council.

10th Amendment Resolution

Early in 1994, the Colorado General Assembly passed House Joint Resolution No. 94-1035, which provides that the State claims sovereignty under the 10th Amendment to the *United States Constitution* over all powers not otherwise constitutionally granted to the Federal Government. This resolution served as the prototype for ALEC's model and resolutions approved by California (Senate Joint Resolution No. 44), Missouri (House Concurrent Resolution 27), and the Oklahoma House of Representatives (House Resolution 1056). In addition, Colorado legislators also approved House Joint Resolution No. 94-1027, which challenges federal authority over the states. Copies of the Colorado measures are in Appendix F.

Constitutional Defense Council

The 1994 Arizona Legislature approved House Bill 2371, which creates the Constitutional Defense Council and appropriates $1 million for the council's activities. The bill was based on Governor Fife Symington's 1993 executive order that originally established the council and served as the model for ALEC's recommendation. Appendix G contains copies of the following documents that provide additional information about this legislation:

- Chapter 2.1 of Title 41 of the *Arizona Revised Statutes*, "Constitutional Defense Council";
- "The Constitutional Defense Council Executive Summary"; and
- Executive Order 93-25, "Establishing The Constitutional Defense Council."

State Sovereignty Legislation Relating to Unfunded Mandates

In 1994, many states approved legislation similar to Nevada's A.J.R. 8 (1993), which urges Congress to stop sending mandates to the states without adequate funding. Two other resolutions were also popular with several state legislatures, and at least one bill concerning this topic was passed.

Congressional Delegation Mandate Consultation Resolution

One of these resolutions requested congressional representatives to appear before joint sessions of the pertinent state legislature to discuss unfunded federal mandates and explain new mandates. Commonly called the "Congressional Delegation Mandate Consultation Act," this resolution was approved by Alabama, California, and Delaware in 1993 and considered by at least nine states during the 1994 sessions. It was adopted by Arizona, Louisiana, Nebraska, Pennsylvania, and South Dakota. A copy of a model for this legislation, provided by ALEC, is attached as Appendix H.

Request for Constitutional Amendment

The other prevalent resolution is similar to the Kansas Legislature's S.C.R. 1620. Approved on March 25, 1994, this legislation requests Congress to call a convention for the purpose of proposing an amendment to the *Constitution of the United States* to require the Federal Government to pay the costs incurred by a state in providing federally mandated programs and services. Appendix I contains a copy of the Kansas resolution. Similar resolutions also were considered in 1994 in Illinois, Indiana, Missouri, Pennsylvania, and South Carolina.

Federal Mandates Act

The Colorado General Assembly adopted two unique measures that address the federal mandate situation. One is a resolution, H.J.R. No. 94-1011, which concerns the responsibilities of state agencies to monitor and comment on pending federal mandates.

The other is one of the few state statutes enacted on this topic. Senate Bill 94-157, "The Federal Mandates Act," seeks "to ensure that federal mandates implemented in Colorado comply with state policy as established by the General Assembly." The legislation provides guidelines for state agencies to execute federal requirements within the parameters of state policies and requires reports on the implementation of the provisions. No appropriation was included because the General Assembly determined that one was not necessary. Copies of both Colorado measures may be found in Appendix J.

FEDERAL RESPONSE TO STATE SOVEREIGNTY

State demands concerning sovereignty issues have attracted the attention of both the federal administration and Congress. In 1994, due to pressure from state officials, many of the attempts to increase the federal regulation of industries based on public lands (such as ranching and mining) failed, and several amendments to environmental laws were postponed. Most of the federal actions taken in response to state sovereignty, however, related to the issue of unfunded mandates.

Administrative Action

On September 30, 1993, according to ACIR, "President Bill Clinton issued Executive Order 12866 . . ., which requires federal agencies to consult more actively and fully with their state and local counterparts before promulgating intergovernmental regulations and mandates." A month later, Executive Order 12875, which "limits unfunded mandates arising from agency rule promulgations" was issued.

Leon Panetta, former Director of the U.S. Office of Management and Budget (OMB), provided the guidelines for complying with E.O. 12875 to all federal departments, agencies, and independent regulatory agencies on January 11, 1994. The instructions include estimating the costs to state and local governments of unfunded federal mandates and justifying proposed regulations.

Congressional Legislation

The 103rd Congress discussed over 30 bills concerned with mandate relief; some would have required federal reimbursement. On November 5, 1994, the *Congressional Quarterly* explained that none of the measures passed. Apparently, the following bills were seriously considered but were defeated in the final days of the session:

- S 993, which would have required the Congressional Budget Office (CBO) to review all legislation establishing an unfunded mandate and to analyze in detail legislation assessing more than $50 million in costs. HR 5128 was similar.

- HR 140, which would have prohibited Congress from imposing unfunded mandates.

Numerous other measures concerning this issue were also introduced. Some bills would have required compensation to state and local governments for costs incurred in complying with federal mandates, and several would have prohibited the imposition of mandates unless fully funded by the Federal Government. Another bill would have required CBO to estimate the cost of legislation to state and local governments and the extent to which federal funds cover the costs of complying with the mandates, and at least one would have required OMB to identify rules and regulations that are particularly burdensome and costly to state and local governments.

Future Consideration

Recent publications indicate that this issue did not die with the unsuccessful legislation. For example, according to David Broder, a columnist for the Washington Post Writers Group, Vice-President Al Gore officiated at the signing of an agreement addressing the subject early in December 1994. This agreement, between the Secretary of Health and Human Services and officials from the State of Oregon, will "ease federal regulations on some programs and accept state-defined 'benchmarks' as a gauge of success." In addition, pertinent legislation will be reconsidered by the 104th Congress. The *Congressional Quarterly* also expects the return of this issue to Congress.

Currently, Congress is considering a bill that would require federal funding for any future federal legislation that would cost state or local governments more than $50 million to implement. Titled "The Unfunded Reform Act," the measure is pending in the U.S. Senate as of the writing of this paper.

OTHER ACTIONS CONCERNING STATE SOVEREIGNTY

In addition to legislative and congressional actions addressing state sovereignty, other efforts have begun recently. Major projects have been initiated by the national organizations representing state officials, and many county governments are confronting the issue directly. This section summarizes the efforts of these various organizations.

Governmental Organizations

Most of the national organizations of state legislators have become involved in the state sovereignty issue. In particular, ALEC, the National Conference of State Legislatures (NCSL), and The Council of State Governments (CSG) are currently active in responding to their members' growing concern with unfunded federal mandates.

ALEC

In 1994, ALEC created an Ad Hoc Committee on State Sovereignty. One of the primary projects of this committee was the development of the model legislation discussed earlier in this paper. Appendix K contains a copy of the minutes from the committee's August meeting, including the "ALEC State Sovereignty Strategy Draft Proposal."

NCSL

Recently, NCSL and the National Governors' Association (NGA) announced "an unprecedented project to restore the states' authority in the federal system." Characterized as "an aggressive action plan," the project will include legislative process remedies, litigation, regular meetings of public officials, a federalism summit, and constitutional amendments. Appendix L contains NCSL's description of this project.

CSG

In addition, CSG is involved in planning a "Conference of the States." This idea originated with Utah Governor Michael O. Leavitt (R) and Nebraska Governor Ben Nelson (D). The Governors expect that such a conference will prepare state and federal legislation, including constitutional amendments, to "correct the balance" between the states and the Federal Government. This plan has also been endorsed by NCSL and NGA.

Appendix M provides an outline of the "process that would consolidate and focus state power" as published in *Conference of the States: An Action Plan For Balanced Competition in the Federal System*, a concept paper adopted by CSG on December 2, 1994. The entire paper is available in LCB's Research Library.

Also in the appendix is a copy of the model legislation upon which states may base their agreements to participate in the conference sessions, planned for mid-1995. Senator Rhoads has requested the drafting of Nevada's "Resolution of Participation" (BDR R-1334), which would, among other provisions, name the State's delegates to the conference.

The County Government Movement

Many county commissions have chosen to bypass their state legislatures and are taking specific actions to reduce federal control. The model for such actions is provided by Catron County, New Mexico, and is illustrated in *A Brief Description of The County Government Movement*, published by the Catron County Commissioners in 1993. This document explains the philosophy behind the movement, examines the expanding role of county government, and provides a process for a county to assert its authority. Although the movement is primarily concerned with combatting federal control over public lands, it represents a growing frustration with extensive federal (and, often, state) regulation and with a regulatory process that often results in more stringent requirements than directed by the authorizing legislation. Consequently, this movement has also included the issue of unfunded mandates, which has been the counties' primary legislative priority over the past 2 years.

Catron County Ordinances

One of the general aspects of the model is the approval of certain edicts, often called the "Catron County ordinances," which that county adopted in 1990. The stated purpose of these ordinances is to protect the county's physical environment, customs, culture, and economic stability. Among other provisions, the ordinances include the adoption of a land-use plan for the county, the requirement for federal agencies to conduct joint planning (pursuant to existing federal laws and regulations) with the county for proposed actions on federal lands, and the demand for mitigation of the adverse effects of environmental decisions. Also included is a penalty, involving a fine and jail time, for any state or federal official who violates private property rights through regulatory action.

The U.S. Forest Service and the Attorney General for the State of Washington, among others, have stated that the ordinances are unconstitutional. On January 28, 1994, in *Boundary Backpackers v. Boundary County*, Idaho District Judge James Michaud rejected ordinances that were based on Catron County's. According to Nevada's Office of the Attorney General, the judge ruled that Boundary County's land-use plan, which asserted local control over decisions affecting federal and state lands in the county, violates both the Idaho and U.S. Constitutions. In September 1994, the Washington Wilderness Coalition filed a federal lawsuit to overturn similar ordinances in the Washington counties of Walla Walla and Columbia.

Responses by Nevada Counties

The National Federal Lands Conference, based in Utah, estimates that about 800 counties throughout the country have considered adopting all or part of the Catron County model, including several counties in Nevada. Elko, Esmeralda, Eureka, Lander, Lincoln, and Nye Counties have established public lands planning commissions. Eureka, Lincoln, and Nye have designated all travel corridors crossing public lands as county roads. Several of the counties developed the Nevada Alliance for Public Lands, an organization created to enhance solidarity on public lands issues. This group drafted an interlocal agreement that, among other provisions, provides for the sharing of legal expenses; it has been signed by Esmeralda, Eureka, Lander, Lincoln, and Nye Counties.

In January 1994, the Board of Directors for the Nevada Association of Counties (NACO) voted to send a letter to the Secretaries of Agriculture and Interior. In the absence of a formal rejection by these federal officers of Commissioner Carver's claim, this letter asserts state ownership of public lands and requests negotiations to transfer control of the land from the Federal Government. The vote, however, was not unanimous: Clark County's delegate, absent from the meeting, sent written opposition to the proposed letter. Following the meeting, the Mineral County Commission sent a letter to NACO, indicating its opposition to the action.

Recently, NACO asked the counties to pay $21,250 for a study to be conducted by the University of Nevada, Reno. The study will examine the costs, including the loss of federal revenue, to the State of it becoming the owner and manager of its public lands. Washoe County commissioners were the first to agree to provide some of the funding.

CONCLUDING REMARKS

The focus of state sovereignty is much broader than the focus of either the unfunded mandates movement or the public lands crusade. These two efforts have specific goals: to stop the Federal Government from imposing requirements without providing the funding to implement them and to remove the Federal Government's control from the public lands. State sovereignty's goal is to remove federal control from all activities not specifically granted to the Federal Government in the *United States Constitution*.

No centralized opposition to the current state sovereignty movement has appeared, but there is opposition to specific aspects of the issue. For example, some state legislators are reluctant to risk losing federal money, such as highway funding, and question whether states can assume the financial liabilities required if the states become responsible for existing programs or public lands. Others have argued that the passage of resolutions, which do not have the force of law, is a futile activity.

Opposition to increasing state authority at the expense of federal authority, however, is as old as American politics. In 1787, the system of strong individual states and a weak central government, under the *Articles of Confederation*, did not appear to be viable, leading to the drafting of the *Constitution* and the creation of a stronger central government. James Madison's original vision of federal powers included the congressional authority to veto any state legislation perceived to be in conflict. Although the Anti-Federalists argued that a strong central government would destroy the separate states' legislative authority and was contrary to the ideals of the Revolution, the Federalists, led by Madison, argued successfully for the ratification of the *Constitution*.

The debate over the balance of power between the states and the Federal Government has been, in some form or other, a consistent part of every discussion about American political philosophy since 1787. Countless publications and judicial decisions have attempted to define and resolve this extensive and complex issue; yet, the debate continues. Although the current activities appear to be shifting the balance of power in favor of the states, they may not resolve this debate entirely.

Clearly, however, the issue of state sovereignty, particularly as it relates to mandates from the Federal Government, is again at the center of discussions in legislatures across the country and in Washington, D.C. Most likely, the members of the 1995 Session of the Nevada Legislature will also consider this issue.

APPENDICES

APPENDIX A

SIGNIFICANT U.S. SUPREME COURT CASES CONCERNING STATE SOVEREIGNTY

The following cases were cited by Richard G. Wilkins, Professor of Law at Brigham Young University, in his paper, "Reviving Federalism," which he presented to the Western Legislative Conference on November 16, 1994. This list is not all-inclusive. For additional information on this complex topic, the reader may wish to review § 277 through § 293, "Distribution of Powers of Federal and State Governments," in *American Jurisprudence*.

Texas v. White, 7 Wall. 700 (1869)

New State Ice Co. v. Liebmann, 285 U.S. 262 (1932)

Wichard v. Filburn, 317 U.S. 111 (1942)

Katzenback v. McClung, 379 U.S. 294 (1964)

National League of Cities v. Usery, 426 U.S. 833 (1976)

Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S. 264 (1981)

Pacific Gas & Elec. Co. v. State Energy Comm'n., 461 U.S. 190 (1983)

Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985)

South Dakota v. Dole, 483 U.S. 203 (1987)

Coleman v. Thompson, 111 S.Ct. 2546 (1991)

Gregory v. Ashcroft, 501 U.S. 452 (1991)

New York v. United States, 112 S.Ct. 2408 (1992)

APPENDIX B

"Federally Induced Costs: Mandate Relief Comes of Age"
Bruce D. McDowell
Intergovernmental Perspective
Summer-Fall 1994

Federally Induced Costs: Mandate Relief Comes of Age

Bruce D. McDowell

Federal mandates to state and local governments are a built-in feature of American federalism. For decades, the federal government's use of mandates was relatively limited. The federal relationship with state and local governments typically revolved around aid programs that provided substantial funding for implementing federal requirements. In recent years, however, the federal government's use of mandates has grown rapidly. By 1993, the term "unfunded federal mandates" had become the rallying cry for one of the most contentious intergovernmental issues. This commonly used term, however, has different meanings to different participants in the debate.

In its new report *Federally Induced Costs Affecting State and Local Governments*, ACIR developed the concept of federally induced costs to explore more completely and without the pejorative connotations associated with the term "mandates" (1) the fiscal dimensions of federal actions affecting state and local governments and (2) the ways in which the federal government assists state and local governments, which can be thought of as an offset to induced costs.

Growing Number and Impact of "Mandates"

Whether defined conservatively or broadly, the number of federal intergovernmental regulations has increased dramatically since 1960.[1]

As the number of mandates has grown, so have the costs to state and local governments. Medicaid and environmental protection programs have been particularly costly. At the same time, many state and local governments have been facing taxpayer revolts and revenue-depleting reverses in their economies. These pressures have led many state and local government officials to make mandate relief their top intergovernmental reform priority.

The Federal Response

This year, the Congress and the Executive Branch focused attention on mandate relief. In one of his first intergovernmental initiatives, President Bill Clinton issued Executive Order 12866 (September 30, 1993), which requires federal agencies to consult more actively and fully with their state and local counterparts before promulgating intergovernmental regulations and mandates. This order was followed by Executive Order 12875 (October 26, 1993), which limits unfunded mandates arising from agency rule promulgation.

Many state and local officials would like to go further; they made reimbursement of federally mandated expenditures their top priority for congressional action. In the 103rd Congress, 34 mandate relief bills were introduced, including 10 that would require federal reimbursement.[2]

Difficulties in Reimbursing Mandates

Establishing and operating a workable reimbursement process will be difficult. Studies of state mandate reimbursement programs for local governments have found that most of them provide relatively little funding relief and some are completely ineffective.[3]

The states' experience suggests that federal policymakers will face a series of complex issues in designing effective reimbursement programs. For example, precision is needed to determine which types of regulatory requirements and which costs will qualify for federal reimbursement, which federal programs provide full or partial cost reimbursement to state and local governments, how such programs differ from each other, and their advantages and disadvantages.

Other questions pertain to the benefits of federal mandates and the relationship between benefits and costs. Although compliance with mandates may require additional expenditures, state and local governments also may derive increased revenues; economic, social, or environmental benefits; and/or reduced costs. Thus, netting out costs and benefits is an important consideration. Determining benefits is no less difficult than determining costs, however, especially when indirect costs and benefits are included.

Many obstacles to mandate reimbursement are conceptual in nature. For example, definitions of "mandates" often are unworkable or inappropriate. According to common usage, mandates encompass any federal statutory, regulatory, or judicial instruction that (1) directs state or local governments to undertake a specific action or to perform an existing function in a particular way, (2) imposes additional financial burdens on states and localities, or (3) reduces state and local revenue sources.

Three problems interfere with utilizing this definition as a basis for financial reimbursement: (1) nonfiscal dimensions of mandates, (2) problems of defining mandates, and (3) impacts other than mandates.

The Nonfiscal Dimension. Many of the problems associated with mandates are not primarily fiscal. For example, objections to provisions establishing a uniform speed limit on the nation's highways, and to many other rules, have little to do with cost. These mandates, however, raise important issues of legitimacy, accountability, and political representation. "Political costs" such as these would remain even if the financial costs are minimal or fully reimbursed by the Congress.

Problems of Definition. There is no universally accepted definition of a federal mandate and surprisingly little consensus on the matter. Consequently, attempts to estimate the total number of federal mandates, and thus define the universe of programs that might be subject to reimbursement, vary greatly.

Financial Impacts Other than Mandates. Some of the most costly federal financial impacts on states and localities do not fit the standard definition of a federal mandate, for example, the costs to local school systems that occur as an incidental consequence of the location of a major federal installation, or immigration or other federal policies that create significant incidental fiscal impacts.

The Scope of Federal Financial Impacts

It is clear that many federal policy instruments can impose financial impacts on state and local governments. They may include traditional direct mandates, various forms of grant conditions, federal preemptions, tax policy provisions, incidental and implied federal policy impacts, and federal exposure of state and local governments to legal and financial liabilities. Although these instruments vary considerably in their degree of compulsion and regulatory intent, intergovernmental dialogue about federal "mandates" is often complicated by the varying definitions used.

Many of the problems associated with mandates and other federally induced costs are relatively recent. They have become politically significant gradually as the scope and character of

federal policy initiatives evolved from a traditional reliance on grants and other subsidies to a greater emphasis on unfunded regulation. This relatively new development has been encouraged by changing federal judicial doctrines and increasingly constrained federal budgets.

Intergovernmental Tensions and Federally Induced Costs

From the federal government's perspective, requiring state and local governments to undertake activities, provide benefits, or enact laws can appear to be an effective and efficient way to achieve desirable policy objectives. Few citizens or state and local governments would disagree with the objectives of equal employment opportunities for the handicapped, clean air, safe drinking water, and curbing alcohol abuse by teenagers. They produce many benefits, some of which would be impossible or unlikely to occur without federal action.

Nevertheless, concerns have been raised by state and local governments about:

- Excessive costs due to complex and rigidly specified implementation mechanisms;
- Inadequate consideration of costs and benefits;
- Distortion of state and local budgets and policy priorities;
- Erosion of state and local initiative and innovation;
- Inefficiencies due to the application of single, uniform solutions to geographically diverse problems;
- Inadequate consideration of varying state and local financial and personnel resources;
- Attenuated accountability to citizens, due to the separation of responsibilities for policy direction and public finance; and
- A double standard, whereby the federal government exempts itself from compliance, or complies only partially, with the regulations it imposes on state and local governments.

Growing numbers of states and communities have launched independent efforts to inventory and assess the costs associated with federal mandates. Some notable examples include studies conducted by the cities of Anchorage, Columbus (Ohio), and Chicago, and the states of Tennessee, Ohio, and Virginia (see page 22).

ACIR Examines the Issue

ACIR's concern for the intergovernmental implications of mandates and federally induced costs began almost 20 years ago. In its 1977 report *Categorical Grants: Their Role and Design*, the Commission focused early attention on crosscutting grant requirements, maintenance-of-effort requirements, and other forms of grant conditions. The following year, the Commission examined financial issues arising from state mandates affecting local governments in *State Mandating of Local Expenditures*. ACIR's 1984 report *Regulatory Federalism: Policy, Process, Impact and Reform* traced the growth in federal mandates during the 1960s and 1970s.

Reports on *Federal Statutory Preemption of State and Local Authority* in 1992 and *Federal Regulation of State and Local Governments* in 1993 traced the growth of federal mandates and preemptions during the 1980s and began the difficult task of identifying the financial costs of intergovernmental regulations. The Commission added to knowledge about the field with reports on disability rights, medicaid, environmental decisionmaking, state mandates, and public works.

Through these and other efforts, ACIR has developed a growing body of recommendations, which include:

- Elimination of crossover sanctions as an enforcement tool in federal statutes (1984);

- Full federal reimbursement for all additional direct costs imposed by new legislative mandates (1984);
- Establishment of a "preemption notes" process (1) in the Congress to analyze the impacts of proposed preemption legislation prior to enactment, and (2) in the Executive Branch as part of the rulemaking process (1992);
- Reexamination by the Supreme Court of the constitutionality of federal mandating (1993);
- A two-year moratorium on unfunded or underfunded legislative, executive, and judicial mandates (1993); and
- Enactment of a Mandate Relief Act that would require (1) regular inventory and cost estimation of all existing and proposed federal mandates, (2) analysis of the incidence of costs and the ability to pay of those parties on whom the costs fall or would fall, and (3) equitable federal sharing of the mandated costs or an affordable prioritization and scheduling of compliance by the nonfederal parties (1994).

Congress Considers Federally Induced Costs

In 1993, the question of what to do about federally induced costs began to be considered seriously by the Congress. The 34 "mandate relief" bills introduced in the 103rd Congress resulted in hearings in the Senate and the House and a compromise bill that would provide:

- Definition of mandates as federal legislation and regulation that requires state, local, and tribal government participation in a federal program, or that would compel state and local spending for participation (major entitlement programs).
- Exclusion of legislation and regulations implementing civil rights; individual constitutional rights; waste, fraud, and abuse prevention in grant programs; emergencies; and national security.
- A requirement for CBO to (1) estimate the impact on state, local, and tribal governments; (2) state whether it should be funded; (3) identify existing and new sources of federal financial assistance; (4) describe other costs and benefits; and (5) state whether there is an intention to preempt.
- A point of order procedure on legislation containing mandates estimated to cost state, local, and tribal governments more than $50 million per year unless new or additional financial assistance is authorized.
- A requirement for federal regulatory agencies to (1) develop a process for state, local, and tribal input into the development of regulations; (2) provide greater outreach and assistance to small governments; (3) evaluate costs and benefits of major regulations with an expected cost over $100 million.
- Prohibition of judicial review of actions taken pursuant to the act.
- A two-year study to establish a baseline methodology for determining costs and benefits.

Questions Raised

In the process of holding hearings on a number of these bills, it became apparent that many hard-to-grasp details are crucial to finding workable solutions to the mandate relief issue. Questions raised by the hearings fall into the following categories:

- What is a "mandate" and who is responsible for funding it?
- How should reimbursement amounts be calculated?
- Who should determine the amounts to be reimbursed?

• Should the Congress take further action to reform the executive rulemaking process to help provide mandate relief?

Elements of the "Mandate-Relief" Solution

Solutions are needed to three broad problems: (1) informing the process, (2) disciplining the system, and (3) funding federally induced costs.

Informing the Process. Estimates of the total annual cost impact of federal actions on state and local government budgets range from 2 or 3 percent to 20 percent or more. There is no good fix on these figures, either nationwide or for individual state and local governments, yet they are at the heart of the issue.

Three potential means of better informing the process are frequently discussed: (1) better cost estimates for proposed federal actions, (2) cost accounting standards to facilitate the collection of reliable information, and (3) an inventory of federally induced costs updated annually to track their total impact over time.

Disciplining the System. Information alone may not be enough to limit added federal costs on state and local governments. Any additional disciplining of the mandate process probably must come from the Congress.

There are several ways to introduce greater discipline into the processes to limit or reverse unfunded federal requirements: (1) process improvements, (2) criteria for federal funding, (3) caps, (4) realignment of the federal system, and (5) moratoria.

Funding Federally Induced Costs. It is not enough to know how much a new federal requirement will cost. It also should be demonstrated how the costs can be met. Direct reimbursement through the federal budget is simplest, but it is limited by the deficit. Thus, the search for financial partners, "creative financing" techniques, and affordability analyses is increasingly attractive.

Beyond appropriation of funds for grants or loans, there is a growing interest in shared revenues, payments in lieu of taxes, user fees, mixed public and private funds, in-kind contributions, tax expenditures, longer schedules for compliance, and waivers.

The issues outlined above are difficult, and objective research alone is not likely to resolve them. Additional intergovernmental dialogue also is needed.

Bruce D. McDowell is ACIR Director of Government Policy Research.

NOTES

[1] See, for example, Susan A. MacManus, "'Mad' about Mandates: The Issue of Who Should Pay for What Resurfaces," *Publius: The Journal of Federalism* 21 (Summer 1991): 59-76; and National Conference of State Legislatures, *Mandate Catalogue* (Washington, DC, 1993).

[2] Several bills attracted considerable support. Early in 1994, a bill introduced by Rep. James P. Moran to improve the congressional process for estimating mandate costs (H.R. 1295) had 243 cosponsors. Among the bills that would waive compliance with unfunded federal mandate requirements, H.R. 140, introduced by Rep. Gary A. Condit, had 219 cosponsors in the House of Representatives and S. 993, sponsored by Sen. Dirk Kempthorne, had 53 co-sponsors in the Senate.

[3] For analyses of state mandate reimbursement programs, see U.S. Senate, Subcommittee on Intergovernmental Relations, *1985 Hearings*; U.S. General Accounting Office, *Legislative Mandates: State Experiences Offer Insights for Federal Action* (Washington, DC, 1988); and U.S. Advisory Commission on Intergovernmental Relations (ACIR), *Mandates: Cases in State-Local Relations (Washington, DC, 1990)*.

APPENDIX C

"Assessing Mandate Effects on State and Local Governments"
Philip M. Dearborn
Intergovernmental Perspective
Summer-Fall 1994

Assessing Mandate Effects on State and Local Governments

Philip M. Dearborn

Many questions have been raised about the financial consequences of federal mandates to state and local governments. To help answer these questions, ACIR has reviewed and summarized several recent studies of mandate costs. The costs reported were related to state and local budgets to the extent feasible, and some of the difficulties in interpreting the impacts were identified.

Several state and local governments have sought to provide comprehensive information about federal mandate costs and their budgetary effects, but there are still gaps and unresolved issues. Some studies have concentrated solely or primarily on environmental mandates, while others have considered a sample of mandates. These studies raise questions about methodology and interpretation, including:

- Should the definition of mandates be limited to outright unfunded directives or should grant conditions and the effects of federal tax actions be included?
- When both state and federal laws or regulations require similar action, which government should be considered responsible for the unfunded mandate?
- Should costs that local governments pass through to users in the form of fees or charges be differentiated from costs payable from general taxes?
- Should mandate costs incorporated in budget bases or rate schedules be differentiated from future costs that will add to spending or rates?
- Should the effects of mandates be shown as a percentage of budgets, own-source revenues, or costs per household, or on some other basis?
- How should known but unscheduled and unfinanced future mandate costs be shown to illustrate effects on annual budgets?
- How should these and other issues be treated in mandate relief legislation?

Some of the problems encountered in making comprehensive financial assessments of the costs of unfunded federal mandates and interpreting the results can be illustrated by the reports from Tennessee, Ohio, Columbus (Ohio), Lewiston (Maine), Chicago, and Anchorage.

Tennessee

Tennessee's Department of Finance and Administration compiled a list of every new federal mandate that had caused additional state expenditures from the General Fund since FY 1986-87, reported in *The Impact of Federal Mandates*. The estimated costs of these mandates in 1993 and 1995 are shown in Table 1.

Table 1
State of Tennessee
Federal Mandate Costs
(millions)

	1993	1995	Increase
Medicaid	$113.4	$141.6	$28.2
Non-Medicaid	24.0	36.6	12.6
Loss of Sales Tax on Food Stamps	16.3	16.3	0.0
Total	**$153.7**	**$194.5**	**$40.8**
Percentage of 1991 Own-Source General Revenues ($5,612.4 million)	3.5%	2.7%	0.7%

The estimated mandate costs of $153.7 million for 1993 were equal to about 2.7 percent of the state's $5.6 billion own-source revenues in 1991, as reported by the Bureau of the Census. The projected cost increase of $40.8 million from 1993 to 1995 is equivalent to about 0.7 percent of 1991 revenues. Only general fund mandates were included in the study. The percentages might be somewhat higher if special fund mandates, such as transportation, were included.

The Tennessee report raises two important issues in evaluating cost effects. First, for Medicaid, the estimates include only state costs resulting from federal directives issued since 1987. This represents a middle ground between counting all Medicaid matching (about $750 million in 1991 for Tennessee) and not counting any of the matching as a mandate because states are not required to participate in Medicaid.

The second issue is whether the 20 states that tax food sales should, like Tennessee, count as a mandate the revenues not received on food stamp purchases, which are exempt from sales taxes.

Ohio

Ohio, in an August 1993 report, *The Need for a New Federalism: Federal Mandates and Their Impact on the State of Ohio*, estimated the cost of unfunded federal mandates on the state government for 1992 to 1995 (see Table 2). The 1992 estimated cost of $260.1 million is about 1.7 percent of own-source revenues in fiscal year 1991. The increase of $129.1 million from 1992 to 1995 is equivalent to about 0.8 percent of 1991 own-source revenues. Although the bases for calculating the Ohio and Tennessee estimates are somewhat different, the percentages of own-source revenues spent on mandates are remarkably similar.

For Medicaid, Ohio also estimated the mandate cost of federal requirements enacted since 1987, which reflects a small portion of state Medicaid spending (about $1.8 billion in 1991).

Table 2
State of Ohio
Federal Mandate Costs
(millions)

	1992	1995	Increase
Medicaid	$185.4	$262.7	$77.3
Other Human Services	48.7	68.5	19.8
Clean Water Act	16.6	26.7	10.1
Transportation	4.9	31.3	26.4
Other	4.5		-4.5
Total	**$260.1**	**$389.2**	**$129.1**
Percentage of 1991 Own-Source General Revenues ($15,623.0 million)	1.7%	2.5%	0.8%

Note: These figures do not include $430 million in costs to comply with the *Americans with Disabilities Act*, which will be incurred over several years.

Ohio, unlike Tennessee, estimated some transportation mandate costs that result primarily from federal requirements to (1) use rubberized asphalt, (2) follow the International Registration Plan, and (3) change requirements for commercial drivers' licenses.

Although Ohio estimates $430 million in costs from the *Americans with Disabilities Act*, it was not possible to allocate the costs by years. Most of these costs involve nonrecurring capital expenditures over several years, perhaps funded by bond issues requiring debt-service payments over an extended period. The additional annual mandate costs that should be added will depend on when and how these costs are ultimately incurred.

Columbus, Ohio

The City of Columbus, in a 1991 report by the Department of Health, *Environmental Legislation: The Increasing Costs of Regulatory Compliance*, identified estimated mandate costs it would incur from 1991 to 2000. The costs are estimated for each year from 1991 to 1995, but are summarized in total amounts for 1996 to 2000. The study includes federal and state mandates. In most instances, the state laws either parallel or implement federal laws, with the federal law providing the underlying mandate.

However, in the case of solid waste disposal and infectious waste, the state appears to be the principal source of the mandate. The estimated costs for 1991 and 1995 are shown in Table 3.

The city estimates that the $62.1 million in 1991 mandate costs represented about 10.6 percent of the $591.5 million budget, with this percentage increasing to 18.3 percent in 1995. If the solid waste disposal and infectious waste costs are considered state mandates, then the remaining federal mandates are 10.4 percent in 1991 and 15.0 percent for 1995.

In preparing the estimates, the city surveyed every municipal department for costs incurred under 13 federal mandates. Just three programs (*Clean Water Act*, *Safe Drinking Water Act*, and solid waste regulations) account for 95 percent of the total 1995 costs.

Table 3
City of Columbus, Ohio
Federal and State Environmental Mandate Costs
(millions)

	1991	1995	Increase
Clean Water Act	$54.7	$75.5	$20.8
Resource Conservation	4.2	2.8	-1.4
Safe Drinking Water	1.4	7.5	6.1
Solid Waste Disposal	0.5	18.9	18.4
Other	1.3	2.7	1.4
Total	**$62.1**	**$107.4**	**$45.3**
Percentage of City Budget ($591.5 million)	10.6%	18.3%	7.7%
Percentage without State Mandates	10.4%	15.0%	4.6%

The Columbus study provides additional perspective on mandate cost estimates by separating those supported by sewer and water charges from those supported by general taxes and converting both types to costs per household (see Table 4).

By 1995, nearly 80 percent of the estimated costs of mandates will be charged to sewer and water users, leaving a relatively small amount, almost entirely for solid waste, to be charged to

Table 4
Columbus Mandate Costs
by Source of Payments and Household Costs

	1991	1995	Increase
Source of Payments: (millions)			
Sewer and Water	$56.6	$84.8	$28.2
General Taxes	5.5	22.6	17.1
Total	**$62.1**	**$107.4**	**$45.3**
Payments per Household: (dollars)			
Sewer and Water	$163	$244	$81
General Taxes	21	86	65
Total	**$184**	**$330**	**$146**

general taxpayers. In some local governments, solid waste costs are also charged to users.

Chicago, Illinois

The City of Chicago, in conjunction with the Institute for Metropolitan Affairs at Roosevelt University, surveyed all city departments for the 1991 costs of federal and state unfunded mandates and regulations. Reported in *Putting Federalism to Work for America: Tackling the Problems of Unfunded Mandates and Burdensome Regulations*, the federal costs totaled $191.2 million, or the equivalent of 8.3 percent of the city's 1991 own-source revenues (see Table 5).

Table 5
City of Chicago, Illinois
Unfunded Federal Mandates
(millions)

	1991 Costs
Agency Direct	$88.2
Indirect Administrative	27.3
Airport Restrictions	12.7
Arbitrage Rebate	18.0
Bond Refinancing Restrictions	45.0
Total	**$191.2**
Percentage of 1991 Own-Source General Revenues ($2,307.9 million)	8.3%

A separate estimate for environmental mandates projects the costs as declining from $95.1 million in 1991 to $68.2 million in 1995. Unlike the other cities, most Chicago environmental costs result from the *Resource Conservation and Recovery Act* and clean air requirements, not from water-related regulations. City agencies are not responsible for drinking water and sewage treatment. As a result, the environmental costs to residents are undoubtedly much higher than shown in this analysis.

There are several unique features in the Chicago study. The city estimates that it incurs annual costs as a result of federal limitations on slots at O'Hare Airport. The city also considers the costs of arbitrage rebates a federal mandate. These costs stem from the 1986 federal tax reform that prohibited state and local governments from profiting by investing federally tax-exempt bond funds in higher yielding taxable securities. Similarly, the 1986 law permits only one advance refunding of tax-exempt bonds, secured by escrowed higher interest federal securities. In both instances, the city believes its debt management has been impaired by federal laws intended to eliminate an abuse of the federal income tax laws.

Lewiston, Maine

The City of Lewiston, in a 1992 report, *Testimony on the Review of Existing Regulations: The Regulatory Flexibility Act for the U.S. EPA*, analyzed the capital, operational, and maintenance costs of complying with federal mandates. Lewiston's estimates include the amounts (1) actually budgeted in 1992, (2) projected based on existing requirements, and (3) needed to meet proposed federal regulations (see Table 6).

Table 6
Lewiston, Maine
Cost of Federal Mandates
(thousands)

	Current	Projected	Proposed
Safe Drinking Water			
Debt Service	$305.1	$ 392.3	$1,107.2
Operation & Maintenance	30.0	300.0	1,250.0
Clean Water			
Debt Service	18.4	453.4	4,322.6
Operation & Maintenance	10.0	410.0	1,000.0
Occupational Safety			
Debt Service	10.5	5.2	0.0
Operation & Maintenance	40.0	70.0	0.0
Totals			
Debt Service	334.0	850.9	5,429.8
Operation & Maintenance	80.0	700.0	2,250.0
Grand Total	**$414.0**	**$1,630.9**	**$7,679.8**
Percent of 1992 Budget ($53 Million)	0.8%	3.1%	14.5%

Note: Debt service is based on projected capital costs amortized with level debt service over 20 years at 6 percent.

These results do not include solid waste costs that the city considers to be state requirements, even though they may relate indirectly to federal requirements. It also was necessary to estimate annual debt-service costs based on the lump-sum capital spending estimates.

The $414,000 currently budgeted for federal mandates represents about 0.8 percent of Lewiston's budget. Complying with projected requirements at a cost of $1.6 million would add 3.1 percent, and complying with all proposed regulations would add 14.5 percent. Thus, at some time in the future, the costs of complying with all potential federal requirements could equal about 18.4 percent of the city budget. Because most of the anticipated costs are associated with safe drinking water and clean water activities, it appears they would result mainly in increased sewer and water charges.

Anchorage, Alaska

The City of Anchorage estimated the costs of federal mandates in 1992 in *Paying for Federal Environmental Mandates: A Looming Crisis for Cities and Counties*, using a method similar to that used by Columbus (see Table 7). Expressed as a percentage of own-source revenues, the costs were less than 1 percent in 1993 and are expected to increase to only 1 percent by 1996. This impact is much lower than the Columbus and Lewiston estimates, and Anchorage cautions that it should not be viewed as representative of other cities or counties for several reasons. These reasons include limited industrial development problems, relatively new infrastructure, and considerable wealth from oil production.

Table 7
Anchorage, Alaska
Costs of Federal Environmental Mandates
(millions)

	1993	1996	Increase
Clean Water	$4.4	$13.1	$8.7
Clean Air	3.9	11.0	7.1
Resource Conservation and Recovery	7.8	6.0	-1.8
Toxic Substances	1.2	1.1	-0.1
All Other	5.2	6.4	1.2
Total	**$22.5**	**$37.6**	**$15.1**
Percentage of 1991 Own-Source General Revenues ($386.9 million)	0.6%	1.0%	0.4%

Issues in Evaluation

Future efforts to evaluate the fiscal effects of federal mandates will have to contend with a variety of difficult issues, which are noted at the beginning of this article. Perhaps the most troublesome will be how comprehensive the studies should be and how to allocate costs. Definitions of mandates range from a very narrow inclusion of unfunded directives to including all grant programs and tax effects. Federal mandates and state policies also have become intertwined in many instances, making it difficult to determine which government is responsible for the costs, especially those incurred by local governments.

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APPENDIX D

Letters from Nevada Attorney General Frankie Sue Del Papa
Concerning the Nevada Plan for Public Land

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September 17, 1993

VIA FACSIMILE AND U.S. MAIL

Mr. Edward L. Presley
Executive Director
County Alliance to Restore the
Economy and Environment
1350 East Flamingo Road, No. 519
Las Vegas, Nevada 89119

Dear Ed,

Your recent letter sets forth a collection of concerns about regulation of public lands and regulatory takings, and then concludes with a call for me, as Attorney General, to take certain immediate actions. Please accept this response as an official statement of my position.

1. Control of public lands.

A good portion of your letter is devoted to the challenge of federal control on public lands. However, your legal theory is unconventional, and it was rejected by the court in *State of Nev. ex rel. Nev. State Bd. of Agriculture v. United States*, 512 F. Supp. 166 (D. Nev. 1981), *affirmed on appeal*, 699 F.2d 486.

You may, as an advocate, pursue the matter. However, it is necessary for me, as the State's attorney, to provide considered counsel in the context of the full legal environment. Given these parameters and legal precedent, I cannot join in your approach.

As we have discussed in the past, and as you have discussed with my deputy for public lands, the law on federal authority over public lands is well-established. The basis for it is constitutional, not just statutory. The Property Clause, U.S. Const. art. IV, § 3, cl. 2, provides:

> Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The Property Clause operates in tandem with the Supremacy Clause, U.S. Const. art. VI, cl. 2. The Supremacy Clause makes federal law paramount in those areas where the constitution gives the federal government authority to operate. This coincides with the Property Clause to give federal land management agencies, acting pursuant to statute, a firm control on the management of public lands.

Not only does the seminal U.S. Supreme Court decision set forth this authority of the federal government to regulate public lands, *Kleppe v. New Mexico*, 426 U.S. 529 (1976), but a long line of Nevada Supreme Court decisions is in harmony with its holding. *See, e.g., Courchaine v. Bullion Mining Co.*, 4 Nev. 369, 374 (1868); *State v. Central Pac. R.R.*, 21 Nev. 247, 254-55, 30 P. 686 (1892); *In re Calvo*, 50 Nev. 125, 138, 253 P. 671 (1927); *Itcaina v. Marble*, 56 Nev. 420, 432-33, 55 P.2d 625, 630 (1936); *Ansolabehere v. Laborde*, 73 Nev. 93, 107, 310 P.2d 842 (1957). The *Kleppe* opinion was expressly relied on by the Nevada Court in *State v. Morros*, 104 Nev. 709, 717, 766 P.2d 263 (1988).

Your entreaty to me is essentially one to overturn this massive precedent. The task would be monumental. Even if there were enough merit in the legal theories which you posit to justify filing a legal action, the balance of costs and benefits from such an action cannot justify it.

In all I have seen and heard from you, there has been little or no mention of the vast body of law which contradicts your position. I think you owe it to the people whom you address to explain its existence. The course you advocate could lead to rather large legal expenses with little guarantee of ultimate success. Public officials need to know this before they enlist in your cause.

2. Excessive regulation as taking.

I am sensitive to the burden of unnecessary, unwarranted government regulation. As you are aware, Senate Concurrent Resolution 50, passed during the last session of the Nevada Legislature, calls for this office to develop a takings checklist for agency use, and to train the agencies in its use. This project is already underway. Both the public and state agencies are well-served by educating regulators regarding the takings consequences of government action.

At the same time, I am not prepared to submit to pressures to adopt any group's agenda offered in the guise of concern for private property. Specifically, I know that takings law is recently the means used by private interests seeking to wrest public lands from government control. As a proponent on behalf of those who would oust the government of control, you make a very broad reading of takings law. But your position is based on what you hope will become the law, not what it already is. Again, in fact, your position is contrary to established prece-dent. *See, e.g., LaRue v. Udall*, 324 F.2d 428 (D.C. Cir. 1963).

Although you allege the existence of a concerted effort to systematically take the property of Nevada citizens, I fail to find any evidence of it attached to your letter. If you are able, you may provide support for your statements, and I will supplement this response. At the present time, however, I have no basis for pursuing the matter.

I must also say, Ed, that your supporting reference to a draft letter from the U.S. Attorney General's office is misleading at best. My staff learned, by speaking with Mark Evans in the Justice Department, that the draft was never sent, was never meant to be made public, and does not and never did state the position of the U.S. Attorney General. I think you do your cause more harm than good by relying on such authority.

3. State of Alaska Lawsuit.

Finally I will comment on the lawsuit filed by the State of Alaska against the United States. You are quite right that our situation in Nevada is not the same as in Alaska. The Alaska lawsuit seeks to *enforce* the terms of the Alaska admission act. I believe the gist of your theory is that the terms of the Nevada admission act are *unenforceable*, specifically section 4, which requires the State to:

> [F]orever disclaim all right and title to the unappropriated lands lying within said terri-tory, and that the same shall be and remain at the sole and entire disposition of the United States.

Again, this is the argument rejected by the court in *State of Nev. ex rel. Nev. State Bd. of Agriculture v. United States*, 512 F. Supp. 166.

Perhaps the court's decision in the Alaska suit will provide some useful precedent, but at this time I see no paradigm for action in this state.

* * * * *

In conclusion, I believe your agenda is principally a political, not a legal, one. Both as an attorney and as an elected, constitutional officer of the State of Nevada, I find it

impossible to press the legal arguments upon which you rely. I suggest that if you are to succeed, you must devote your energies to the legislative branch of the state and federal governments, and not the courts.

As always, I welcome your continued communication on these matters.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

FSDP/WH/rc
cc: All County Commissions
All District Attorneys

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
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FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

March 3, 1994

All Legislators, District Attorneys and
County Commissioners

Dear Colleagues:

A group calling itself the County Alliance to Restore the Economy and Environment (CAREE) sent a memorandum to all Nevada Legislators on February 17, 1994. The group attacked the Governor for relying on advice from this office regarding public land issues. This letter is intended to rebut the group's several distortions of law and fact regarding the role and posture of this office.

The memorandum begins with the statement that "Governor Bob Miller's letter to Dick Carver . . . leaves the impression that we don't need a legislature or a governor because Frankie Sue Del Papa is in charge." This hyperbole ignores the primary duty of the Attorney General to advise the Executive branch of state government. "The attorney general and his duly appointed deputies shall be the legal advisers on all state matters arising in the executive department of the state government." NRS 228.110(1). The relationship between this office and the executive branch is rudimentary in our system of state government. Therefore in all respects it was proper for the Governor to ask for and rely upon legal advice from the Attorney General.

The memorandum further states that "Legislative Counsel has already decided in 1979 that the Law Nevada Revised Statute 321.596-601 (sic) was Constitutional." There is no reference to the Legislative Counsel opinion in 1993 which is fully consistent with the counsel offered by my office. In an eight page opinion dated November 5, 1993, the Legislative Counsel Bureau made a thorough review of the relevant law, and its conclusions fully support the Governor's position in these matters. The consistency of the legal advice provided to both branches of State government speaks significantly of the accuracy of that advice.

The advice we issued was validated by a January 27, 1994 decision in an Idaho case entitled Boundary Backpackers v. Boundary County. The decision held unconstitutional a county ordinance much like the ones Mr. Carver lobbied for in Nevada counties. The predictable outcome conformed in every respect with our analysis. Of particular note is the award of costs to the plaintiffs and against the county. I will gladly provide you a copy of the decision if you request it.

Unfortunately, Commissioner Carver and his group are in effect a cause in search of a legal theory. To date, they have no theory with any measure of respect in the legitimate legal community. Their efforts to dress their agenda in pseudonymous legal clothing is misleading and misguided. I strongly urge anyone tempted to rely on the representations made by this group first seek their own counsel.

Mr. Carver's rhetoric is a naked attempt to appropriate to himself the fervor all Nevadans feel for this great State; his invitation is to revisit yesterday's battles. However, the leadership needed to carry this State to new possibilities and opportunities will be found in more thinking persons whose vision is not so fettered by the past.

I hope this information is helpful in understanding the position we have taken. This office has had a long experience with these legal issues. You may call on me at any time to discuss in more detail that experience, or any aspect of the issues raised by the CAREE memorandum.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

FSDP:CWH:pw

APPENDIX E

Model State Sovereignty Legislation Developed by the American Legislative Exchange Council (ALEC)

ADOPTED
AUGUST 5, 1994

ALEC
CONSTITUTIONAL DEFENSE COUNCIL ACT

Section 1. {**Title.**} This act shall be known as may be cited as the *Constitutional Defense Council Act*

Section 2. {**Legislative findings and declarations.**} The legislatures finds and declares that:

A. The Constitution of the United States of America envisions sovereign states and guarantees the states a republican form of government in which decisions are made by the elected representative of the people.

B. The power of state and local government of {insert state} to better the lives of their citizens are being encroached upon by the federal government.

C. With increasing and alarming frequency, important decisions affecting our lives that should be left to the states are being made by the federal government in Washington, DC.

E. Federal mandates are being imposed on the states without the accompanying tax dollars necessary to implement the mandated programs.

F. The impact of federal mandates threatens the fiscal integrity of our State as well as our right of self determination.

G. The intent of this legislation is to restore, maintain, and advance the State's Sovereignty and Authority over issues that affect the state and the well being of its citizens.

Section 3. {**Members; Powers; Staff.**}

A. The defense council shall consist of the following members: {**To be determined by State.**}

B. The Defense Council shall meet at times at the call of the chair.

1. A majority of the membership on the defense Council is required for a quorum to conduct council business. A majority of the quorum is required for any action taken by the Defense Council.

Section 4. {Powers & Duties.}

A. The Council, in the name of the state or its citizens, may examine and challenge by legal action, legislation or any other legal means:

1. Federal Mandates.
2. Court Rulings.
3. The Authority granted to, or assumed by, the federal government.
4. Laws, regulations and practices of the federal government.
5. Any other activity that is deemed appropriate by the Council.

Section 5. {Appropriations.}

A. A council fund is established in the state treasury for deposit of appropriations, gifts, grants and other council monies. Monies in the Council fund are continuously appropriated.

B. The sum of {insert amount} is appropriated from the state general fund in fiscal year {insert year} to the Constitutional Defense Council for the purpose provided in this act.

Section 6. {Severability Clause.}
{Insert severability clause.}

Section 7. {Repealer Clause.}
{Insert repealer clause.}

Section 8. {Effective Date.}
{Insert effective date.}

ADOPTED
AUGUST 5, 1994

ALEC
RESOLUTION TO RESTATE STATE SOVEREIGNTY

WHEREAS, The 10th Amendment to the Constitution of the United States reads as follows: "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;" and

WHEREAS, The 10th Amendment defines the total scope of federal power as being that specifically granted by the United States constitution and no more; and

WHEREAS, The scope of federal power defined by the 10th Amendment means that the federal government was created by the states specifically to be an agent of the states; and

WHEREAS, State authority has been eroded primarily by four developments: (1) Federal assumption of powers reserved to the states under the 10th Amendment; (2) Interpretations of the "commerce clause" which go beyond any reasonable conception, and in effect authorize federal pre-emption with respect to any issue for which some faint or circuitous connection can be made to interstate commerce; (3) By threat of withholding, withdrawing, or diverting federal funds to coerce compliance with federal policies; (4) Failure on the part of the states to challenge federal intrusions. Indeed state governments have endorsed federal usurpation by seeking additional federal funding and by accepting federal delegations of power.

WHEREAS, Today, in {insert year}, the states are demonstrably treated as agents of the federal government; and

WHEREAS, Numerous resolutions have been forwarded to the federal government by the State of {insert state} without any response or result from Congress or the federal government; and

WHEREAS, Many federal mandates are directly in violation of the 10th Amendment to the Constitution of the United States; and

WHEREAS, The United states Supreme Court has ruled in New York v. United States, 112 S. Ct. 2408 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states; and

WHEREAS, A number of proposal from previous administrations and some now pending from the present administration and from Congress may further violate the United states Constitution;

NOW THEREFORE BE IT RESOLVED, That the State of {insert state} hereby claims sovereignty under the 10th Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the United States Constitution.

BE IT FURTHER RESOLVED, That this serve as Notice and Demand to the federal government, as our agent, to cease and desist, effective immediately, mandates that are beyond the scope of its constitutionally delegated powers.

BE IT FURTHER RESOLVED, That copies of this Resolution be sent to the president of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Speaker of the House and the President of the Senate of each state's legislature of the Untied States of America, and {insert state} Congressional delegation.

ADOPTED
AUGUST 5, 1994

ALEC
JOINT LEGISLATIVE COMMITTEE ON FEDERAL MANDATES ACT

Section 1. {Title.} This act shall be known as and may be cited as the *Joint Legislative Committee on Federal Mandates Act.*

Section 2. {Legislative findings and declarations.} The legislature finds and declares that:

A. The 10th Amendment to the Constitution of the United States reads as follows: The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

B. The number of federal mandates imposed upon the states by the United States Congress has alarmingly increased in recent years.

C. The members of the legislature of {insert state} desire to personally protect state sovereignty from federal encroachment as well as communicate with the {insert state} delegation to the United States Congress concerning this critical problem so that our representatives may be completely cognizant of the effect the actions of the federal government have at the state legislative level and may be more sensitive to federal usurpation of state authority.

Section 3. {Joint legislative committee on federal mandates; members; powers and duties.}

A. A joint legislative committee on federal mandates is established consisting of the president of the senate, four members of the senate appointee by the president of the senate, the speaker of the house of representatives and four members of the house of representatives appointed by the speaker of the house of representatives. No more than three members of the Senate or House of Representatives, including the President and Speaker, shall be from the same political party. Members shall serve two year terms ending

on the Convening of the regular session of the Legislature each Odd-Numbered year.

B. The Committee shall meet on the call of the President of the Senate or the Speaker of the House of Representatives, and a majority of the members constitutes a quorum for the transaction of business.

C. The committee shall:

1. Review each year the activities of Congress and the federal government including court rulings with regard to any laws, regulations or other actions that may require their state to comply with any federal mandate.

2. Take any action necessary to protect this state's constitutional rights and sovereignty against federal mandates.

3. Arrange for and conduct an annual joint session of the Legislature or a meeting of the Committee and request the attendance of all members of the {insert state} congressional delegation to discuss issues relating to federal mandates and the appropriate use of federal power to influence state policy.

D. The Committee may utilize legislative staff for research and other services required by committee.

Section 4. {Severability clause.}

Section 5. {Repealer clause.}

Section 6. {Effective date.}

ADOPTED
AUGUST 5, 1994

ALEC
FEDERAL MANDATE/FEDERAL ENCROACHMENT ON STATE SOVEREIGNTY ACT

Section 1. {Short Title.} This act shall be known and may be cites as the *Federal Mandate/Federal Encroachment on State Sovereignty Act*.

Section 2. {Legislative Declarations.} The Legislature finds and declares:

A. The 10th Amendment to the Constitution of the United States reads as follows: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States , are reserved to the States respectively, or to the people.

B. Today, with increasing frequency important decisions affecting the lives of individuals in the state are being made by the federal government and the states are demonstrably treated as agents of the federal government.

C. State sovereignty and authority over issues that affect the state and the well being of its citizens must be restored.

Section 3. {Definitions.} The following terms mean:

A. Congressional Delegation - all members of the United States Senate and House of Representatives from {insert state}.

B. Federal Encroachment on State Sovereignty - any exceedence of federal authority over state.

C. State Sovereignty - as related to the 10th Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

D. State - all agencies of the state including independent agencies, state colleges and universities.

F. Federal Mandate - a provision of federal law or regulation that is mandated on the state.

Section 4. {Designation of Federal Mandate/Federal Encroachment on State Sovereignty Auditor Powers & Duties.}

A. The federal mandate/federal encroachment on state sovereignty auditor shall make an inventory of all federal mandates and federal encroachment on the state. The federal mandate/federal encroachment on state sovereignty auditor shall make a calculation of the cost of these federal mandates to the different levels of government.

B. The federal mandate/federal encroachment on state sovereignty auditor shall issue a report by January 30th of each year, which shall contain:

1. A summary of the cost of federal mandates on the state as well as full detail on cost by program and agency;

2. A review of federal laws that exceed federal authority.

3. The voting records of each member of the state's congressional delegation on all bills containing federal mandates and exceedences of federal authority.

4. The report prepared pursuant to this section shall be sent to:

a. The Governor;
b. The state's United States Senators and Representatives;
c. All members of the state legislature.

Section 5. {Ad Hoc Reports.}

Upon request of the Governor, the Speaker of the House, the President Pro Tem of the Senate, or the minority leaders of the House or Senate, the federal mandate auditor/encroachment of state sovereignty auditor shall prepare ad hoc reports estimating the cost of federal mandates to the state government and exceedence of federal authority in any proposed federal legislation. These reports shall be sent to all officials listed in subsection (3) of Section (5) of this act.

Section 6. {Severability Clause.}
{Insert severability clause.}

Section 7. {Repealer Clause.}
{Insert repealer clause.}

Section 8. {Effective Date.}
{Insert effective date.}

APPENDIX F

Colorado House Joint Resolutions 94-1035 and 94-1027

HOUSE JOINT RESOLUTION 94-1035

BY REPRESENTATIVES Duke, May, Adkins, Agler, Allen, Anderson, Armstrong, Fleming, Jerke, Kreutz, Lawrence, Moellenberg, Morrison, Owen, Pankey, Pfiffner, Ratterree, Salaz, Shoemaker, Taylor, Chlouber, Coffman, Entz, Epps, Kaufman, Martin, and Tucker;
also SENATORS Roberts, Ament, Bishop, Mutzebaugh, Norton, R. Powers, Schroeder, Wells, Blickensderfer, Rizzuto, and Tebedo.

WHEREAS, The 10th Amendment to the Constitution of the United States reads as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."; and

WHEREAS, The 10th Amendment defines the total scope of federal power as being that specifically granted by the United States Constitution and no more; and

WHEREAS, The scope of power defined by the 10th Amendment means that the federal government was created by the states specifically to be an agent of the states; and

WHEREAS, Today, in 1994, the states are demonstrably treated as agents of the federal government; and

WHEREAS, Numerous resolutions have been forwarded to the federal government by the Colorado General Assembly without any response or result from Congress or the federal government; and

WHEREAS, Many federal mandates are directly in violation of the 10th Amendment to the Constitution of the United States; and

WHEREAS, The United States Supreme Court has ruled in New York v. United States, 112 S. Ct. 2408 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states; and

WHEREAS, A number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the United States Constitution; now, therefore,

Be It Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

(1) That the State of Colorado hereby claims sovereignty under the 10th Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the United States Constitution.

(2) That this serve as Notice and Demand to the federal government, as our agent, to cease and desist, effective immediately, mandates that are beyond the scope of its constitutionally delegated powers.

Be It Further Resolved, That copies of this Resolution be sent to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Speaker of the House and the President of the Senate of each state's legislature of the United States of America, and Colorado's Congressional delegation.

Charles E. Berry
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Tom Norton
PRESIDENT OF THE
SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Joan M. Albi
SECRETARY OF
THE SENATE

HOUSE JOINT RESOLUTION 94-1027

BY REPRESENTATIVES Ratterree, Fleming, Chlouber, George, Adkins, May, Epps, Agler, Grampsas, Jerke, Moellenberg, Allen, Anderson, Berry, Clark, Coffman, Dyer, Entz, Faatz, Foster, June, Kaufman, Lawrence, Martin, Morrison, Owen, Prinster, Reeser, Romero, Salaz, Schauer, Shoemaker, Sullivan, Taylor, Pankey, Pfiffner, and Tucker;
also SENATORS R. Powers, Ament, Bird, Bishop, Blickensderfer, Lacy, Mutzebaugh, Owens, Roberts, Schroeder, Tebedo, Traylor, Wattenberg, and Wells.

WHEREAS, The Constitution of the United States envisions sovereign states and guarantees the states a republican form of government in which decisions are made by the elected representatives of the people; and

WHEREAS, The state and local governments in Colorado are losing their power to act on behalf of their citizens, as the power of government is moving farther away from the people into the hands of federal agencies and officials who are not elected and who are unaware of the needs and concerns of Colorado and other states; and

WHEREAS, With increasing and alarming frequency important decisions affecting the lives of Colorado citizens are being made by the federal government in the form of both funded and unfunded federal mandates imposed on the states; and

WHEREAS, Congress fails to provide adequate means to implement many of the federal mandates directed to the states which places state governments in a vice that threatens to squeeze state resources beyond their limits; and

WHEREAS, Imposition of unfunded federal mandates requires states to fund the federal requirements with diminishing state revenues or jeopardize their eligibility for certain federal funds; and

WHEREAS, The states and Congress should engage in earnest discussions to resolve the difficult position that states are forced into by their efforts to comply with the growing number of unfunded federal mandates, because this trend could eliminate state flexibility to effectively deal with local problems as limited state resources are diverted to funding federally mandated programs; and

WHEREAS, Federal mandates threaten the fiscal integrity of the states and their right of self-determination; and

WHEREAS, The United States Advisory Commission on Intergovernmental Relations recommended in a July 1993 report that "the federal government institute a moratorium on mandates for at least two years and conduct a review of mandating to restore balance, partnership, and state and local self-government in the federal system" and that the "Supreme Court reexamine the constitutionality of mandating as a principle"; and

WHEREAS, Numerous federal laws impose mandates on the state of Colorado, including, but not limited to the following: Asbestos School Hazard Abatement Act; Family and Medical Leave Act; Safe Drinking Water Act; Clean Air Act; Americans with Disabilities Act; National Voter Registration Act; Title XIX of the federal "Social Security Act"; and Water Pollution Control Act; and

WHEREAS, The members of the Colorado General Assembly want the members of the Colorado congressional delegation to fully understand the impact the actions of the federal government have on the state of Colorado, especially the difficulties imposed on the General Assembly in its effort to allocate resources to a large number of pressing state needs; and

WHEREAS, The federal court system affords a means to liberate the states from the grip of federal mandates and to give the power to govern back to the people; now, therefore,

Be It Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

That legal action challenging the constitutionality of both funded and unfunded federal mandates, the court rulings that hinder state management of state issues, and the authority of the federal government to mandate state action is necessary to restore, maintain, and advance the state of Colorado's sovereignty and authority over issues that affect Colorado and the well-being of its citizens.

Be It Further Resolved, That the Colorado Attorney General examine and challenge by legal action, in the name of and on behalf of the state of Colorado, federal mandates, court rulings, the authority granted to or assumed by the federal government, and laws, regulations and practices of the federal government to the extent they infringe on the state of Colorado's sovereignty or authority over issues affecting its citizens.

Be It Further Resolved, That all of the states are urged to participate in any legal action brought pursuant to this joint resolution and that the Colorado Attorney General shall request and encourage such participation and shall cooperate with other states in any legal action that includes issues of joint concern.

Be It Further Resolved, That copies of this joint resolution be sent to the Attorney General and presiding officers of both houses of the legislatures of each of the states in the United States, the President of the United States, the Clerk of the United States House of Representatives, the Secretary of the United States Senate, and to each member of the Colorado Congressional Delegation.

APPENDIX G

Documents Concerning the Arizona Constitutional Defense Council

CHAPTER 2.1

CONSTITUTIONAL DEFENSE

ARTICLE 1. GENERAL PROVISIONS

Section
41-401. Constitutional defense council; members; powers; revolving fund; definition.

ARTICLE 1. GENERAL PROVISIONS

41-401. Constitutional defense council; members; powers; revolving fund; definition

A. The constitutional defense council is established consisting of the governor or his designee, a person appointed by the president of the senate and a person appointed by the speaker of the house of representatives.

B. The purpose of the council is restoring, maintaining, and advancing the state's sovereignty and authority over issues that affect this state and the well-being of its citizens by taking any action it deems appropriate.

C. Meetings of the council may be called by any member, and decisions of the council shall be made by a majority vote of the members.

D. The council may hold meetings or hearings regarding any of the following:

1. Federal mandates.
2. Court rulings.
3. The authority granted to, or assumed by, the federal government.
4. Laws, regulations and practices of the federal government.
5. Any other activity deemed appropriate given the purposes of the council.

E. The council may require the attorney general or his designee to provide testimony on potential legal actions that would enhance the state's sovereignty or authority on issues affecting this state and the well-being of its citizens.

F. By majority vote, the council may direct the attorney general to initiate and prosecute any action that the council determines will further its purposes.

G. Subject to the provisions of this section, the council may select and employ attorneys to implement the purposes of this chapter. The attorney general may direct or assist any council attorney in any manner deemed appropriate by the attorney general to best serve the purposes of the council. When requested by the council, agencies and departments of this state, except the department of law, shall provide reasonable personnel and resources to assist in any matter pursued by the council. The council shall not hire permanent staff.

H. At least annually, the council shall meet with the attorney general and compile a list of at least ten attorneys who they deem to be qualified to represent the council pursuant to this chapter. Only those attorneys who are named to this list may be employed by the council. Before being employed by the council, an attorney shall be approved by the attorney general, but that approval may not be unreasonably withheld.

I. The attorney general shall negotiate a contract for services with any attorney selected and approved for employment pursuant to this section.

J. A constitutional defense council revolving fund is established in the state treasury to be administered by the director of the department of administration under the conditions and for the purposes prescribed by this section. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations. Monies in the fund shall be used by the director of the department of administration to pay the fees and costs of legal actions initiated pursuant to subsection F or G of this section. The attorney general shall review and approve all claims for payment for legal services that are submitted to the director of the department of administration by the council or its attorneys.

K. On or before the fifteenth day of each month, the director of the department of administration shall cause to be filed with the council members and the attorney general a full and complete account of the receipts and disbursements for the constitutional defense council revolving fund for the preceding month. With five business days' notice, the council may order the attorney general or an attorney employed by the council to cease all work to be charged to the constitutional defense council revolving fund.

L. The constitutional defense council and the department of law are exempt from title 41, chapter 23, relating to the procurement code, for matters relating to the purposes of the council.

M. The council shall submit a report on December 1 of each year to the speaker of the house of representatives and the president of the senate that summarizes the council's activities.

N. In this section "council" means the constitutional defense council. 1994

THE CONSTITUTIONAL DEFENSE COUNCIL

EXECUTIVE SUMMARY

The Constitutional Defense Council is conceived as an organized effort to restore republican democracy in the United States through federal litigation on an entire range of issues.

In recent decades the power of the state has been concentrated in the federal government to an extent which would shock the founders of the American nation. As the 20th Century nears its conclusion, those who hold elective offices at the state and local levels are finding that distant command decisions by federal powers are destroying their constitutional authority to lead their states and communities.

The Constitutional Defense Council arises from the conviction that this continuing expansion of federal power violates the letter and the spirit of the U.S. Constitution.

Because the issues raised by this controversy lie at the very center of American political life, Arizona legislative leadership has agreed to seek an appropriation of $1 million to fund the initial activities of the Constitutional Defense Council.

Further, Gov. Fife Symington will immediately generate an executive order creating the Council, to be followed by a legislative effort to create the Council during the next regular session of the Arizona Legislature. The executive order will direct all state executive agencies to cooperate fully with the Council and its attorneys and provide whatever information, technical assistance and expertise which may be necessary to success.

The Department of Administration will adminster the funds and prepare contracts for legal services.

The Constitutional Defense Council will comprise the Governor, the Speaker of the House, the President of the Senate and the Arizona Attorney General.

The Council will retain legal counsel with an expertise in constitutional law and the requisite background in any area in which litigation is initiated. It will also name a lead attorney for Arizona to assist in devising and executing overall legal strategy. At this point an Arizona-based attorney and a Washington, D.C.-based attorney are envisioned.

The Office of the Governor will inform all fifty states of our intentions. The Constitutional Defense Council attorneys will work with other states who choose to form similar organizations to appear where feasible as co-plaintiffs for issues of multi-state importance.

Some of the constitutional issues which may be raised by the Constitutional Defense Council include the following:

- The constitutionality of unfunded federal mandates and federal mandates generally;

- The constitutionality of federal court rulings which purport to manage state prison systems and compel expenditure of limited state corrections funds on the purported rights of convicted felons;

- The constitutional authority of the Environmental Protection Agency and the U.S. Congress to mandate sate environmental requirements, including fiscal structures, and their ability to threaten penalties for technical non-compliance.

- The constitutional limits on the federal government to impose laws and regulations which abrogate water and private property rights, diminish state authority for management of public lands and irreparably damage local economies supported by mining, timber and ranching industries.

The July 1993 report of the U.S. Advisory Commission on Intergovernmental Relations calls for a two-year moratorium on federal mandates. Gov. Symington supports that recommendation.

The report also offered a conservative estimate of the cost to state and local governments of eleven federal regulatory statutes enacted since 1983 for which data is available: between $8.9 billion and $12.7 billion.

Finally, the report also called for reconsideration of the constitutionality of unfunded mandates, one of the principle missions of the Constitutional Defense Council.

EXECUTIVE ORDER 93-25

ESTABLISHING THE CONSTITUTIONAL DEFENSE COUNCIL

WHEREAS, the Constitution of the United States of America envisions sovereign states and guarantees the states a republican form of government in which decisions are made by the elected representatives of the people; and

WHEREAS, the state and local governments in Arizona are losing their power to better the lives of their citizens; and

WHEREAS, with increasing and alarming frequency important decisions affecting our lives are being made by the federal government in Washington; and

WHEREAS, federal mandates are being imposed on the states without accompanying tax dollars necessary to implement the mandated programs; and

WHEREAS, the impact of federal mandates threatens the fiscal integrity of our State as well as our right of self determination;

NOW, THEREFORE, I, Fife Symington, Governor of the State of Arizona, do hereby create the Constitutional Defense Council and delineate herein its structure and duties.

1. The Council shall consist of the Governor of the State of Arizona, the Speaker of the Arizona House of Representatives, the President of the Arizona State Senate and the Arizona Attorney General.

2. Meetings of the Council may be called by any member and decisions shall be based upon a majority vote of the members.

3. The Council shall:

   a. Seek a legislative appropriation of $1,000,000 to fund the Council.

   b. Hire legal counsel with expertise in constitutional law and the specific area under consideration for legal action.

   c. Utilize staff and resources within state agencies as designated by the Governor.

   d. Except as hereafter may be provided by the Governor, the State Department of Administration shall serve as administrative agent for the Council and the Governor's Office of Communications shall be responsible for public information and general press responsibilities.

4. The functions and purpose of the Council shall be:

   a. Examine the constitutionality of unfunded federal mandates and mandates in general.

   b. Challenge federal court rulings that hinder the management of Arizona's prison system and place undue financial hardship on Arizona's taxpayers.

   c. Examine the authority of the Environmental Protection Agency and Congress to mandate air quality standards and penalties.

d. Consider advisability of legal action against the federal government challenging laws or regulations which reduce or negate water rights or the rights of owners of private property.

e. Evaluate and consider legal action on conflicting federal regulations or policies in land management on federal lands.

f. Oppose federal intervention which would damage Arizona's mining, timber and ranching industries.

g. Engage in such other activities as may be consistent with the purpose of the Council.

5. This Order shall become effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

GOVERNOR

DONE at the Capitol in Phoenix this twenty-fourth day of November in the Year of Our Lord One Thousand Nine Hundred and Ninety-Three and of the Independence of the United States of America the Two Hundred and Seventeenth.

ATTEST:
Secretary of State

APPENDIX H

The Congressional Delegation Mandate Consultation Act
An ALEC Model Resolution

Congressional Delegation Mandate Consultation Act

Whereas the number of unfunded federal mandates imposed upon the states by the United States Congress has alarmingly increased in recent years; and

Whereas this continuing imposition places (state)and her sister states in the precarious position of either attempting to fund the federal requirements with diminishing amounts of available revenue or jeopardizing eligibility for certain federal funds; and

Whereas states and the United States Congress should engage in earnest discussions regarding the difficult posture in which the states have been cast and the urgent necessity of the states to receive monetary assistance for these mandates or relief from the enforcement of these unfunded mandates; and

Whereas the members of the legislature of (state)desire to personally communicate with the (state)delegation to the United States Congress concerning this critical problem so that our representatives may be completely cognizant of the effect the actions of the federal government have at the state legislative level and may be more sensitive to the difficulties unfunded federal mandates create; now therefore

Be it resolved by the legislature of (state), both houses thereof concurring, that all members of the (state)Delegation to the United States Congress are respectfully requested to annually appear before a joint session of the legislature of (state)to discuss the problems related to unfunded federal mandates as well as discuss the new burdens that have been imposed by the federal government on the state.

Be it resolved that the Clerk of the House of Representatives, by copy of this resolution, advise each member of the (state)congressional Delegation of this invitation and of our hopeful anticipation of their acceptance.

APPENDIX I

Kansas Senate Concurrent Resolution No. 1620 (1994)

CHAPTER 368

SENATE CONCURRENT RESOLUTION No. 1620

A CONCURRENT RESOLUTION requesting the Congress of the United States to propose for ratification by the states an amendment to the Constitution of the United States requiring the federal government to pay costs incurred by states in providing programs and services mandated or required by the federal government.

WHEREAS, States are finding it increasingly difficult to provide for the financing of costs of basic programs and services required under the constitutions and laws of such states; and

WHEREAS, Each year states are required to establish additional programs and services or to expand existing programs and services in accordance with standards prescribed by the federal government; and

WHEREAS, Revenue sources available to states are not expanding in such a manner as to permit the financing of both basic state programs and services and programs and services mandated by the federal government; and

WHEREAS, Under Article V of the constitution of the United States, congress may propose amendments to the constitution of the United States for ratification by the states: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Legislature of the State of Kansas hereby requests the congress of the United States to propose and submit to the states for ratification an amendment to the constitution of the United States, in accordance with Article V of the Constitution of the United States, requiring the federal government to pay all costs incurred by states in establishing new programs and services or expanding existing programs and services mandated by the federal government; and

Be it further resolved: That the Legislature of each of the other states in the union is hereby urged to request the congress of the United States to propose and submit to the states for ratification an amendment to the constitution of the United States, for such purpose; and

Be it further resolved: That the Secretary of State be directed to send enrolled copies of this resolution to the Secretary of the United States Senate, the Clerk of the United States House of Representatives, each member of the Kansas delegation in the Congress of the United States and the Secretary of State and to the secretary of state and the presiding officers of each house of the Legislature of each of the several states of the United States.

Adopted by the House March 17, 1994.

Adopted by the Senate March 9, 1994.

APPENDIX J

Colorado House Joint Resolution No. 94-1011
and
Colorado Senate Bill No. 94-157

HOUSE JOINT RESOLUTION 94-1011

BY REPRESENTATIVES Ratterree, Acquafresca, Adkins, Agler, Allen, Berry, Blue, Chlouber, Coffman, Eisenach, Entz, Epps, Fleming, Foster, Friednash, George, Grampsas, Hagedorn, Jerke, June, Kaufman, Keller, Kerns, Kreutz, Lawrence, Martin, May, Moellenberg, Morrison, Owen, Pankey, Pfiffner, Pierson, Prinster, Reeser, Reeves, Schauer, Shoemaker, Snyder, Strom, Sullivan, Taylor, and Tucker;
also SENATORS R. Powers, Blickensderfer, Hopper, Johnson, Lacy, Mutzebaugh, Norton, Rizzuto, Roberts, Schroeder, Tebedo, and Traylor.

WHEREAS, Several mechanisms were created in the 1980's to help limit the growth in federal regulation of state governments, including the congressional fiscal note requirements, the federal "Paperwork Reduction Act of 1980", and the federal "Regulatory Flexibility Act"; and

WHEREAS, While these mechanisms offered potential for limiting and mitigating the federal regulation burdens of state governments, the mechanisms were not perfect and the growth of mandates has continued at a rapid pace; and

WHEREAS, Between 1981 and 1990, the Congress of the United States enacted twenty-seven new laws or major amendments that added significant requirements for state and local governments; and

WHEREAS, House Joint Resolution 93-1012, enacted at the first regular session of the fifty-ninth general assembly, continued the activities of the Federal Budget Task Force; and

WHEREAS, The Federal Budget Task Force has been authorized to continue the study of the impact of a reordering of federal government budget priorities on Colorado in light of probable reductions in the federal budget; and

WHEREAS, A survey of Colorado state departments identified

one hundred ninety-five federal programs containing mandates for state or local governments, over one hundred of which contained direct orders for which noncompliance will result in sanctions or the loss of federal aid; and

WHEREAS, The Federal Budget Task Force has met on three occasions during the 1993 legislative interim and has made its recommendations to the governor and the general assembly no later than the required reporting date of January 1, 1994; and

WHEREAS, In Colorado's 1993 fiscal year, $793.9 million or 11.9 percent of the total state budget and $715.8 million or 23.2 percent of general fund spending were to comply with federal mandates or conditions of aid; and

WHEREAS, The Congress is currently considering at least sixty bills that contain some form of mandates or requirements for state or local governments; now, therefore,

Be It Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

(1) That state departments identify those bills pending in Congress and regulations to be prepared within the executive branch of the federal government that may have significant effects on state governments;

(2) That state departments press committees and subcommittees of Congress responsible for the identified bills to consider the effect on state and local governments;

(3) That state departments call for the preparation of fiscal notes by the congressional budget office on significant provisions of those bills before final subcommittee and committee action;

(4) That state governments educate the public about the impact of federal regulation on state and local governments and their respective budgets;

(5) That federal, state, and local governments continue to evaluate ways to improve regulatory relief mechanisms and give high priority to the development of a more effective, efficient, and equitable intergovernmental partnership to achieve shared objectives with minimal unilateral and costly

regulation.

Be It Further Resolved, That copies of this resolution be sent to the Secretary of State eacn of the several states in the Union to disburse to the Speaker of the House and the President of the Senate of the state legislature, the Clerk of the United States House of Representatives, the Secretary of the United States Senate, and to each member of the Colorado Congressional Delegation.

Charles E. Berry
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Tom Norton
PRESIDENT OF THE
SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Joan M. Albi
SECRETARY OF
THE SENATE

An Act

SENATE BILL 94-157

BY SENATORS Norton, R. Powers, Wells, Bird, Bishop, Hopper, Johnson, Meiklejohn, Rizzuto, Roberts, Schroeder, Tebedo, Traylor, and Wattenberg;
also REPRESENTATIVES Berry, Acquafresca, Adkins, Agler, Allen, Anderson, Chlouber, Epps, Fleming, George, Jerke, Kreutz, Lawrence, May, Moellenberg, Morrison, Owen, Pfiffner, Schauer, Taylor, and Tucker.

CONCERNING THE IMPLEMENTATION OF FEDERAL MANDATES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 78
Federal Mandates Act

PART 1
IMPLEMENTATION OF FEDERAL MANDATES

24-78-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "FEDERAL MANDATES ACT".

24-78-102. Legislative declaration. (1) (a) IN ENACTING THIS ARTICLE, THE GENERAL ASSEMBLY EMPLOYS ITS LEGISLATIVE AUTHORITY TO ESTABLISH THAT THE PEOPLE OF THE STATE OF COLORADO, ACTING THROUGH THEIR ELECTED OFFICIALS IN COLORADO STATE GOVERNMENT, HAVE THE RESPONSIBILITY AND AUTHORITY TO ESTABLISH POLICY IN AND FOR COLORADO PERTAINING TO FEDERAL PROGRAMS MANDATED IN FEDERAL STATUTES.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) THE INTENT OF THE GENERAL ASSEMBLY IS TO ASSURE THE PRIMACY OF THE STATE OF COLORADO'S LEGAL AND POLITICAL AUTHORITY TO IMPLEMENT IN AND FOR COLORADO THE POLICY MANDATED BY FEDERAL STATUTES AND TO VIGOROUSLY CHALLENGE AND SCRUTINIZE THE EXTENT AND SCOPE OF AUTHORITY ASSERTED BY FEDERAL EXECUTIVE BRANCH AGENCIES WHEN FEDERAL AGENCY ACTIONS AND INTERPRETATIONS ARE INCONSISTENT WITH COLORADO POLICY AND EXCEED THE LAWFUL AUTHORITY OF THE FEDERAL GOVERNMENT OR ARE NOT REQUIRED BY FEDERAL LAW.

(c) IN THIS CONNECTION THE COLORADO GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(I) THE POWER TO IMPLEMENT FEDERAL POLICIES IN AND FOR COLORADO IS CENTRAL TO THE ABILITY OF THE PEOPLE OF COLORADO TO GOVERN THEMSELVES UNDER A FEDERAL SYSTEM OF GOVERNMENT; AND

(II) ANY IMPLEMENTATION OF FEDERAL POLICIES IN AND FOR COLORADO BY FEDERAL EXECUTIVE BRANCH AGENCIES THAT IS CONTRARY TO FUNDAMENTAL NOTIONS OF FEDERALISM AND SELF-DETERMINATION MUST BE IDENTIFIED AND COUNTERED.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) THERE IS AN URGENT NEED TO MODIFY FEDERAL MANDATES BECAUSE THE IMPLEMENTATION OF THESE MANDATES BY THE STATE WASTES THE FINANCIAL RESOURCES OF LOCAL GOVERNMENTS, THE CITIZENS OF COLORADO, AND THE STATE AND DOES NOT PROPERLY RESPECT THE RIGHTS OF THE STATE, LOCAL GOVERNMENTS, AND CITIZENS.

(b) THE STATE GOVERNMENT HAS AN OBLIGATION TO THE PUBLIC TO DO WHAT IS NECESSARY TO PROTECT THE RIGHTS OF COLORADO CITIZENS UNDER FEDERAL LAW WHILE MINIMIZING OR ELIMINATING ANY ADDITIONAL COST OR REGULATORY BURDEN ON ANY CITIZEN OF THE STATE.

(c) THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION DIRECTS THAT POWERS THAT ARE NOT DELEGATED TO THE UNITED STATES ARE RESERVED TO THE STATES OR TO THE PEOPLE. COLORADO, AS ONE OF THE SOVEREIGN STATES WITHIN THE UNION, HAS CONSTITUTIONAL AUTHORITY TO ENACT LAWS PROTECTING THE ENVIRONMENT OF THE STATE AND SAFEGUARDING THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE CITIZENS OF COLORADO. HOWEVER, THIS AUTHORITY HAS TOO OFTEN BEEN IGNORED BY THE FEDERAL GOVERNMENT, AS THE FEDERAL GOVERNMENT HAS INTRUDED MORE AND MORE INTO AREAS THAT MUST BE LEFT TO THE STATES. IT IS ESSENTIAL THAT THE DILUTION OF THE AUTHORITY OF STATE AND LOCAL GOVERNMENTS BE HALTED AND THAT THE PROVISIONS OF THE TENTH AMENDMENT BE ACCORDED PROPER RESPECT.

(d) CURRENT FEDERAL REGULATORY MANDATES, AS REFLECTED IN FEDERAL ADMINISTRATIVE REGULATIONS, GUIDELINES, AND POLICIES, OFTEN DO NOT REFLECT THE REALITIES OF THE ROCKY MOUNTAIN REGION, AND FEDERAL REGULATORS FREQUENTLY DO NOT UNDERSTAND THE NEEDS AND PRIORITIES OF THE CITIZENS OF COLORADO.

(e) THE CITIZENS OF THIS STATE CAN CREATE AND WISH TO CREATE INNOVATIVE SOLUTIONS TO COLORADO'S PROBLEMS, BUT THE CURRENT MANNER IN WHICH LEGAL CHALLENGES TO STATE POLICIES AND FEDERAL PROGRAMMATIC SUBSTITUTIONS OF STATE PROGRAMS ARE HANDLED DOES NOT ALLOW THE STATE THE FLEXIBILITY IT NEEDS. IT IS NOT POSSIBLE FOR THE STATE OF COLORADO TO EFFECTIVELY AND EFFICIENTLY IMPLEMENT THE PROVISIONS OF FEDERAL STATUTES UNLESS THE BURDEN TO PROVE THE INSUFFICIENCY OF THE STATE'S EFFORTS TO IMPLEMENT FEDERAL REQUIREMENTS IS SHIFTED TO THE PERSON OR AGENCY WHO ASSERTS SUCH INSUFFICIENCY.

(f) THE PROVISIONS OF THIS ARTICLE WILL BETTER BALANCE THE EXERCISE OF THE POWERS OF THE FEDERAL GOVERNMENT AND THE POWERS RESERVED TO THE STATES. IN ADDITION, THE APPLICATION OF THIS ARTICLE ULTIMATELY WILL BRING ABOUT GREATER PROTECTION FOR THE STATE AND THE NATION, BECAUSE IT WILL DIRECT THE STATE TO IMPLEMENT FEDERAL STATUTES AT THE LEAST POSSIBLE COST, THEREBY FREEING MORE MONEYS FOR OTHER NEEDS.

(g) THE PURPOSE OF THIS PART 1 IS TO ENSURE THAT FEDERAL MANDATES IMPLEMENTED IN COLORADO COMPLY WITH STATE POLICY AS ESTABLISHED BY THE GENERAL ASSEMBLY.

24-78-103. Definitions. AS USED IN THIS PART 1, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "EXECUTIVE COMMITTEE" MEANS THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL ESTABLISHED PURSUANT TO SECTION 2-3-301 (1), C.R.S.

(2) "FEDERAL STATUTE" MEANS A FEDERAL STATUTE THAT IS IN ACCORD WITH THE UNITED STATES CONSTITUTION IMPOSING MANDATES ON STATE OR LOCAL GOVERNMENTS, WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) THE FEDERAL "SAFE DRINKING WATER ACT", 42 U.S.C. SEC. 300f, ET SEQ., AS AMENDED;

(b) THE FEDERAL "CLEAN AIR ACT", 42 U.S.C. SEC. 7401, ET SEQ., AS AMENDED;

(c) THE "FEDERAL WATER POLLUTION CONTROL ACT", 33 U.S.C. SEC. 1251, ET SEQ., AS AMENDED;

(d) THE FEDERAL "SOLID WASTE DISPOSAL ACT", 42 U.S.C. SEC. 3251, ET SEQ., AS AMENDED;

(e) THE FEDERAL "RESOURCE CONSERVATION AND RECOVERY ACT OF 1976", 42 U.S.C. SEC. 6901, ET SEQ., AS AMENDED;

(f) THE FEDERAL "COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980", 42 U.S.C. SEC. 9601, ET

SEQ.. AS AMENDED:

(g) THE FEDERAL "SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986", P.L. 99-499, AS AMENDED;

(h) THE FEDERAL "ENDANGERED SPECIES ACT OF 1973", 16 U.S.C. SEC. 1531, ET SEQ., AS AMENDED;

(i) THE FEDERAL ASBESTOS SCHOOL HAZARD ABATEMENT STATUTE, 20 U.S.C. SEC. 4011, ET SEQ., AS AMENDED;

(j) THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT OF 1993", P.L. 101-336, AS AMENDED;

(k) THE FEDERAL "COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986", 49 U.S.C. SEC. 2501, AS AMENDED;

(l) THE FEDERAL "FAMILY AND MEDICAL LEAVE ACT OF 1993", P.L. 103-3, AS AMENDED;

(m) THE FEDERAL "EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT", P.L. 99-145 AND 99-499, AS AMENDED;

(n) THE FEDERAL, STATE, AND LOCAL PARTNERSHIP FOR EDUCATION IMPROVEMENT PROGRAM, 20 U.S.C. SEC. 1751, ET SEQ., AS AMENDED;

(o) THE FEDERAL "NATIONAL VOTER REGISTRATION ACT OF 1993", P.L. 103-31, AS AMENDED;

(p) THE FEDERAL SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM, 42 U.S.C. SECS. 1751 AND 1773, AS AMENDED;

(q) THE FEDERAL SOCIAL SERVICES AND MEDICAID REQUIREMENTS, 42 U.S.C. SEC. 1396, AS AMENDED;

(r) FEDERAL HIGHWAY SAFETY PROGRAMS;

(s) THE FEDERAL "INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991", P.L. 102-240, AS AMENDED.

(3) "JOINT BUDGET COMMITTEE" MEANS THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY ESTABLISHED PURSUANT TO SECTION 2-3-201 (1), C.R.S.

24-78-104. State programs to implement federal statutes. (1) ANY STATE OFFICER, OFFICIAL, OR EMPLOYEE CHARGED WITH THE DUTY OF IMPLEMENTING ANY FEDERAL STATUTE SHALL IMPLEMENT THE LAW AS REQUIRED BY THE FEDERAL STATUTE IN GOOD FAITH AND EXERCISING A CRITICAL VIEW TOWARD THE PROVISIONS OF ANY FEDERAL REGULATION, GUIDELINE, OR POLICY IN ORDER TO IDENTIFY THOSE PROVISIONS OF ANY FEDERAL REGULATION, GUIDELINE, OR POLICY THAT ARE INCONSISTENT WITH COLORADO POLICY OR DO NOT ADVANCE COLORADO POLICY IN A

COST-EFFECTIVE MANNER.

(2) ANY AGENCY OF THE EXECUTIVE DEPARTMENT OF STATE GOVERNMENT THAT IS AUTHORIZED TO DEVELOP A STATE PROGRAM TO RESPOND TO ANY MANDATES CONTAINED IN A FEDERAL STATUTE SHALL DEVELOP THE STATE PROGRAM AND PROMULGATE ANY NECESSARY REGULATIONS USING THE FOLLOWING CRITERIA:

(a) STATE PROGRAMS SHOULD BE DEVELOPED BY THE STATE AGENCY TO MEET THE REQUIREMENTS OF FEDERAL STATUTES IN GOOD FAITH WITH A CRITICAL VIEW TOWARD ANY FEDERAL REGULATIONS, GUIDELINES, OR POLICIES.

(b) STATE PROGRAMS SHOULD BE DEVELOPED WITH DUE CONSIDERATION OF THE FINANCIAL RESTRAINTS OF LOCAL GOVERNMENTS, THE CITIZENS OF COLORADO, AND THE STATE, INCLUDING THE LIMITATIONS IMPOSED BY SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(c) ANY STATE PROGRAM THAT IMPLEMENTS THE GOALS OF THE FEDERAL STATUTE SHOULD USE THE MOST EFFICIENT METHOD POSSIBLE, WITH CAREFUL CONSIDERATION GIVEN TO COST OF THE PROGRAM AND THE IMPACT OF THE PROGRAM ON COLORADO CITIZENS AND LOCAL GOVERNMENTS, AND THE LONG-RANGE PUBLIC HEALTH, SAFETY, AND WELFARE OF CITIZENS OF THE STATE.

24-78-105. Joint budget committee - reports to the executive committee - budgetary savings. (1) THE JOINT BUDGET COMMITTEE SHALL REPORT TO THE EXECUTIVE COMMITTEE REGARDING THE PROPOSED IMPLEMENTATION OF THIS SECTION.

(2) (a) IF ANY STATE PROGRAM IS AUTHORIZED OR MANDATED BY A FEDERAL STATUTE, NO STATE APPROPRIATIONS FOR THE PROGRAM SHALL BE ENACTED UNLESS:

(I) THE STATE PROGRAM IS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE;

(II) THE STATE PROGRAM IS NECESSARY TO IMPLEMENT THE FEDERAL STATUTE;

(III) THE OPERATION OF THE STATE PROGRAM BENEFITS THE STATE BY PROVIDING A COST-EFFECTIVE IMPLEMENTATION OF THE FEDERAL STATUTE BY THE STATE, BY LOCAL GOVERNMENT, AND BY BUSINESS; OR

(IV) THE STATE PROGRAM BENEFITS THE STATE, LOCAL GOVERNMENT, AND BUSINESS BY PROVIDING A COST-EFFECTIVE MEANS TO MEET A HIGHER PUBLIC HEALTH, SAFETY, AND WELFARE STANDARD ESTABLISHED UNDER STATE LAW.

(b) EACH STATE AGENCY MAKING A BUDGET REQUEST FOR STATE APPROPRIATIONS FOR A STATE PROGRAM AUTHORIZED OR MANDATED BY FEDERAL STATUTE SHALL INCLUDE IN ITS BUDGET REQUEST CITATIONS TO

THE FEDERAL CONSTITUTIONAL PROVISIONS AND THE STATE CONSTITUTIONAL OR STATUTORY PROVISIONS THAT AUTHORIZE THE STATE PROGRAM. THE JOINT BUDGET COMMITTEE SHALL REVIEW THE BUDGET REQUEST AND DETERMINE WHETHER ADDITIONAL STATE STATUTORY AUTHORITY IS REQUIRED IN ORDER TO IMPLEMENT THE STATE PROGRAM AND SHALL MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY AND THE EXECUTIVE COMMITTEE THEREON.

(c) THE GENERAL ASSEMBLY, AFTER RECEIVING A RECOMMENDATION FROM THE JOINT BUDGET COMMITTEE AND THE EXECUTIVE COMMITTEE, SHALL DETERMINE WHETHER A STATE PROGRAM IS NECESSARY AND WHETHER FEDERAL CONSTITUTIONAL AUTHORITY AND STATE CONSTITUTIONAL OR STATUTORY AUTHORITY EXIST. THE GENERAL ASSEMBLY SHALL EXERCISE A CRITICAL VIEW TOWARD THE INTERPRETATION OF THE FEDERAL STATUTE FOUND IN FEDERAL REGULATIONS, GUIDELINES, OR POLICIES. ENACTMENT OF STATE APPROPRIATIONS FOR A STATE PROGRAM SHALL CONSTITUTE THE GENERAL ASSEMBLY'S DETERMINATION THAT THE STATE PROGRAM IS NECESSARY AND THAT FEDERAL CONSTITUTIONAL AUTHORITY AND STATE CONSTITUTIONAL OR STATUTORY AUTHORITY EXIST. STATE APPROPRIATIONS MAY NOT BE BASED SOLELY ON REQUIREMENTS FOUND IN REGULATIONS, GUIDELINES, OR POLICIES OF A FEDERAL AGENCY.

(d) PRIOR TO RECOMMENDING TO THE GENERAL ASSEMBLY ANY BUDGET FOR A STATE AGENCY THAT IS CHARGED WITH IMPLEMENTING FEDERAL MANDATES, THE OFFICE OF STATE PLANNING AND BUDGETING AND THE JOINT BUDGET COMMITTEE SHALL REQUIRE THAT THE STATE AGENCY PROVIDE INFORMATION REGARDING ANY MONETARY SAVINGS FOR THE STATE AND ANY REDUCTION IN REGULATORY BURDENS ON THE PUBLIC AND ON LOCAL GOVERNMENTS THAT COULD BE OR HAVE BEEN ACHIEVED THROUGH THE DEVELOPMENT OF STATE POLICIES THAT MEET THE INTENT OF THE FEDERAL STATUTE BUT DO NOT NECESSARILY FOLLOW ALL APPLICABLE FEDERAL REGULATIONS, GUIDELINES, OR POLICIES. THE STATE AGENCY SHALL ALSO PROVIDE ADVICE TO THE OFFICE OF STATE PLANNING AND BUDGETING AND THE JOINT BUDGET COMMITTEE REGARDING ANY CHANGES IN STATE STATUTES THAT ARE NECESSARY TO PROVIDE THE STATE AGENCY THE AUTHORITY TO IMPLEMENT STATE POLICIES IN SUCH A WAY AS TO CREATE ADDITIONAL SAVINGS OR GREATER REDUCTIONS IN REGULATORY BURDENS. THE OFFICE OF STATE PLANNING AND BUDGETING SHALL REVIEW AND COMPILE THE INFORMATION RECEIVED FROM STATE AGENCIES PURSUANT TO THIS SECTION AND SHALL INCLUDE RECOMMENDATIONS IN ITS ANNUAL BUDGET REQUEST TO THE JOINT BUDGET COMMITTEE BASED UPON SUCH INFORMATION.

(3) FOR PURPOSES OF THIS SECTION, "STATE PROGRAM" DOES NOT INCLUDE ANY PORTION OF A PROGRAM THAT IS FUNDED WITH NON-TAX OR NON-FEE REVENUES, OR BOTH, WHICH STATE AUTHORITIES ARE REQUIRED TO ADMINISTER IN A TRUSTEESHIP OR CUSTODIAL CAPACITY AND WHICH ARE NOT SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY.

PART 2
EXERCISE OF STATE AUTHORITY

24-78-201. Requests for information regarding federal

mandates. (1) THE STAFF OF THE LEGISLATIVE COUNCIL AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL JOINTLY PREPARE ONE OR MORE REQUESTS FOR INFORMATION REGARDING FEDERAL MANDATES ON OR BEFORE AUGUST 30, 1994. THE REQUESTS FOR INFORMATION SHALL BE DIRECTED TO PERSONS INVOLVED WITH OR AFFECTED BY FEDERAL MANDATES. INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(a) PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION BOTH WITHIN AND OUTSIDE OF COLORADO AND INDIVIDUALS IN SUCH INSTITUTIONS WHO HAVE DEVELOPED A HIGH DEGREE OF EXPERTISE IN THE SUBJECTS OF FEDERALISM AND FEDERAL MANDATES;

(b) ATTORNEYS IN PRIVATE PRACTICE WHO HAVE DEALT WITH FEDERAL MANDATE LITIGATION OR RESEARCH; AND

(c) ORGANIZATIONS AND FOUNDATIONS THAT HAVE AN INTEREST IN THE ISSUES OF FEDERALISM AND THE IMPOSITION OF FEDERAL MANDATES ON STATE AND LOCAL GOVERNMENTS.

(2) THE ISSUES ADDRESSED IN THE REQUESTS FOR INFORMATION ISSUED PURSUANT TO THIS SECTION SHALL INCLUDE THE FOLLOWING:

(a) IDENTIFICATION OF FEDERAL MANDATES EXPRESSING BROAD FEDERAL POLICIES THAT WOULD BEST BE IMPLEMENTED ON A STATE-BY-STATE BASIS OR THAT COULD BE RESISTED BECAUSE OF THE UNIQUE CIRCUMSTANCES THAT ARE PRESENT IN EACH STATE AND BECAUSE OF THE UNNECESSARY BURDENS THAT ARE CREATED BY FEDERAL REGULATIONS AND POLICIES;

(b) LEGAL THEORIES THAT SUPPORT THE RIGHT OF EACH STATE TO IMPLEMENT OR OPPOSE FEDERAL MANDATES PURSUANT TO THE STATE'S OWN POLICIES;

(c) PRACTICAL METHODS, INCLUDING THE ENACTMENT OF ANY STATE LEGISLATION, BY WHICH THE STATE MAY FULLY EXERCISE ITS AUTHORITY IN THE IMPLEMENTATION OF FEDERAL MANDATES;

(d) RECOMMENDATIONS REGARDING FEDERAL LEGISLATION THAT WOULD ENSURE THAT THE STATES HAVE THE NECESSARY AUTHORITY TO IMPLEMENT FEDERAL DIRECTIVES IN A MANNER THAT IS CONSISTENT WITH STATE POLICY AND IS SUITED TO THE NEEDS OF EACH STATE; AND

(e) POSSIBLE FUNDING SOURCES FOR FEDERAL MANDATE EFFORTS AND OPPORTUNITIES FOR THE STATE OF COLORADO TO MATCH OTHER FUNDING SOURCES OR TO COOPERATE WITH OTHER ENTITIES IN WORKING TOWARDS FEDERAL MANDATE SOLUTIONS.

(3) THE REQUESTS FOR INFORMATION PREPARED PURSUANT TO THIS SECTION SHALL REQUIRE THAT THE INITIAL RESPONSES BE RECEIVED BY THE STAFF OF THE LEGISLATIVE COUNCIL AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES BY OCTOBER 15, 1994. THE STAFF OF THE LEGISLATIVE COUNCIL AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES MAY PREPARE

ADDITIONAL REQUESTS FOR INFORMATION TO FOLLOW UP AND OBTAIN FURTHER DETAILS REGARDING THE INITIAL RESPONSES THAT WERE RECEIVED.

24-78-202. Report by the staff of the legislative council and the office of legislative legal services regarding federal mandates - recommendations. (1) THE STAFF OF THE LEGISLATIVE COUNCIL AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL EXAMINE THE INFORMATION RECEIVED THROUGH THE REQUESTS FOR INFORMATION PREPARED PURSUANT TO SECTION 24-78-201 AND, BASED UPON SUCH INFORMATION, SHALL JOINTLY PRESENT A REPORT TO THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL ON OR BEFORE DECEMBER 1, 1994, THAT INCLUDES THE FOLLOWING:

(a) RECOMMENDATIONS TO THE EXECUTIVE COMMITTEE REGARDING:

(I) CONTRACTS THAT THE EXECUTIVE COMMITTEE MAY ENTER INTO WITH SPECIFIED PERSONS OR ENTITIES TO CONDUCT RESEARCH, TO ANALYZE CERTAIN SUBJECTS, OR TO PROVIDE OTHER SERVICES REGARDING FEDERAL MANDATES; OR

(II) A REQUEST FOR PROPOSALS PROCESS TO OBTAIN BIDS FOR CONTRACTS TO PROVIDE SERVICES REGARDING FEDERAL MANDATES WITH THE INTENT THAT THE CONTRACTS BE ENTERED INTO ON OR BEFORE FEBRUARY 1, 1995, AND THAT THE RESULTS OF ANY RESEARCH OR ANALYSIS PERFORMED UNDER SUCH CONTRACTS BE RECEIVED BY THE EXECUTIVE COMMITTEE ON OR BEFORE JULY 1, 1995; AND

(b) ESTIMATES OF THE COST OF THE FEDERAL MANDATE EFFORTS RECOMMENDED BY THE STAFF OF THE LEGISLATIVE COUNCIL AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES UNDER THE PROVISIONS OF THIS SECTION AND RECOMMENDATIONS REGARDING ANY POSSIBLE PUBLIC AND PRIVATE SOURCES OF MONEYS TO FUND SUCH EFFORTS, INCLUDING ANY APPROPRIATIONS BY THE GENERAL ASSEMBLY THAT MAY BE REQUIRED.

24-78-203. Severability. IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE DECLARED TO BE SEVERABLE.

SECTION 2. 2-3-203 (1), Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2-3-203. Powers and duties. (1) The committee has the following powers and duties:

(f) TO ENFORCE THE REQUIREMENTS OF THE "FEDERAL MANDATES ACT", ARTICLE 78 OF TITLE 24, C.R.S., IN THE BUDGETING PROCESS PURSUANT TO THE REQUIREMENTS OF SECTION 24-78-105 (2), C.R.S.

SECTION 3. 2-3-303 (2), Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2-3-303. Functions. (2) In addition to any other powers and duties set forth in law, the executive committee shall have the following powers and duties:

(e) TO OVERSEE THE IMPLEMENTATION OF THE "FEDERAL MANDATES ACT", ARTICLE 78 OF TITLE 24, C.R.S., PURSUANT TO THE REQUIREMENTS OF SECTION 24-78-105 (1), C.R.S.

SECTION 4. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state money is necessary to carry out the purposes of this act.

SECTION 5. Effective date - applicability. This act shall take effect upon passage and shall apply to any state regulation promulgated on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety

Tom Norton
PRESIDENT OF
THE SENATE

Charles E. Berry
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan M. Albi
SECRETARY OF
THE SENATE

Judith M. Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED June 1, 1994 at 1:34 P.M.

Roy Romer
GOVERNOR OF THE STATE OF COLORADO

SENATE BILL 94-157

APPENDIX K

ALEC Ad Hoc Committee on State Sovereignty
August 4 and 5, 1994
Minutes

The powers not delegated to the United States, by the Constitution,
nor prohibited by it to the States,
are reserved to the States, respectively, or to the people.
- The 10th Amendment of the U.S. Constitution.

ALEC Ad Hoc Committee on State Sovereignty

August 4 & 5, 1994
Tampa, Florida

Minutes

The second 1994 meeting of the ALEC Ad Hoc Committee on State Sovereignty was held in conjunction with ALEC's Annual Meeting in Tampa, Florida -- August 4th and 5th. The meeting was called by Representative Brenda Burns (AZ). Those in attendance included:

Legislators:
Representative Brenda Burns (AZ)
Senator Brad Gorham, (RI)
Representative David Halbrook (MS)
Representative Donna Jones (ID)
Senator Jim Neal (DE)
Representative Carolyn Oakley (OR)
Senator Tom Patterson (AZ)
Senator Dean Rhoads (NV)

Private Sector:
Pete Poynter, BellSouth Tecommunications Inc.
Alan Smith, Nationwide Insurance Companies
Russell Smoldon, Salt River Project

Arizona Staff
Molly Greene, Special Assistant to the Majority Leadership

ALEC
Wendell Cox, Director of State Policy & Legislation
Tracey Pribble, Senior Legislator Director

- The first item of business was a discussion on the need to change the ad hoc committee's name, *ALEC Board Committee on States' Constitutional Defense*, due to concern that it had a "defensive" connotation. The ad hoc committee adopted the new name of *ALEC Board Committee on State Sovereignty*.

- The next item of business was the review of the *ALEC State Sovereignty Strategy Draft Proposal. (See attached copy.)* Representative Burns requested that ad hoc committee members forward any background information on federal mandates to Tracey Pribble so that they may be

considered in the development of the final draft proposal to be reviewed by committee members prior to the next scheduled ad hoc committee meeting.

As part of the *ALEC State Sovereignty Strategy*, ALEC staff was directed to develop a Congressional Candidates Federal Mandate Opposition Card to be reviewed by the ad hoc committee. *(See attached draft.)*

■ The final item of business was the ad hoc committee's review and consideration of several pieces of proposed ALEC State Sovereignty model legislation.

- ☐ Resolution to Restate State Sovereignty
- ☐ Constitutional Defense Council Act
- ☐ Congressional Delegation Mandate Consultation Act
- ☐ Federal Mandate/Federal Encroachment on State Sovereignty Act
- ☐ Sagebrush Rebellion Act
- ☐ Resolution Opposing Federal Withholding, Withdrawal of Federal Funds
- ☐ Memorializes Congress to Call a Limited Constitutional Convention
- ☐ Resolution to Limit Federal Regulation of State Governments
- ☐ Resolution to Challenge the Constitutionality of Federal Mandates

The committee adopted, as amended, four pieces of the above proposed model legislation. These four pieces of legislation will serve as the core legislative elements to ALEC State Sovereignty Strategy and will be included in the *ALEC 1995-1996 Source Book*. Please note: The Federal Mandate/Federal Encroachment on State Sovereignty Auditor Act was adopted to offer states alternative language to the Joint Legislative Committee on Federal Mandates Act.

1. Resolution to Restate State Sovereignty
This resolution restates state sovereignty under the 10th Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the U.S. Constitution. *(See attached copy.)*

2. Constitutional Defense Council Act
This Act establishes a Council that may examine and challenge by legal action, legislation or any other legal means --- federal mandates, court rulings, authority assumed by federal government. *(See attached copy.)*

3. Joint Legislative Committee on Federal Mandates Act
This Act establishes a committee to review, each year, the activities of Congress and the federal government including court rulings, with regard to any laws, regulations or other actions that may require the state to comply with federal mandates. *(See attached copy.)*

4. Federal Mandate/Federal Encroachment on State Sovereignty Auditor Act
This Act designates a federal mandate federal encroachment on State Sovereignty Auditor to complete an inventory each year of federal mandates and federal encroachment on state sovereignty. *(See attached copy.)*

Proposed
August 4, 1994

The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ALEC STATE SOVEREIGNTY STRATEGY

THE PROBLEM

The federal government has usurped powers that constitutionally reside with the states. Despite court interpretations, the 10th Amendment continues to say today what it said when it was adopted. The problem is much greater than unfunded federal mandates. As government has become more remote it has become less responsive and more the captive of special interests. The principle that government should be close to the people is at least as important today as it was when the 10th Amendment was adopted. States must reassert their sovereignty under the Constitution.

State authority has been eroded primarily by three developments.

(1) Federal assumption of powers reserved to the states under the 10th Amendment.

(2) Interpretations of the "commerce clause" which go beyond any reasonable conception, and in effect authorize federal pre-emption with respect to any issue for which some faint or circuitous connection can be made to interstate commerce.

(3) Failure on the part of the states to challenge federal intrusions. Indeed state governments (especially executive branches) have endorsed federal usurpation by seeking additional federal funding and by accepting federal delegations of power (that were not federal

powers to begin with). An example is the Ozone Transport Commission.

GENERAL STRATEGIC OPTIONS

- **Constitutional**. A sufficient number of convention call resolutions are not likely to pass state legislatures. Moreover, a constitutional amendment strategy is risky in the present political-media environment -- the result could be worse than the present situation. Moreover, the 10th Amendment does not need to be amended. It has simply to be enforced. The amendment strategy would be more appropriately adopted by those who favor federal power.

- **Judicial.** We will probably lose most initiatives, but an aggressive legal strategy is required to raise public awareness and establish the political environment in which the Congress will be more responsive to state sovereignty issues.

- **Political.** A political strategy requires a simple majority of support in both houses of Congress. While this is not easy, it is more readily achievable than the super - majority support that would be required for a constitution strategy. A political strategy should be the "linchpin" of the overall state sovereignty initiative. The political strategy would be advanced by judicial strategy.

(The primary strategy should be judicial and political.)

OUTLINE OF POTENTIAL ACTIONS

1. Board Committee meeting at the Annual Meeting (August 1994)
   - General discussion of strategy
   - Initial ideas for element to be included in *Constitution Principles of State Sovereignty*
2. North Carolina Board Meeting (September 1994)

- Board committee outlines *Constitutional Principles of State Sovereignty*, with private sector participants and ratification at same meeting by Board of Directors. Leaders such as Governor Leavitt and Symington should be involved at this point.

- Adoption of a 1994 Campaign Pledge Card.

3. Consultation with potential coalition members (October 1994). This could be informal or semi-formal (similar to a hearing), and would require oversight by the Board Committee chair (and other members who may be able to make the trip).

4. Board Committee Meeting at National Orientation Conference (December 1994)

   - Adoption of a draft *Constitution Principles of State Sovereignty* and beginning preparation for the *Conference of the States.*

   - Planning for the *Conference of the States*, including identification of participants.

   - Activities of the Board Committee would be highlighted in the National Orientation Conference program.

   - Identification and adoption of a model issue in which to organize multi-state resistance to mandates.

5. Task Force Chair Meetings - Mandate Oversight Responsibility (December 1994)

   - Develop a policy statement on task force oversight responsibility -- disseminate to all ALEC Task Force Chairs. Issue should be placed on all task force agendas.

6. State Sovereignty Day (January 1995)

- Multi-state introduction of Ad Hoc Committee-approved model State Sovereignty legislation.

- Multi-state press conference - reaffirming State Sovereignty.

- Ad Hoc Committee National Press Conference
  National Press Club -- Washington, DC.

7. Newsletter of the States: Reaffirming State Sovereignty

   - Monthly Newsletter updating State Legislators on State Activity as it relates to Reaffirming State Sovereignty

8. National Leadership Summit (1995)

9. *Conference of the States* (1995)

   - The conference would be marketed and structured as a gathering of constitutional importance.

   - The conference would include a select delegation of state legislators from every state (and possibly state constitutional officers), led by the ALEC legislative board and state chairs. The conference would consider, revise and adopt the *Constitutional Principles of State Sovereignty*. There would be private sector observers.

   - Leaders such as Governor Leavitt and Governor Symington would play an important role.

   - A hearing mechanism would be established for comments by interested parties.

   - Press coverage would be important.

10. Action strategy to implement *Constitutional Principles of State Sovereignty*

- Immediate briefing of "friendly" Congressional leaders.

- Endorsement of *Constitutional Principles of State Sovereignty* by Congressional leaders and other top political leaders.

- Endorsement of *Constitutional Principles of State Sovereignty* by coalition members (see below).

- Pledges by members of Congress and candidates.

11. Concerted Action by states (1995 and after)

- Development of model federal legislation that would implement the *Constitutional Principles of State Sovereignty*. For example, a new Clean Air Act could be written, etc.

- Identification of other strategies.

- Consultation with Congressional delegation.

APPENDIX L

"NCSL Joins NGA to Restore States' Authority"
NCSL Conference Report
Vol. 10, No. 4, Winter 1994, p. 1

NCSL Joins NGA to Restore States' Authority

NCSL and the National Governors' Association have undertaken an unprecedented project to restore the states' authority in the federal system. Meeting in October in Columbus, Ohio, an NCSL-NGA working group agreed to an aggressive action plan that contains five elements:

- an agenda of legislative process remedies.
- litigation.
- a call for regular meetings of the leaders of the Big 7 state and local government organizations.
- a federalism summit, and
- constitutional amendments.

The group also discussed the conference of the states as proposed by Utah Governor Mike Leavitt.

The effort is "a serious and comprehensive attempt to provide states with far greater influence over federal policymaking," said Delaware Senator Robert Connor, immediate past president of NCSL and a member of the joint working group. "If we are successful, we will accomplish fundamental change in the way decisions are made and—perhaps most important—in the way the public views government and elected officials."

Each element of the action plan would help accomplish structural or procedural objectives and would also serve to educate federal officials, the press and the public about the seriousness of federalism issues.

The legislative package will include several remedies including passing mandate relief legislation, securing greater protection against unwarranted preemption of state laws, and establishing intergovernmental subcommittees in each house of Congress.

The group will recommend that NCSL and NGA look for ways to encourage and coordinate court challenges of federal legislation that violates the 10th Amendment to the Constitution.

Regular meetings of state and local officials and a federalism summit would enhance communication among state, local and federal officials. The new coalition would coordinate the group's lobbying strategies. The federalism summit would include state and local officials, congressional leaders and administration officials, including the president.

NCSL representatives to the working group are Delaware Senator Robert Connor; Ohio Representative Jane Campbell, NCSL president-designate; New York Senator James Lack, NCSL president-elect; Arizona Representative Art Hamilton; North Carolina Speaker Dan Blue, chair of the Assembly on Federal Issues; and Colorado Senate President Tom Norton. They are joined by Utah Governor Mike Leavitt, Ohio Governor George Voinovich and Nebraska Governor Ben Nelson from NGA.

APPENDIX M

Outline of Proposal for Conference of the States
and
Model Resolution of Participation in the Conference

We propose a process that would consolidate and focus state power. This process would culminate in an historic event called a *Conference of the States*. Following is an outline of the process:

- In each state legislature, a Resolution of Participation in a Conference of the States will be filed during the 1995 legislative session. The resolution authorizes the appointment of a bi-partisan, five-person delegation of legislators and the governor from each state to attend.

- When a significant majority of states have passed Resolutions of Participation, a legal entity called the Conference of the States, Inc., will be formed by the delegates from each state, acting as incorporators. The incorporators will also organize and establish rules, assuring that each state delegation receives one vote.

- The actual Conference of the States would then be held, perhaps in a city with historic significance such as Philadelphia or Annapolis. At the Conference, delegations would consider, refine and vote on ways of correcting the imbalance in the federal system. Any item receiving the support of the state delegations would become part of a new instrument of American democracy called a *States' Petition*. The States' Petition would be, in effect, the action plan emerging from the Conference of the States. It would constitute the highest form of formal communication between the states and the Congress. A States' Petition gains its authority from the sheer power of the process the states follow to initiate it. It is a procedure outside the traditional constitutional process, and it would have no force of law or binding authority. But it must not be ignored or taken lightly because it symbolizes to the states a test of their relevance. Ignoring the Petition would signal to the states an intolerable arrogance on the part of Congress.

- The States' Petition would then be taken back to the states for approval by each state legislature. If the Petition included constitutional amendments, those amendments would require approval by a super-majority of state legislatures to continue as part of the State's Petition.

- Armed with the final States Petition, the representatives of each state would then gather in Washington to present the Petition and formally request that Congress respond.

While the Petition would have no force of law and would not be binding on Congress, it is likely that Congress would respond. To ignore the carefully reasoned, formal Petition of America's state legislatures would be unthinkable. Rejection of the Petition would communicate to the people that Congress is unwilling to listen. It would confirm an arrogance that could not be ignored by the states. Rejection would also ignite a national political debate that no candidate for Congress, for president, for governor, or for any state legislative race could avoid. The questions of Madison, Jefferson and Hamilton would be asked again -- Do we want a government dominated by Washington, or a balanced federalist system? The answer to that question is the same today as it was in 1787.

RESOLUTION OF PARTICIPATION IN A CONFERENCE OF THE STATES

[Whereas clauses to be provided by individual states - see attached Council of State Governments' Governing Board resolution as sample]

The following identical language needs to be incorporated into each state's resolution:

Now, Therefore, Be It Resolved:

That the following be adopted:

(1) A delegation of five voting persons from the State of , shall be appointed to represent the State of at a Conference of the States for the purposes described in Section (2) to be convened as provided in Section (3). The delegation shall consist of five voting persons as follows: (a) the governor or, if the governor does not wish to be a member of the delegation then a constitutional officer selected by the governor; and (b) four legislators, two from each house selected by the presiding officer of that house. No more than two of the four legislators may be from the same political party. Each presiding officer may designate two alternate legislator delegates, one from each party, who have voting privileges in the absence of the primary delegates.

(2) The delegates of the Conference of the States will propose, debate and vote on elements of an action plan to restore checks and balances between states and the national government. Measures agreed upon will be formalized in an instrument called a States' Petition and returned to the delegation's state for consideration by the entire legislature.

(3) The Conference of the States shall be convened under the §501(c)3 auspices of the Council of State Governments in cooperation with the National Governors' Association and the National Conference of State Legislatures no later than 270 days after at least 26 legislatures adopt this resolution without amendment.

(4) Prior to the official convening of the Conference of the States the steering committee will draft:

- **(a) the governance structure and procedural rules for the Conference;**
- **(b) the process for receiving rebalancing proposals; and**
- **(c) the financial and administrative functions of the Conference, including the Council of State Governments as fiscal agent.**

(5) The bylaws shall:

- **(a) conform to the provisions of this resolution;**
- **(b) specify that each state delegation shall have one vote at the Conference; and**
- **(c) specify that the Conference agenda be limited to fundamental, structural, long-term reforms.**

(6) Upon the official convening of the Conference of the States, the State delegations will vote upon and approve the Conference governing structure, operating rules and by-laws.

RESOLUTION
CALLING FOR A CONFERENCE OF THE STATES
TO BE PROMOTED AND CONVENED BY
THE COUNCIL OF STATE GOVERNMENTS

FOR THE PURPOSE OF RESTORING
BALANCE IN THE FEDERAL SYSTEM

PINEHURST, NORTH CAROLINA

Whereas: The United States' Constitution established a balanced compound system of governance and through the Tenth Amendment reserved all non-delegated and non-prohibited powers to the States or to the people; and

Whereas: Over many years, the Federal government has dramatically expanded the scope of its power and preempted state government authority and increasingly has treated States as administrative subdivisions or as special interest groups, rather than co-equal partners; and

Whereas: The Federal government has generated massive deficits and continues to mandate programs that State and Local governments must administer; and

Whereas: The number of federal unfunded mandates has grown exponentially during the last 30 years and has profoundly distorted State budgets, thereby handcuffing the ability of State leaders to provide appropriate and needed services to their constituencies; and

Whereas: Since 1990, the Federal government has enacted at least 42 major statutes imposing burdensome and expensive regulations and requirements on States and Localities, which is nearly equal to all those enacted in the prior two decades combined; and

Whereas: Persistent, State-led endeavors have consistently failed to generate any substantial reaction or remedy from the Federal government; and

Whereas: The U.S. Supreme Court has repeatedly determined that the States must look to the Congress and related political remedies for protection against Federal encroachments on the reserved powers of the States; and

Whereas: The Council of State Governments, through its Intergovernmental Affairs Committee, has been the champion of State sovereignty for many years; and

Whereas: In recent years, States have been the principal agents of government reform, including updating their constitutions, modernizing and restructuring governmental institutions, and, along with Local governments have been the pioneers of government innovation, thus responding to the needs of their citizens; and

Whereas: The Council of State Governments recognizes a sense of urgency in calling for The Conference of the States, whereby each State government would send a delegation to develop a comprehensive Action Plan to restore balance in the Federal system; and

Whereas: The aforementioned experience of The Council of State Governments, in conjunction with its regional structure and groupings of elected and appointed officials from all three branches of State government, reflects an entity ideally suited to promote and facilitate such a conference; and

Whereas: The Conference of the States will communicate broad bipartisan public concern on the extent to which the American political system has been distorted and provide a formal forum for State governments to collectively propose constructive remedies for a more balanced State-Federal governance partnership for the 21st century.

Now Therefore Be It Resolved:

By the Intergovernmental Affairs Committee and the Executive Committee of The Council of State Governments that these Committees recommend to the Governing Board that CSG fully endorse the concept of The Conference of the States; and

Be It Further Resolved:

That these Committees also recommend to the Governing Board that The Council of State Governments be the primary catalyst for all State governments, to organize and convene The Conference of the States, with the following stipulations:

I. That the Council create a bipartisan Steering Committee representing a cross-section of State leaders to guide the promotion, planning and convening of The Conference of the States; and

II. That the Council maintain ongoing consultation with the National Governors' Association, the National Conference of State Legislatures and other appropriate State governmental organizations in this process; and

III. That the Council and The Conference of the States Steering Committee strictly avoid identification with special interests and individuals by focusing activities on working with State government leaders in each geographic region and each State to ensure that The Conference of the States is an initiative of and for the States and the people they represent.

CSG President
Governor E. Benjamin Nelson

CSG Chairman
Representative Robert C. Hunter