The Need for a New Federalism:

Federal Mandates and Their Impact on the State of Ohio

Prepared by
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* Mandates often reflect well-intentioned policy goals of the Congress and executive branch agencies, such as the Medicaid program, the Safe Drinking Water Act, and ADA.

* Unfunded mandates, nonetheless, impose costly burdens on state and local governments. For example, nine Ohio cities report 10-year costs of $2.8 billion to comply with various environmental mandates.

* Unfunded mandates have proliferated over the last two decades as the federal budget deficit has grown. For example, 20 new mandates were approved by the 101st Congress (costing states $15 billion); over 200 new mandate bills were introduced in the 102nd Congress, and 15 were approved; and over 100 new mandate bills already have been introduced in the 103rd Congress.

* There is little understanding by members of Congress about the financial impact of mandates, partly because information about the costs of mandates is scarce, both before and after legislation is enacted.

* Mandates preempt important state initiatives and reduce state and local flexibility and innovation. For example, passage of the Family Support Act of 1988, the Boren Amendment, and the Resource Conservation and Recovery Act all preempted Ohio programs.

* Unfunded mandates have a significant impact on state budgets and can force the reordering of state priorities. For example, increasing Medicaid costs have deprived governors of needed resources for education programs and reform.

* Some unfunded mandates stem from a failed federal-state partnership, where states assumed new regulatory roles in return for promises of federal financial assistance, which since have been abandoned. Mandated rail inspection is one example of such broken promises.

III. Recommendations

* Congress should pass legislation immediately that requires the Congressional Budget Office to report on the costs of mandates prior to congressional action. This approach would force Congress to address the fact that real costs are associated with legislative measures even if they do not appear on the federal ledger.

* Congress should direct the General Accounting Office to conduct a study examining legislation and implementing regulations enacted in the 101st, 102nd, and 103rd Congresses that contain unfunded mandates. The report should include the estimated costs to states, counties, and cities in implementing each of the mandates.

* Congress and federal agencies should provide the maximum possible flexibility for states and local governments to meet federal legislative and regulatory mandates. Mechanisms to waive mandate requirements if states are meeting broad policy guidelines should be adopted.

* Congress should oppose, and the President should veto, legislation that imposes further mandates without also providing adequate funding to cover the costs of implementation.

PREFACE

Unfunded federal mandates have been a constant problem for the nation's governors and state legislators for many years. Yet no state ever has conducted a comprehensive, quanitative examination of the burdens caused by these mandates, or generated recommendations to address this problem.

While we have attempted to be as thorough as possible, it simply was not feasible to identify every single cost incurred by every single unfunded federal mandate without imposing an altogether new burden on Ohio's state agencies. The centerpiece of this report is data collected from 17 State agencies on the most burdensome and egregious mandates. Mandate costs are reported for 1992 or the first year the data are available. Future costs are reported where available. When future costs are not listed, the first year figure is assumed as an annual cost, except where otherwise noted.

This study is divided into several sections. Chapters 1-3 detail cost data for unfunded federal mandates for three broad areas: Human Services; the Environment; and Transportation and Infrastructure. Chapter 4 explores the impact of mandates at the local level, noting the scope of the problem and reporting on significant progress in State-local cooperation in Ohio. Chapter 5 envisions a "New Federalism," characterized by a reform-minded Congress and a responsible Executive that work with states and local governments in a partnership based on mutual respect.

The State of Ohio recognizes, of course, that federal financial assistance to State operations is substantial. According to the Ohio Public Expenditure Council, Ohio received over $5.8 billion in federal funding in 1992. While this figure may exceed the mandate costs contained in this report, it does not alter the fact that mandates continue to pose a significant cost and regulatory burden on states. By casting the mandate problem in this light, this study should help to awaken and inform public opinion and action on this important issue.

INTRODUCTION

By Governor George V. Voinovich

The art of governance may be defined as the practice of balancing that which is desirable against that which is affordable, of setting priorities and making choices. This truth is relevant to all levels of American government -- federal, state, local and municipal.

The recent explosion of unfunded federal mandates -- 174 since the mid-1970s -- tells us of a troubling dynamic that distorts governmental accountability. The guardians of the federal government have grown adept at a sort of budgetary sleight of hand that allows Washington to exert greater influence over other government subdivisions without providing corresponding federal support. More and more, Washington is forcing the states to expand their missions, yet states are forced to finance this federal encroachment through their own resources. Needless to say, this situation has crippled state budgets from Maine to California, forcing states to reorder their own state budget priorities.

The intellectual foundation of most mandates is the idea that the federal government must ensure that certain programs are implemented. This idea presumably carries with it the implication that federal mandates ought to be a last resort. Yet the sheer number of mandates detailed in this report suggests that many in Congress no longer look upon the idea of imposing unfunded, national policy on state governments as a last resort. Rather, the design of much federal legislation suggests that the federal government insists that state governments do things Washington cannot, because of the persistent federal budget deficit.

Federal mandates can be useful in easing the difficulty state and local governments sometimes face in providing needed services. In addition, a federal mandate can, in some cases, permit states to bypass the considerable effort associated with setting technical standards in such areas as air and water quality. Finally, mandates that impose uniform rules across the country may be helpful to business, by limiting the inconvenience varying state laws and policies might impose on interstate commerce.

Activism in government is not always a bad thing, provided that those who advocate such activism are prepared to accept responsibility for its costs. What burdens state governments is activism on the cheap, and what outrages state governments is Congress' insistence that new federal policy initiatives be paid for out of state budgets.

Too often, federal mandates on the states interfere with one of the most fundamental tasks of government -- the setting of priorities. State officials entrusted by the voters with the responsibility to set a course for state government, provide services, and plan for the future find their ability to do these things constrained by federal directives that take legal or statutory precedence.

Perhaps the most glaring example of this is the forced trade-off between Medicaid and education funding. In the past five years, elementary, secondary and higher education declined as a share of state spending at a time when nearly everyone acknowledges that improving our schools is one of government's highest priorities. Many states cannot spend a greater share of tax dollars on education because mandated Medicaid spending is consuming more and more state resources.

Many of the arguments against unfunded mandates contained in this study will strike a familiar chord with elected officials in cities, counties, and states across the country. This study represents a compelling argument for eliminating this pervasive phenomenon. It also makes the case that it is long past time to restore the balance in state-federal relations that our Founding Fathers envisioned.

CHAPTER ONE

HUMAN SERVICES

I. MEDICAID

The Medicaid program was created over a quarter-century ago with the goal of assuring health care to the poor. Five years after its inception, in 1970, it cost about five billion dollars. A decade later, Medicaid accounted for nine percent of state budgets. Today Medicaid represents about 17 percent of all state spending, or about $43 billion.[1] According to the National Association of State Budget Officers, Medicaid will be a $200 billion program by 1995, consuming over 25 percent of state budgets if it continues to grow at its current rate.

A new report from the Kaiser Commission maintains that during the 1980s, as other federal funds to the states dried up, Medicaid became the "bank" for financing social welfare spending.[2] In the past decade, to be sure, Congress has enacted new, costly Medicaid mandates without the necessary resources to fund them. While states like Ohio recognize and embrace the important responsibility of providing medical and other services to needy Ohioans, it increasingly has been forced to reorder its spending priorities in the face of federal mandates.

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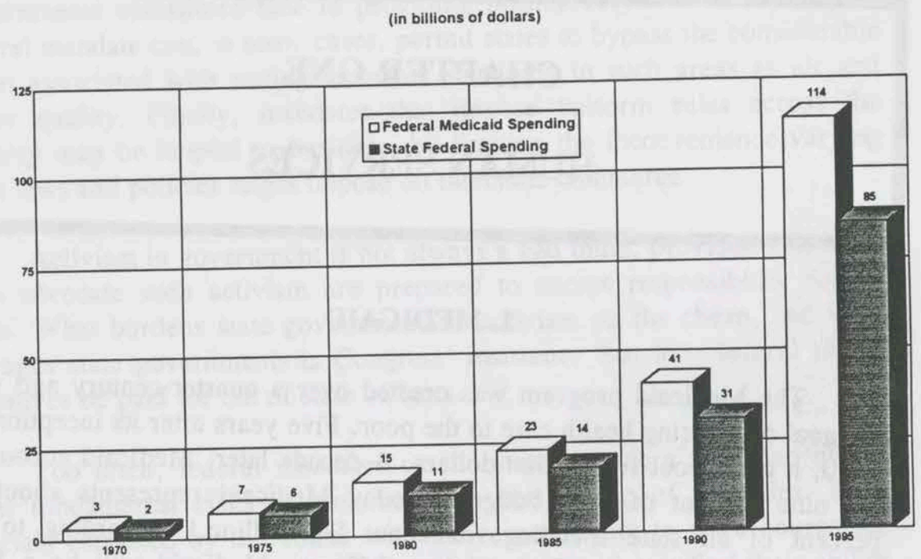
[1]This $43.1 billion figure is only for state expenditure. The federal government's share is over $100 billion.

[2]"The Medicaid Cost Explosion: Causes and Consequences," State Legislatures, July 1993.

The Growth of Medicaid Spending



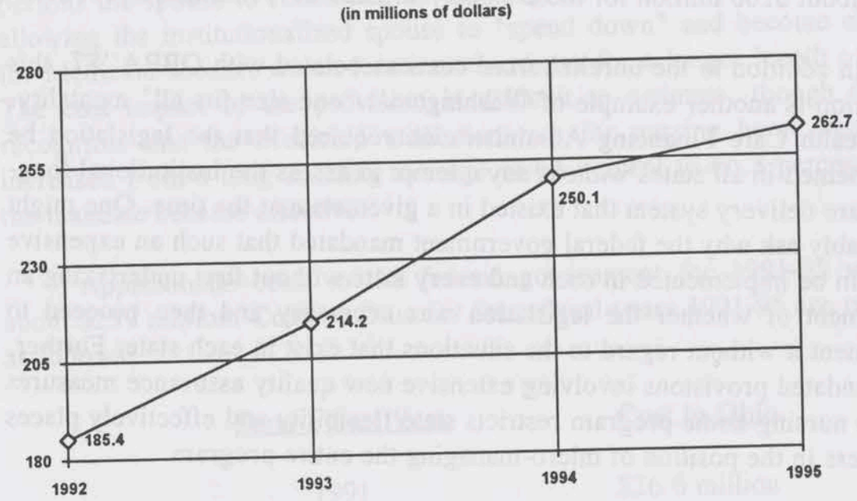
Source: National Association of State Budget Officers

The ability of Congress to appropriate increasingly higher funding levels in the Medicaid program is due largely to the structure of the program itself. Medicaid is an entitlement exempt from federal budgetary ceilings, thereby allowing the Congress to mandate countless requirements (many of them new) that the states must help fund. Therefore, as congressional spending in this area continues to grow, seemingly unbounded, state spending often is forced to increase at comparable levels. Perhaps not surprisingly, these new increases often are buried -- and therefore hidden from state legislatures and governors -- in the form of arcane budget documents that may run thousands of pages.

While the following section does not include earlier Medicaid mandate examples (Deficit Reduction Act of 1984, Consolidated Omnibus Budget Reconciliation Act of 1985, and Omnibus Budget Reconciliation Act of 1986), it should not be assumed that these mandates are insignificant. However, it can be rightly claimed that the mandate explosion in the

Medicaid program commenced in earnest in 1987, with most of the mandates affecting the states in subsequent years. The following graph represents total mandated Medicaid costs to the State of Ohio from 1992-95.

Ohio Medicaid Spending



Omnibus Budget Reconciliation Act of 1987

One of the first significant Medicaid mandates came in the form of the Omnibus Budget Reconciliation Act of 1987, which implemented the Federal Nursing Home Reform Act. The Act required far-reaching changes in nursing facility services including pre-admission screening and annual resident review (PASSARR), alternative disposition plans, certification and enforcement of facilities, nurse aide training, and residents' rights.

The Ohio Department of Human Services (ODHS), which has principal responsibility for administering the State's Medicaid program, maintains that this is one of the costliest programs for the State to implement. Specifically, the legislation had the fairly typical effect on Ohio

and other states of driving up personnel costs in order to implement the mandates.[3]

The total federal commitment to this program for fiscal years 1990-95 is nearly $300 million. Approximate costs to Ohio of implementing OBRA '87 is about $200 million for those same years and $37.4 million in 1992.

In addition to the unreimbursed costs associated with OBRA '87, this legislation is another example of Washington's "one size fits all" mentality. The Health Care Financing Administration required that the legislation be implemented in all states without any attempt to assess the institutional long-term care delivery system that existed in a given state at the time. One might reasonably ask why the federal government mandated that such an expensive program be implemented in each and every state without first undertaking an assessment of whether the legislation was necessary and then proceed to implement it without regard to the situations that exist in each state. Further, the mandated provisions involving extensive new quality assurance measures for the nursing home program restricts state flexibility and effectively places Congress in the position of micro-managing the entire program.

Medicare Catastrophic Coverage Act

The Medicare Catastrophic program symbolized the federal government's practice of enacting new programs, but shifting the costs to the states. Because the program had funding difficulties from its inception, large portions of the Act were repealed by Congress, leaving only the Medicaid provisions in place. Two of these provisions have had serious consequences for states.

The first provision forced states to reimburse Medicare cost-sharing expenses (i.e., Medicare premiums, deductibles and co-insurance) for many elderly poor not already covered by Medicaid.[4] The State has estimated that

[3]According to the February 1991 edition of *State Health Notes*, California officials concluded that in order to comply with federal requirements mandated by the federal Nursing Home Reform Law of 1987, that state would have to increase Medicaid spending by between $400 million and $800 million.
[4]This population is referred to as Qualified Medicare Beneficiaries (QMB's).

between fiscal years 1992-95 this provision will cost Ohio an additional $34 million, with 1992 costs of $6.2 million.

The other provision would extend greater protection of income and assets for spouses of Medicaid recipients in nursing homes. This change permits the spouse to retain half of the couple's income and assets, thereby allowing the institutionalized spouse to "spend down" and become eligible for Medicaid sooner, which forces states to pay for a longer length of stay. The cost impact of the provision is difficult to estimate, though ODHS recognizes that the Medicaid utilization rate for nursing home bed days increased from a long-standing average of 63 percent to 66.3 percent after the mandate became effective.

Approximate costs to the federal government for 1991-95 will be about $257 million. Costs to Ohio for State fiscal years 1991-95 are roughly as follows:

State Fiscal Year	Cost to Ohio
1991	$26.6 million
1992	$30.7
1993	$32.4
1994	$37.2
1995	$40.9
Total	**$167.8 million**

Family Support Act of 1988

The Family Support Act, signed in the fall of 1988 and billed as welfare reform, made significant changes in the administration of the Aid to Families with Dependent Children program. These changes also contained two mandates on states.

The Act first provided a mandatory extension of Medicaid services for 12 months to ADC families that become ineligible for Medicaid due to an increase in employment income. Second, it required Medicaid coverage to be continued for two-parent families with one unemployed parent.[5]

Welfare reform is another area where the State intended to implement a similar program prior to the mandate being imposed by Congress. In fact, the State's 1990-91 budget included funding to implement a welfare reform proposal that required federal waivers but that exceeded the requirements of the Family Support Act. When the Act became law, however, the State instead implemented the provisions of the federal mandate since it offered, among other things, a more favorable federal reimbursement rate.

Despite the State's embrace of the Family Support Act, the simple fact is that the Congress mandated that all states accomplish certain welfare reform objectives. In the case of the State of Ohio, this mandate is expected to cost approximately $51.1 million in 1992 and $233.1 million between State fiscal years 1992-95.

Omnibus Budget Reconciliation Act of 1989

The Omnibus Budget Reconciliation Act of 1989 was another culprit that forced increased Medicaid spending on the states. The following mandates, which were imposed by that Act, provide excellent examples of just how intrusive Washington has become in redesigning the Medicaid program:

* Requires states to provide Medicaid coverage for pregnant women and children up to age six in families with incomes up to 133 percent of the poverty line;

* requires states to reimburse providers of obstetric and pediatric care at levels to ensure services to Medicaid recipients;

[5]Cash welfare payments could be limited to six months out of twelve, but Medicaid must continue.

* set requirements for state coverage of early screening, diagnostic and treatment services;

* requires states to treat any problem found in such screening if treatment was allowed by Medicaid, regardless of whether treatment was included in a state's basic package;

* requires states to notify Medicaid recipients who are eligible for programs such as Women, Infants, and Children; and

* requires states to pay Medicare Part A (hospital) for working disabled people under certain conditions.

This was the most costly Medicaid legislation to implement; the State projects its cost to reach $59.8 million in 1992 and $367 million between State fiscal years 1990-95. The federal contribution also is significant -- more than $564 over the same years.

Omnibus Budget Reconciliation Act of 1990

Five congressionally-imposed mandates were the end result of the Budget Reconciliation Act of 1990, which essentially amended and expanded OBRA '87.

First, beginning in 1992, states were required to phase-in Medicaid coverage for all children between ages 6-19 over a ten-year period in households with incomes below 100 percent of the poverty level. Second, states must provide continuous coverage to infants during their first year in households below 133 percent of poverty, as well as provide continuous coverage for women through a 60-day postpartum period. Third, states are prohibited from imposing time limits on inpatient hospital care for Medicaid eligible children under age six. Fourth, states were required to pay group health premiums for working Medicaid recipients under circumstances where it is cost effective to do so. Lastly, and perhaps most important from

Ohio's perspective, the requirement that states expand coverage for Qualified Medicare Beneficiaries (QMB's).

The provisions of OBRA '90 became effective on January 1, 1993, and the fiscal impact to the State between 1993-95 is expected to be approximately $11.5 million.

The Ohio Department of Human Services was not the only state agency to be affected by the budget reconciliation legislation of 1987 and 1990. These bills contained provisions that required the Ohio Department of Mental Retardation (MRDD) to both conduct reviews and provide necessary services[6] of all residents with mental retardation or related conditions who live in Medicaid certified nursing facilities, irrespective of the person's Medicaid eligibility. There are about 2,800 residents who are reviewed each year and approximately 2,000 nursing facility residents who receive specialized services. Costs to MRDD which are not reimbursed by the federal government total about $5.6 million per year.

Lastly, as referenced earlier, budget reconciliation bills are largely "catch-all" mechanisms that cover a wide range of policy and programs. And OBRA '90 is a good example. In this legislation, there contained a mandate that social security coverage be provided for all employees excluded from state retirement systems such as students and intermittent employees. In response to this mandate, the Ohio General Assembly approved H.B. 382, which provides coverage for these employees under the Public Employees Retirement System at a cost of $4-5 million in 1992.

The Boren Amendment

All of the aforementioned legislation and their problems for states are exacerbated by federal legislation and regulations that limit states' ability to manage the cost of the most expensive Medicaid services -- inpatient hospital and long-term care.

[6]The services include medication, training and various other health services in order to help patients acquire the behavior skills necessary to live independently. The services are also designed to prevent, where possible, the regression or loss of certain physical functions.

Until the 1980s, states were required to reimburse these institutions on the basis of retrospective cost principles. After several years of double-digit expenditures resulting from the inflationary incentives of cost reimbursement, federal law was changed to allow states more flexibility in instituting payment systems designed to control cost growth. Although Congress, on the one hand, freed states to begin to control costs, this congressionally-imposed amendment for the past dozen years has become almost as problematic as retrospective cost reimbursement.

The Boren Amendment requires states to reimburse the costs "which must be incurred by efficiently and economically operated facilities." Unfortunately, consensus has never been achieved -- in regulation or in practice -- over what portion of costs *must* be incurred and what constitutes an efficiently and economically operated hospital or nursing home. In practice, most states, including Ohio, hinge their compliance with the Boren Amendment on demonstrating that they are meeting the costs incurred by a large number of facilities. Clearly, if the costs of these industries as a whole continue to rise (which they have), these relative comparisons become fairly meaningless in defining what truly are efficiently operated facilities.

The utter subjectivity of the Boren Amendment has made for fertile ground in Ohio and elsewhere for litigation,[7] which naturally has led to generous payment systems. The irony of this development is that the federal government operates a much larger Medicare program with no such constraints. In the end, states increasingly are concerned that Medicare losses are being absorbed by Medicaid payment levels that continue to grow due to the ever-present threat of litigation. And this open invitation to endless litigation has effectively given to the judiciary responsibility for making policy decisions that properly belong to the states.

The Boren Amendment clearly heightens the institutional bias in the Medicaid program. Hospital and nursing home payments erode state budgets, and the unfortunate consequence is that states keep physician and

[7]The State of Ohio has lost two Boren Amendment suits that resulted in legal costs of $23 million. A third suit is pending.

other non-institutional payment rates very low to compensate. Recognizing that this causes access problems, Congress added yet another requirement regarding state payment levels for pediatric and obstetrical services. Again, this is typical of the federal theme of failing to address the cause of institutional bias while, at the same time, requiring states to finance fee increases from Medicaid budgets that are already stretched to their limits.

Returning to a True Partnership

In light of the explosive increase in the cost of the Medicaid program over the past decade, it is simply irresponsible to continue to expand the scope of the program without the necessary federal resources. From a public policy perspective, there is little merit in Congress making changes to the program that already is unfair to the states. Yet, the Congress seems destined to do both of these things, and the legislative perpetrator this time is the Omnibus Budget Reconciliation Act of 1993.

As this study was going to publication, members of the House and Senate were conferring over, among other things, several provisions in the Medicaid program. One provision would cost states up to $7 billion by limiting Medicaid payments to hospitals with a disproportionate share of low-income patients. In another section of this legislation, lawmakers were debating certain "Technical Corrections" in the Medicaid program. For instance, the House decided to add language that would limit states' ability to establish innovative programs through certain federal waivers. Additionally, a provision was added making it more difficult for states to contract with HMO's to participate in Medicaid managed care programs. Obviously neither one of these two provisions (and there are more) can be considered mere "technical corrections." They are substantive policy changes to the Medicaid program that reduce the states' own ability to serve their respective populations.

While some progress has been made between the states and the federal government over the contours of the Medicaid program, much work remains. In that context, the following are just a few principles that could

guide federal policymakers in the future concerning this traditional federal-state partnership.

* President Clinton should make a commitment to veto any legislation containing new Medicaid mandates.

* The Administration should support repeal of the Boren Amendment.

* The Congress and the executive branch should immediately eliminate the requirement for states to submit waivers for enhancing and restructuring their Medicaid programs for services or reimbursement systems that have proven their worth. For example, in 1991 the Dayton Area Health Plan faced elimination due to a federal requirement that HMO's limit their Medicaid enrollment to no more than 75 percent of their total clientele. It actually required special congressional authorization to allow this program to continue serving approximately 40,000 Medicaid recipients in Southwest Ohio.

* Budget pressures in the Medicaid program have prompted many states, including Ohio, to initiate their own reforms of the program. States must be granted the flexibility in both administering and redesigning their individual Medicaid programs.

As the policy of the National Governors' Association makes abundantly clear, these changes clearly will not resolve overnight the nation's long-term struggle to restructure the Medicaid program. However, they would provide immediate and sensible relief in challenging economic times. They would also mark the beginning of a new and real partnership between the federal government and state governments over the design and implementation of this vitally important program.

II. EDUCATION

Federal education mandates primarily are directed at local school districts, not the states. Yet Congress increasingly is mandating education policy prescriptions, taking this authority away from state and local officials. Although the federal government is assuming a larger policymaking role, the federal government only provides five to six percent of the funding for primary and secondary education in the United States. Governors agree that nationwide education standards are important, but continue to believe that states must retain the necessary flexibility to reform and improve their own education systems.

Preschool Children With Disabilities

For years, federal law has required that school-aged disabled children have access to an appropriate public education. The Education of the Handicapped Act Amendments of 1986 mandates that preschool children (ages three to five) with disabilities have the right to a free appropriate public education in the least restrictive environment. Appropriate education includes any number of related services such as speech therapy, occupational and physical therapy, adapted physical education, counseling, aide attendant, audiological, guide interpreter, and reader services. School districts are required to locate, identify and serve all children with disabilities. Ohio appropriated nearly $35 million in 1992 to help local school districts provide these mandated services, though local districts throughout the State were required to spend substantially more to meet this mandate.

Vocational Education

The Carl D. Perkins Vocational and Applied Technology Education Act of 1990 dramatically changed the rules for state operations of their vocational education programs. This legislation reduced funding available to the State from 20 percent of the grant total to 13.5 percent, a $2.8 million

reduction in Ohio's funding in 1992. At the same time, the Act mandates that the State carry out costly new administrative activities to emphasize accountability. For instance, the Act requires states to design and implement programs to assess program effectiveness and student progress. The cost to the State of Ohio for implementing these new mandates is $3.38 million in 1992 and $15.07 million over four years.

Data Collection Measures

There is no question that data collection is extremely important to improving our education system. The states' experience with the six National Education Goals demonstrates the need for better, more relevant information to assess our children's progress toward the achievement of these goals. At the same time, however, our schools are over-regulated and over-burdened with data collection demands, which divert important resources from teaching -- the essential mission of our schools.

A recent study of Ohio schools by the Legislative Office of Education found that a school or local district might have to submit as many as 170 federal reports totaling more than 700 pages during a single year. More than half of the paperwork that Ohio schools must submit is mandated by a wide range of uncoordinated federal regulatory and legislative mandates. In return for this enormous paperwork burden, the federal government supplies only five to six percent of the funding for our schools. The Ohio Department of Education is required to assist in data collection and coordination. Overall, these data collection mandates cost the State approximately $400,000 a year.

III. THE AMERICANS WITH DISABILITIES ACT

No one can reasonably dispute the worthy goals of the Americans With Disabilities Act (ADA). Yet while this landmark legislation undoubtedly makes our nation more compassionate to the needs of the disabled, ADA imposes numerous and extremely costly unfunded mandates on state and local governments in order to achieve its objectives. A survey of State-owned facilities, Ohio's public schools and universities, senior

citizen centers, and Ohio's transit systems demonstrates the enormous costs associated with the mandates contained in this Act.

* According to the State's Architect and the Ohio Building Authority, bringing the 4,000 State-owned buildings and five office towers into compliance with ADA is conservatively estimated to cost Ohio $311.5 million.

* A 1990 survey of Ohio schools by the Ohio Department of Education found that local school districts would need to spend more than $153 million to construct or repair school facilities (ramps, elevators or chair lifts, doorways, parking areas, toilets and drinking fountains) to make them accessible to students using wheelchairs.

* The Ohio Department of Aging estimates costs of $8 million to bring Ohio's 200 independently operated, multi-purpose senior centers into compliance with ADA requirements.

* An analysis prepared by the Ohio Department of Transportation anticipates that the State's public transit systems will be forced to spend $148.3 million to expand the accessibility of transit vehicles in order to meet the requirements of ADA.

* According to the Ohio Board of Regents, ADA compliance activities will cost Ohio's public universities and technical colleges $119.2 million.

This survey identified $740 million in mandated costs to Ohio citizens for compliance with ADA mandates. The costs to the State of Ohio alone exceed $430 million. The survey still does not include compliance costs for a wide variety of other categories such as mandates on many county, city and township facilities, let alone compliance costs for the private sector (e.g., apartment buildings, businesses and stores, non-profit institutions and organizations, private educational institutions).

IV. FEDERAL BLOCK GRANT PROGRAMS

Mental Health

Last year, the Congress reauthorized block grant funding for the delivery of states' substance abuse and mental health services. This legislation naturally had an impact on the Ohio Department of Mental Health, which administers Ohio's federal grant funds for this program.

First of all, the portion of Ohio's block grant that is devoted to supporting community mental health services was decreased by more than one-third, from over $18 million to less than $12 million for each of State fiscal years 1993 and 1994.

Additionally, in direct contrast to the original intent of this program, which had served states well for over a decade, Ohio's authority relating to administrative decisions within the block grant was usurped by the Congress. The reauthorization requires that each state "expend not less than 10 percent of the grant to increase (relative to 1992) funds for children's mental health."

Ohio traditionally has dedicated a substantial portion of block grant funds to children's services, and recently even has increased the general revenue funding committed to children in the face of across-the-board budget reductions. If the goal is to establish a national standard, future discussions about the reauthorization of the block grant must examine alternative mechanisms for insuring adequate state and federal funding for children's mental health services, as well as giving appropriate recognition to the State's existing (and past) levels of commitment.

Substance Abuse

The Substance Abuse Block Grant is the other Ohio program that has been subjected to congressionally-imposed restrictions. In a general sense, Congress has steadily eroded the State's ability to distribute block grant funds based on specific needs by imposing requirements that often are

unnecessary. The following examples are indicative of the difficulties faced by the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) in administering this program:

* The federal government has mandated that at least five percent in 1993 (and 10 percent in the following year) of Ohio's block grant funds (about $5 million) be earmarked specifically for expanded treatment services of pregnant women and women with dependent children over the next two fiscal years.

* ODADAS must spend about $6.6 million for child care and prenatal care to all women receiving treatment services.

* The State will be forced to expend more than $2 million to fulfill the federal requirement that states carry out activities that encourage intravenous drug users to undergo treatment. ODADAS must also spend approximately $2.2 million for tuberculosis services, including counseling, testing, and treatment to individuals in drug and alcohol treatment programs.

* The Congress mandated the creation of a system that would annually conduct random, unannounced inspections to ensure compliance with the unlawful sale of tobacco products to minors. The findings of this inspection system, which would cost over $2.5 million, must be reported annually to the federal government.

* Finally, as a result of changes in the definition of AIDS cases, ODADAS has learned that it may be forced to begin setting aside part of its block grant funding for "early intervention services for HIV disease." This change will cost the State between $1 million and $2.5 million in 1994.

These examples typify Congress' steady erosion of block grants, which were intended to enhance states' flexibility in developing programs to best suit their own needs. While Ohio receives $45.2 million in federal assistance for this program in 1993, 40 percent of that funding comes with

strings attached. As a result, the difference between block grants and categorical grants are becoming less clear as Congress turns increasingly to earmarks and mandates to prescribe policy.

V. NUTRITION LABELING AND FOOD SAFETY

The Nutritional Labeling Education Act of 1990 (NLEA) mandates that packaged foods be sold with a standardized nutrition food label by May 1994. According to the Food and Drug Administration (FDA), this requirement applies to some 260,000 labeled products from 17,000 manufacturers.

While the primary cost of complying with NLEA, estimated at $600 million by the FDA, falls on private industry, the Act requires states to review applications for approval of Nutritional Fact Panels, conduct testing to ensure their accuracy, and conduct consumer education programs on the meaning and use of product nutritional information provided under NLEA.

The Ohio Department of Agriculture estimates first year costs for enforcing NLEA at $284,000 for equipping and staffing a laboratory to test food products for verification of labeled nutritional claims and $89,000 a year thereafter. In addition, the agency expects to spend at least $85,000 per year to review food product labels and provide education to consumers and small businesses.

An additional, albeit less costly, federal requirement in a related area adds an additional cost to the State. The U. S. Department of Agriculture's Food Safety and Inspection Service requires the use of a procedure to test the protein content of meat (pursuant to the Meat Inspection Act) that involves the use of mercury catalyst, a highly toxic heavy metal. Samples subjected to this procedure must be disposed of as a hazardous waste, at an estimated cost to the State of $28,000-30,000 per year.

HUMAN SERVICES MANDATE COSTS

Mandate	Cost	Year
OBRA '87	$37.4 million	1992
	$37.7 million	1993
	$41.9 million	1994
	$45.8 million	1995
Medicare Catastrophic Coverage		
a. QMB Cost Sharing	$6.2 million	1992
	$8.2 million	1993
	$9.5 million	1994
	$10.6 million	1995
b. Nursing Home Care	$30.7 million	1992
	$32.4 million	1993
	$37.2 million	1994
	$41 million	1995
Family Support Act	$51.1 million	1992
	$54.5 million	1993
	$63.1 million	1994
	$64.4 million	1995
OBRA '89	$59.8 million	1992
	$79.6 million	1993
	$86.8 million	1994
	$94.7 million	1995
OBRA '90		
a. Medicaid	$1.8 million	1993
	$3.5 million	1994
	$6.2 million	1995
b. Mental Retardation	$5.6 million	1993
c. Employee Retirement	$4.5 million	1992
Preschool Disabled	$36 million	1992
Vocational Education	$3.4 million	1992
	$4 million	1993
	$4 million	1994
	$3.7 million	1995
ADA	$430 million	*
Data Collection	$400,000	1992
Substance Abuse	$18.3 million	1993

TOTAL HUMAN SERVICES COSTS

1992	$234.1 million
1993	$282.6 million
1994	$310.8 million
1995	$331.2 million

* Total costs do not include $430 million for ADA compliance, which could not be broken down by year.

CHAPTER TWO

THE ENVIRONMENT

In few areas of public policy is federal direction more prevalent than in environmental regulation. Increasingly, the federal government relies on the states to administer, monitor compliance with, and enforce many provisions of federal environmental law. States also are responsible for distributing most federal funds for wastewater treatment construction projects and nonpoint source pollution projects. Finally, states find it necessary to work extensively with local governments and with the private sector to provide both technical and procedural assistance in order to achieve federal environmental policy goals.

The costs to state government in this area are substantial and increasingly difficult to bear. The costs of environmental regulation to the private sector, of course, are far greater than to any level of government.[8] Even within the State of Ohio, compliance with provisions of the Clean Air Act, Clean Water Act and other environmental laws will cost the State and local governments billions of dollars. These costs are passed on to the broader economy in the form of higher production costs and higher consumer prices.

To say that environmental regulation has costs is not to say that it is without benefits. Nor is the estimation of such regulation's cost an exercise without ambiguity. The Clean Water Act (CWA) is a good example.

[8]The Safe Drinking Water Act is a notable exception.

I. CLEAN WATER ACT

There are 325 major and 3,650 minor municipal and industrial permitted point source wastewater dischargers in the State of Ohio. Under CWA, the Ohio Environmental Protection Agency (OEPA) is required to regulate all of them to ensure that their discharges do not exceed permit limitations set by the agency under the National Pollutant Discharge Elimination System (NPDES), the national permitting system for wastewater dischargers.

OEPA utilizes a water quality monitoring program that allows permit limitations to be based on precise, accurate data about water quality acquired by actual stream sampling and analysis. This type of permitting program can result in sizable cost savings for dischargers, while at the same time maintaining the environmental quality of Ohio's lakes and streams. Stream sampling and analysis, however, is a labor-intensive activity. A permitting program that relied on statistical modeling to set permit limits would be cheaper for the agency; however, it would cost businesses more, without assuring better water quality.

Permitting, monitoring, and other mandated activities required by the Clean Water Act are estimated to cost Ohio $5.9 million in 1992. New mandates going into effect in 1994 will increase the cost of this program to $10.6 million. Federal grants to the State for Clean Water Act-related purposes total $11.2 million, though not all of these funds are aimed at helping the State comply with mandates.

In addition, the Clean Water Act requires states to implement programs for sludge management, stormwater pollution control, and Combined Sewer Overflows. While each of these programs have merit, there is a large gap between the funding needed to run an effective program and the funding Washington provides the states.

The intent of the sludge management program is to categorize sludges according to their potential to contaminate the environment. Current federal funding will allow some program development and sludge management

review and approval, though OEPA's capacity to perform field surveillance, sampling or complaint investigation is extremely limited. In terms of the financing of Ohio's sludge management program, the State receives grant funding from U.S. EPA of $100,000, and expects to spend an additional $100,000 in 1994.

The goal of the stormwater program is to reduce or eliminate pollution that results from stormwater runoff from construction sites and industrial facilities. While the State receives $150,000 in federal funding to allow OEPA to issue general permits and create a data base, OEPA expects to spend at least $100,000 in State fiscal year 1994, and significantly more in subsequent years.

Combined Sewer Overflows occur in wastewater systems that use a single sewer line to transport both sewage and stormwater runoff to a wastewater treatment plant. The objective is to control effluents from all existing CSO's in order to meet water quality standards. Currently, the federal government provides $50,000 to help the State to update its CSO strategy, though the State expects to spend an additional $100,000 in 1994. It is also in this area that federal water quality standards have the greatest impact in driving up costs to local government.

In each case, the difference between what is needed to deal with the problems Washington has directed states to solve and what Washington is willing to fund is money for fieldwork, monitoring and assessment of the effectiveness of various pollution control practices. These activities are all labor intensive, and as a result, more expensive to government. The alternative, however, is a set of programs based on government prescription and paperwork -- programs that are much less likely to achieve their stated objectives despite the greater costs they impose on the private sector.

Cost to Local Governments

The cost of compliance with the Clean Water Act falls primarily on local governments and the private sector. As with the other environmental

laws described in this survey, state government's role in the Clean Water Act is that of the regulator rather than the regulated community. Inadequate funding of federal mandates to states under CWA and other environmental laws results in: less effective enforcement of those laws; less assistance to local governments and private businesses; and, ultimately costlier, slower progress toward a cleaner, healthier environment.

To local governments, the costs of compliance with the Clean Water Act loom as an enormous drain on available resources. The 1992 Needs Survey conducted by Ohio EPA documented nearly $6 billion of wastewater treatment/management needs. At the national level, a 1990 needs assessment compiled by the U.S. EPA estimated needs of $110 billion over the next 20 years. For a variety of reasons, this estimate is almost certainly low.

Federally mandated water quality standards and other regulations derived from the Clean Water Act legitimately can be cited as forcing nearly all of the $5.9 billion in water pollution control spending identified in these two surveys. It is true, of course, that much of this spending would be needed anyway. Basic secondary sewage treatment and sewer construction are as essential to local infrastructure as paved roads, and the need for them would still be there even if Washington were not involved. In addition, although the federal government provides assistance for wastewater treatment projects, federal appropriations for this purpose consistently have fallen short of commitments made in the Clean Water Act, which raises an important question. If these services truly are needed by local governments, why must the federal government impose these mandates? State and local officials are even more concerned that Congress is poised to add a series of newer, costlier mandates to this Act.

Wetlands

Clean Water Act regulations established guidelines that should be met before a wetland may be dredged or filled in preparation for development or construction. Although the intent is laudable, these regulations can lead to

excessively expensive requirements to avoid wetlands or to mitigate them if they are affected.

CWA regulations set up a three-step approach that confronts a variety of private development and public infrastructure construction efforts. First, impact to wetlands must be avoided. Second, where impact cannot be avoided, it must be minimized. Third, after impact is minimized, the remaining effects on wetlands must be mitigated.

It is impossible to determine all costs incurred by the Ohio Department of Transportation (ODOT) in addressing the wetlands issue. However, it costs about $200,000 for wetlands studies for each major highway realignment project, of which the State cost is typically 20 percent (matching an 80 percent federal contribution). Nine such comprehensive wetlands studies were completed in Ohio in 1992 and eight in 1993, totaling $1.8 million and $1.6 million, respectively. Based on the standard 20 percent State participation in these major projects, Ohio's mandated contributions were $360,000 and $320,000, respectively. ODOT does not presently attempt to itemize the wetland cost components in the environmental studies conducted on the dozens of smaller highway projects begun each year. Nonetheless, the following are some examples of costs for minimizing and mitigating wetland impacts for a few of the larger Ohio projects.

On the Cross County Highway in Cincinnati, ODOT impacted 3.7 acres of wetlands. Because the U.S. Army Corps of Engineers and Ohio EPA require mitigation of 1.5 acres for every acre affected, ODOT must recreate 5.5 acres of wetlands. The Corps of Engineers prefer that mitigation occur as close to the original wetland as possible. Following this preference can require ODOT to acquire expensive urban property and then design sophisticated hydrologic plans to create wetlands on sites that are not prime wetlands locations. ODOT would prefer the flexibility of going offsite where land prices are cheaper, where sites require less engineering and where sites could be developed in conjunction with parks or natural areas.

Per-acre costs for wetlands creation also can run extremely high. The Gallia Route 35 project in 1992 cost $105,715 per acre, for a total cost of $317,000 (the State's cost was $63,400). Wetland recreation activities on several larger ongoing, multi-year projects will be even higher. Costs for creating new wetlands near the Cross County Highway project will be $102,555 per acre, for a total of $562,000. On the New Albany Bypass, ODOT expects to incur costs of about $108,000 per new acre, or a total of $5.1 million. The Buckeye Basin Greenbelt Parkway will cost $200,000 per acre for about 40 acres of mitigation. This $8 million total price includes a $6 million bridge that will avoid taking 12 acres of one marsh. The cost to the State of these three wetland construction projects will total $2.7 million.

This brief account of mandated wetland preservation efforts in Ohio (again, focusing only on major projects) shows 1992 costs of approximately $423,400, and additional projected costs through 1994 of $3.1 million.

II. SAFE DRINKING WATER ACT

Impact on the State

Because the responsibility of paying the cost of environmental regulation falls increasingly on states and local governments, Washington has a bias toward attempting to assure zero risk even in cases where little data about risk exists. The Safe Drinking Water Act (SDWA) provides perhaps the clearest example of this bias.

The Safe Drinking Water Act requires local governments to test drinking water for many chemicals not in common use. It also will require extensive -- and expensive -- corrective measures to remove from drinking water contaminants not found in quantities demonstrated to be harmful to human health. The 1986 Amendments to the SDWA required that non-community water systems be regulated, and increased the number of regulated contaminants from approximately 20 to 83.

The first of these changes increased the number of regulated drinking water systems from about 1,600 to almost 10,000, a 525 percent increase. Ohio EPA is responsible for assuring that each of these systems is carrying out proper drinking water treatment and monitoring practices by collecting and tracking monitoring reports compiled by the regulated systems.

Federal grant funding to OEPA to administer the drinking water program was $2.1 million in State fiscal year 1992, up from $1 million in 1986. The State matched this grant with $2.5 million in General Revenue Fund resources in both 1992 and 1993 in order to meet the requirements of the program and will spend $2.6 million in 1994.

The SDWA mandates are forcing Ohio EPA to change its priorities in administering the drinking water program. It has forced the agency to regulate many more systems, but provided no more resources to hire technical staff to assist those systems. The prospect is for progressive degeneration of the program, with staff time absorbed by a tremendous influx of monitoring reports and little time available for follow-up to correct problems that these reports may indicate.

Impact on Local Governments

It is the local governments that operate drinking water systems that will bear by far the greatest burden from SDWA mandates for increased monitoring and treatment. For example, U.S. EPA estimates that those communities that exceed the lead and copper action levels[9] prescribed in federal SDWA regulation will have to pay an additional $60 per household per year for large systems, defined as those serving more than one million people. Annual costs for residents of small systems serving between 3,300 and 10,000 people could cost each household an additional $260.

While estimates of the total compliance costs to Ohio communities cannot be made at this time, OEPA estimates the costs to Ohio local

[9]When action levels for contaminants in drinking water are exceeded, corrective action must be taken. In the case of lead and copper, exceeding the action levels requires a municipality to take a series of actions beginning with a mandated public education program.

government of testing and monitoring under SDWA for the three-year compliance period between 1993 and 1995 at between $47.5 and $70.5 million. SDWA requires local drinking water systems to test for a total of 83 contaminants. Every 3 years, U.S. EPA is required by the Act to add 25 additional contaminants to those that must be tested. There is a waiver process under which states can excuse water systems from testing for individual contaminants, but it is so cumbersome and slow that many states do not use it. Some examples of contaminants that communities in Ohio must test for include:

a. Toxaphene, an insecticide and herbicide used on cotton (which is not grown in Ohio) and soybeans. Its use has been banned since 1982.

b. Silvex, an herbicide used on rangelands and sugarcane (neither of which exist in Ohio) and golf courses. Its use was banned in 1983.

c. Dibromochloropropane, a soil fumigant on cotton and soybeans. Its use was banned in 1977.

d. Aldicarb, an insecticide used primarily on cotton and potatoes, neither of which are widely grown in Ohio. U.S. EPA has decided that the presence of aldicarb in a drinking water supply is no longer an enforceable violation of the Act, but systems are still required to monitor for it.

III. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

Subtitle D: Solid Waste

U.S. EPA's Subtitle D rules require minimum standards for municipal solid waste (MSW) landfill siting, design, operation, closure, post-closure care of the landfill, ground water monitoring, corrective action for ground water contamination, and financial assurance (i.e., provision for closure, post-closure care, and if necessary clean-up of the site). The Subtitle D rules

were promulgated in October 1991; most will become effective in October 1993.

Most states already have their own rules, laws, or policies with respect to MSW landfills. Yet in order for state regulations to take precedence over federal standards, each state must receive formal authorization from U.S. EPA. This involves demonstrating through a lengthy application process that state regulations are at least as stringent as federal standards.

U.S. EPA allows less flexibility in landfill design and siting criteria in states that have not received authorization. Landfill operators in unapproved states, moreover, must comply with both state and federal standards, which sometimes conflict with each other, thereby putting operators out of compliance with either the state or the federal government.

In Ohio's case, OEPA has been informed by U.S. EPA that extensive revisions in Ohio's solid waste rules will be required, in addition to which an extensive application to administer the program must be filed. The revisions will need to be made in most of the 25 Ohio rules for MSW landfills. They will add provisions that are absent from Ohio's rules, and alter the schedule for requiring landfill owners and operators to demonstrate compliance with siting, liner design and operational criteria.

Perhaps most significantly, the federally mandated revisions will add nothing to the protection of public health and the environment already provided for in Ohio's rules. In fact, in some areas the federal rules are weaker than Ohio's. For example, federal rules prohibit siting a new landfill in an earthquake zone but not over an aquifer. Because some areas of Ohio rely on aquifers for drinking water, the State's rules require that landfill liners consist of at least five feet of compacted clay. The federal rules require only two feet, and Ohio EPA reports already having received many requests from local governments to adjust the State's rules to conform to the weaker federal standard. The fact often cited by defenders of national standards that states are free to impose stricter standards if they choose

ignores the political difficulty involved in competing with a less protective federal standard prepared without regard to local conditions.

Needless to say, the time and effort that Ohio will have to devote to revising its State landfill rules to conform to federal standards will go entirely uncompensated. No federal resources are provided to help states with the costs of:

* Applying for the U.S. EPA authorization;
* revising state rules;
* drafting new policies and guidance to supplement the rules;
* training OEPA and local health department staff about the new rules;
* familiarizing the regulated community about the new rules; or
* enforcing the new rules.

OEPA estimates that this mandate will cost the State $2.58 million in 1994. The Division also administers programs for infectious waste, composting, incineration, solid waste planning, residual waste landfill, construction and demolition waste landfill, and other waste programs.

If Ohio is unable to become an approved state, responsibility for regulating Municipal Solid Waste landfills in the State will revert to U.S. EPA, which has neither the experience nor the staff resources to perform this function. The penalty for failure to conform to this federal mandate ironically becomes turning over a regulatory program from a state agency that can run it effectively to a federal agency that cannot.

At the same time that U.S. EPA is complicating the operation of Ohio's statewide solid waste management plan by imposing its landfill standards on the State, Congress further complicates the situation by refusing to grant states the authority to limit imports of solid waste from other states. In Ohio, large shipments of trash from the East Coast have totaled between 12 and 20 percent of all the waste disposed in Ohio landfills since 1988. This large and unpredictable flow of waste makes planning even more difficult, and congressional inaction in this area is an additional irritant in relations between Ohio and Washington.

Subtitle C: Hazardous Waste

Ohio has more than 1,300 generators of significant amounts of hazardous waste and more than 3,500 generators of small amounts of hazardous waste. Under RCRA's Subtitle C, Ohio EPA is required to do the following:

* Operate a program that grants permits to hazardous waste generators;
* inspect generators to ensure compliance with permit conditions;
* pursue enforcement against violators; and
* make provisions for closure of hazardous waste disposal sites.

While $2.1 million in State matching funds is the only State spending formally mandated under Subtitle C of RCRA, Ohio EPA was forced to spend an additional $2 million in 1992 and $2.3 million in 1993 to accomplish everything required under the federal program. The agency projects costs for 1994 of approximately $2.7 million in addition to the mandated $2.1 million in State matching funds.

Once again, the shortfall between current federal funding levels and what is needed to run a fully effective regulatory program results in inadequate funding for fieldwork. Ultimately, this funding shortfall imposes costs both to the State and to the regulated community.

Apart from the costs of running the regulatory program under RCRA, Ohio also incurs costs as a regulated entity. The Department of Natural Resources has operated facilities for treating wood for use in State parks and forests. ODNR reports that costs of more than $4.5 million over four years will result from RCRA-mandated clean-up of these facilities. Most of this cost will be incurred due to required excavation and removal of hundreds of tons of dirt contaminated by a chemical (pentachlorophenol) used in treating wood. The dirt must then be transported more than a thousand miles to a landfill in Colorado. This is the only qualifying landfill now willing to

accept this kind of waste. The benefit in terms of reduced risk to public health of removing soil from remote locations is questionable.

IV. THE CLEAN AIR ACT

Mandates to states under the Clean Air Act (CAA) represent a heavy burden in time and money on the state agencies charged with implementing the Act. In Ohio, this is principally OEPA, with the Public Utilities Commission of Ohio (PUCO) and the Ohio Department of Transportation (ODOT) having secondary roles.

Compliance with the Clean Air Act will be even more expensive to businesses and private individuals. Many businesses will be forced to change their operating procedures and purchase and install costly new pollution control equipment to come into compliance with CAA emission standards. Private individuals will pay more for motor vehicle fuel and automobile inspections in some areas.

U.S. EPA estimates that compliance with the Clean Air Act will cost about $23 billion per year to implement nationwide by 2005. Clean Air Act mandates include the following:

Title I: Nonattainment Areas and Automobile Inspection

Title I establishes a number of new requirements that must be met by areas designated by U.S. EPA as Nonattainment for ozone and carbon monoxide, two major components of smog. Ohio has four Moderate Nonattainment[10] areas (Cincinnati, Cleveland-Akron, Dayton-Springfield, and Toledo).

By the end of 1996, Ohio must demonstrate to U.S. EPA that our Moderate Nonattainment areas have achieved minimum ozone standards; will maintain that standard for the next 20 years; must show a 15 percent

[10]A Moderate Nonattainment area is one in which the air exceeds the minimum level of concern for ozone.

reduction in emissions of Volatile Organic Compounds (VOCs);[11] and must develop a plan to ensure maintenance of that standard. Nonattainment areas that do not comply with these requirements will be subject to more stringent requirements for both industrial and mobile air pollution sources and could also face the loss of highway construction money.

Most of the expenditures of time and money by the Ohio Department of Transportation on the Clean Air Act relate to Title I. The agency estimates its CAA-related costs at about $100,000 per year, primarily in personnel costs arising from the need for urban airshed modeling and liaison with metropolitan planning organizations.

These requirements also will impact on future industrial development. Since air pollutants come from many sources, the plans required under the Clean Air Act must demonstrate that future industrial development, including highway construction, will not lead to violation of CAA air quality standards.

The Automobile Inspection Maintenance (AIM) program is aimed at reducing air pollutants from automobile exhaust. Because 80 percent of those pollutants come from approximately 20 percent of the cars, the testing program is intended to identify that 20 percent and mandate repairs for those vehicles. By applying these controls on automobiles, the burden on industry is reduced.

While automobile emissions testing is the most cost-effective means available to reduce VOC emissions, OEPA estimates that an annual basic tailpipe testing program with a $7 test fee will cost Ohio consumers $308-440 million over 10 years. These figures do not include costs for vehicles that fail the test.

Should Ohio choose to implement an enhanced auto emissions testing program, there are approximately $160 million in Congestion Management/Air Quality funds available over the next four years through ODOT. These funds would be distributed to the metropolitan planning organizations in the affected areas and could be used for facility test

[11]Hydrocarbons and other chemical compounds released into the atmosphere as the result of incomplete gasoline combustion and certain industrial processes.

equipment, building construction, repair industry mechanics diagnostic training, and up to two years of program operating expenses.

Title IV: Acid Rain

Title IV imposes significant costs on the state government. PUCO is required to review each Ohio utility system's plan to comply with the law at a cost of $850,000 to hire technical staff and purchase computer hardware and software to enable it to conduct its reviews.

Title IV requires electric utilities to curtail emissions of sulfur dioxide (SO2) and nitrous oxide (NOx), key constituents of acid rain, beginning in 1995. These compounds are a byproduct of fossil fuel combustion, especially of coal. Since Ohio derives about 88 percent of its electricity from coal, and since most of this has a high sulfur content, Title IV imposes significantly greater costs on Ohio than on most other states.

In order to meet sulfur dioxide emission quotas for Phase I (1995-99), utility systems can switch to lower-sulfur fuels or install desulfurization technology (i.e., scrubbers). NOx can be controlled through the installation of NOx burners. In addition, Title IV creates for SO2 a complicated permit system, under which utilities can be granted or can acquire from other utilities allowances to emit additional SO2 during a transition period.

Estimates on the private sector's cost of compliance with Title IV and the other titles of the Clean Air Act vary widely. The U.S. EPA, which estimates that total compliance costs will total about $23 billion annually by the time the 1990 Amendments are fully implemented, also points out that this will not be until 2005. Compliance costs can therefore go up or down, depending on a multitude of variables.

What is clear is that the costs of complying with the Clean Air Act generally will be substantial -- and that those costs will fall heavily on Ohio. This is especially true of the acid rain provisions. Compliance costs incurred by electric utilities are passed along to ratepayers, and as with all indirect costs of complying with various federal laws, the costs constitute a hidden tax.

The following estimates of Title IV compliance costs have been made by Ohio utilities:

* American Electric Power's Ohio Power and Columbus Southern Power subsidiaries estimate that compliance with Title IV will cost a total of $1.764 billion over twenty years.

* Cincinnati Gas and Electric estimates compliance costs of anywhere between $519 and $581 million, depending in part on the time chosen for capital replacement.

* Ohio Edison reports compliance costs estimates of about $174 million for the period 1995 to 1999.

Title V: Permitting

Title V requires states to advise all industries regulated under the Clean Air Act of all the requirements they must meet in order to receive a permit to operate. Ohio currently receives about $5 million annually in federal grant funds for all air pollution regulatory activities under Section 105 of the Clean Air Act. In addition, the Ohio General Assembly has passed legislation to impose a two-year emission fee of $8 per ton on certain air emissions to help fund implementation of the Clean Air Act until the $25 per ton fee mandated by the Act can be implemented in 1995. Ohio's interim fee will raise about $5.8 million annually, which thus is the cost of the mandate.

V. FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA)

Since the early 1970s, FIFRA has required that states operate programs to train and certify pesticide applicators. Ohio's program, recognized as one of the nation's finest, cost the State $280,000 to run in fiscal year 1993, with an additional federal contribution (from U.S. EPA) of $105,000, or 27.3 percent of total program cost. This compares with prior commitments from U.S. EPA to pay half the cost of this program.

A planned revision of the formula that distributes Certification and Training funds to the states would result in a reduction of the federal contribution to $65,000 for Ohio in fiscal year 1995 (16 percent of projected program costs). The reduction is defended as necessary to permit additional financial assistance to states with less comprehensive programs. The result is that a well-run pesticide application Certification and Training Program is rewarded with a substantial financial penalty.

VI. CONCLUSION

A major problem with federal environmental law is its structure. These laws are media-based. That is, they deal with air, water, drinking water, or solid waste pollution problems individually, more or less without reference to each other. In the early days of environmental regulation this approach was probably the only practical approach, as much less was known about environmental hazards. At the time, the most acute pollution problems were, often correctly, seen to be caused by so-called "bad actors": individuals or businesses that dispensed dangerous pollutants into the air, water or soil in willful disregard of both the environment and public health.

However, as environmental laws have proliferated, and Congress and successive administrations have struggled to keep up with scientific advances, a staggeringly complex body of law and regulation has been created. EPA personnel especially tend to specialize in the pollution problems of one or another medium, to the exclusion of the others.[12] State and local governments, however, are expected both to comply with all environmental laws themselves and to supervise the compliance of the private sector.

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[12]This is not a problem unique to the executive branch. For example, the two major pieces of water pollution legislation -- the Clean Water Act and the Safe Drinking Water Act -- fall under the jurisdiction of two different committees in the House of Representatives. The Public Works Committee, with jurisdiction over CWA, and the Energy and Commerce Committee, with responsibility for SDWA, do not even have any Members in common. It is small wonder, then, that revisions to these two pieces of legislation, affecting closely related fields, are prepared with scant reference to each other.

Washington is generally insensitive to this burden on lower levels of government. One consequence is the common, albeit mistaken, assumption that states have ready access to the resources necessary to develop and run new programs that regulate such things as stormwater discharges and sludge management with only a small initial grant of federal money. The relatively few millions of dollars involved doubtless appear as a much smaller expense at the federal level than they do to state officials.

The larger problem, however, is that increased knowledge about pollution, and the very success of much environmental law and regulation, is gradually making the structure of that regulation obsolete. There is a growing understanding that air, water, and other types of pollution problems are frequently related. It is also becoming clear that "bad actors" are a less significant cause of this pollution than they once were, partly because strong environmental regulation has forced many of them to either change the way they operate or go out of business.

Greater knowledge and changed conditions ought to lead to changes in the way government operates, in environmental policy as in any other area. The compartmentalized, enforcement-based, U.S. EPA-centered body of environmental regulation we have now is increasingly inappropriate. It simply is unable to respond to changing needs. These include relating pollution problems in different media to one another, working cooperatively with business to prevent pollution, and basing efforts to protect the environment on accurate assessments of what those threats are.

To recognize this larger problem is not to endorse a comprehensive solution to it, at least not in the short term. The ideal would be a unified, simplified body of federal environmental law and regulation. Our ideal environmental policy would focus on the greatest threats to public health and the environment and allow states ample flexibility to address local environmental problems according to their own priorities. Practically speaking, this ideal can only be attained through a long period of evolution.

For the near future, we should recognize that federal environmental standards in many areas are both appropriate and important. But they need

to be based on hard science, not best guesses and good intentions, and they need to reflect some recognition that states' resources to meet these mandates are not infinite. Otherwise they will either not be achieved, or achieved only at the cost of other vital public policy objectives that may be viewed by the public as more urgent. More importantly, if states are going to play an ever greater role in environmental regulation and are going to be forced to pay for these activities, more consideration must be given to local needs and to states' concerns about appropriate standards.

ENVIRONMENTAL MANDATE COSTS

Mandate	Cost	Year
Clean Water Act		
a. Regulation	$5.9 million	1992
	$6.3 million	1993
	$10.6 million	1994
b. Wetlands	$423,400	1992
	$3.1 million	1993-94
Safe Drinking Water Act	$2.5 million	1992
	$2.5 million	1993
	$2.6 million	1994
RCRA		
a. Solid Waste	$185,000	1993
	$2.6 million	1994
b. Hazardous Waste	$3.2 million	1992
Clean Air Act	$4.4 million	1992
	$5.7 million	1993
	$5.9 million	1994
FIFRA	$280,000	1992
	$280,000	1993
	$297,000	1994

TOTAL ENVIRONMENTAL COSTS

1992	$16.6 million
1993	$19.6 million
1994	$26.7 million

CHAPTER THREE

TRANSPORTATION & INFRASTRUCTURE

Throughout its history, America has benefited from leadership that recognized the relationship between transportation and economic development. Canal-building, transcontinental railways, and the interstate highway system were the stunning achievements of federal policies that encouraged development of interconnected transportation networks that would permit speedy, inexpensive movement of people and goods between state borders while spurring our emergence as the world's leader in international trade. This could not have occurred without a strong federal role in transportation and infrastructure development.

A similarly strong federal role likely is necessary if America is to retain its world leadership in the future. However, as with many other traditional areas of U.S. government involvement, infrastructure planning, building and maintenance has been overlapped by other concerns that recently have entered the public policy debate. The two most prominent examples are public safety and environmental protection.

There is broad consensus that safety and preservation of the environment are desirable, and can and should be factored into the federal-aid transportation policymaking equation. There is also growing recognition -- among governors, state transportation agencies, city planners, the freight and commodity hauling industry and others -- of the challenges that accompany formulation of present-day transportation policy, and the flood of mandates that have resulted.

I. INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) reauthorized federal surface transportation programs for six years. It also included separate Highway Safety, Research and Intermodal sections, and also contained the Motor Carrier Act of 1991. The legislation was revolutionary and sweeping, dramatically changing the way many federal aid transportation programs are structured and administered throughout the states by making the funding formulas more equitable to states like Ohio.

One thing that was not revolutionary about the Act was its heavy reliance on an increasingly prevalent device: the unfunded federal mandate. Indeed, ISTEA contains a full harvest of new mandates for the states. Here are some examples.

Rubberized Asphalt

One of the more curious provisions contained in ISTEA is the mandated use of rubberized asphalt (derived from discarded tires) as a pavement additive. Section 1038 mandates that in 1994, states will use rubberized asphalt in 5 percent of federally funded projects. The percentage increases to 10 percent in 1995, 15 percent in 1996 and 20 percent in 1997. Not a single state transportation department nor their national organization endorsed the rubberized asphalt provision, and neither did the infrastructure industry nor engineering trade associations. At a time when federal appropriations are placing a tight ceiling on the amount of Highway Trust Fund money available to state transportation departments, the states are not enthusiastic about these provisions squandering precious resources.

If rubberized asphalt's use as an alternative pavement owes to some ostensible environmental benefits, those are difficult to identify considering the fumes, mists, vapors, particulates and other emissions that are created when the rubberized asphalt blend is heated prior to application. There is no

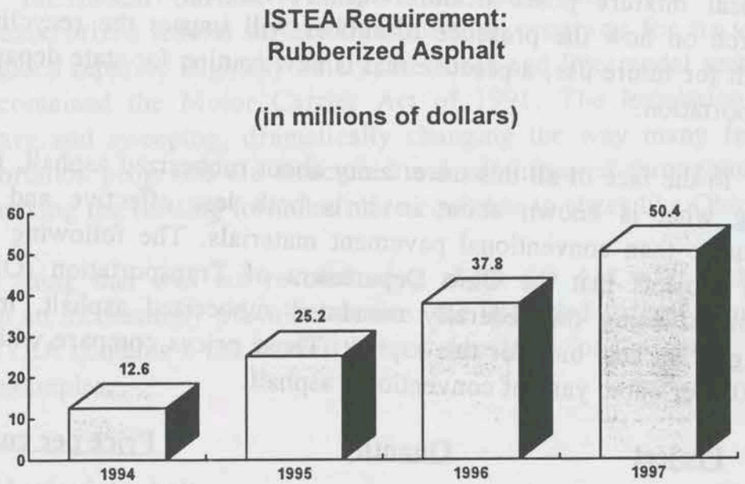
available environmental test data on this procedure, which is surprising since ISTEA placed such emphasis on integrating national infrastructure policy with the mandates of the Clean Air Act and other environmental initiatives. It seems reasonable to conclude that burning of such a complex chemical mixture poses health risks. Furthermore, there was no prior research on how the presence of rubber will impact the recycling of old asphalt for future use, a practice that is now routine for state departments of transportation.

In the face of all this uncertainty about rubberized asphalt, it is worth noting what is known about it: it is both less effective and far more expensive than conventional pavement materials. The following chart lists those projects that the Ohio Department of Transportation (ODOT) has completed using the federally mandated rubberized asphalt, including a listing of the low bids for this asphalt. These prices compare with a cost of $38.05 per cubic yard of conventional asphalt.

Project	Quantity	Price per cubic yard
Athens 32	997 cubic yards	$128.00
Geauga 88	1,219 cubic yards	125.00
Franklin I-270	656 cubic yards	129.04
Athens 7	5,913 cubic yards	108.00
Vinton 50	5,412 cubic yards	99.00
Wayne 23	2,144 cubic yards	60.00
Greene 35	4,174 cubic yards	105.94

For these projects, the average cost per yard of rubberized asphalt was $107.94, almost three times more expensive than conventional material. In 1992, ODOT purchased eight million cubic yards of asphalt.

Based on the current cost differential between conventional and rubberized asphalt, the following graph shows the rapid increase in State costs between these years.



Total costs between 1994-97 will be $126 million. The percentage of rubberized asphalt after 1997 will remain at 20 percent, costing the State $50.4 million annually.

A 1991 ODOT study of 30 other state transportation departments revealed that only one state transportation agency endorsed rubberized asphalt. Four states with effective tire-disposing programs already in place found that disposing of tires in asphalt was the *most* expensive disposal technique. They reported it regularly cost up to $4 per tire for disposal in rubberized asphalt while it cost $1 or less to convert tires into fuel. This mandate effectively turns highways into landfills while diminishing highway service life and creating higher construction costs.

U.S. Transportation Secretary Federico Peña recently estimated that the cost to the nation of implementing the rubberized asphalt provisions could reach $1 billion by 1997. He notes that the material has not tested

long enough over a broad enough range of conditions to conclude that it is an acceptable additive to asphalt, adding that his department "will continue to consider other possible uses for scrap tires that are more environmentally sound and enhance our infrastructure."

International Registration Plan

ISTEA mandated that contiguous states join the International Registration Plan (IRP). IRP is an agreement among states whereby a motor carrier can register vehicle fleets for travel in all IRP jurisdictions by filing vehicle registration paperwork through a home, or base, jurisdiction. Registration fees are paid to the base jurisdiction. The base jurisdiction collects the appropriate fees due to each member jurisdiction, distributes those fees accordingly and issues the IRP credentials. This enables the carrier to travel legally in each of the IRP jurisdictions.

In 1992, IRP administration cost the Ohio Bureau of Motor Vehicles $2.3 million, and the Bureau receives no federal funding to defray these expenses. Similar costs would be expected each year.

Interstate Carrier Registration

ISTEA called for replacement of the multi-state authority registration system for motor carriers. In its place, the Act mandated a new, single-state insurance registration system. The Interstate Commerce Commission has issued final rules dictating procedures under which carriers should file pertinent registration forms that should include proof of insurance. This fee in Ohio will be $5 per vehicle, and ISTEA mandated that the fee be frozen permanently at its present (as of November 15, 1991) level.

These $5 stamps, applied to a class of vehicles whose total numbers vary little from year to year, yield revenues of approximately $2.9 million per year for Ohio. Moreover, the fee to register carrier operating authority (currently $25 for each type of authority filed in Ohio) is eliminated. With

elimination of the registration fees, Ohio lost a revenue source that had averaged $82,000 in annual receipts in recent years. The Public Utilities Commission of Ohio (PUCO) reported total transportation regulation expenses of $5.2 million in 1992.

Data from PUCO's Transportation Department illustrates the impact on carrier registration activity costs caused by a mandated federal cap on one revenue source and total elimination of another traditional revenue sources. While the revenue cap will perpetually bind PUCO to current fee levels, future operation costs are projected to increase about 3.5 percent per year, which results in the following cost projections:

Year	Total Program Costs	Additional State Costs
1993	$5.4 million	$182,000
1994	5.6 million	372,000
1995	5.8 million	572,000
Total	**$17.8 million**	**$1,126,000**

While PUCO Transportation Department expenses will increase a total of $1,126,000 over the next three years, federal mandates prevent the Department from recovering costs through increased fees on interstate motor carriers.

Fixed Guideway System Safety

ISTEA mandates that all states and urban areas in which a fixed guideway (rail) transit system operates shall have in place a rail safety program by September 30, 1993. Ohio has only one such system, operated by the Greater Cleveland Regional Transit Authority, yet the State is proceeding with preliminary plans for complying with this requirement to avoid the loss of five percent of transit apportionments.

States still await proposed rules (not to mention final regulations) on what their rail safety programs should include, even though ISTEA specified that regulations were to be finalized by December 18, 1992. Although it is difficult to know Ohio's compliance costs from this mandate, we believe it will cost $200,000 to establish the required safety program and operate it for the first year. Operation costs in subsequent years would not be quite as great, but would be significant.

Management Systems

ISTEA mandated the creation of six different information systems requiring states to develop, establish and implement a separate system for managing each of the following:

* Highway pavement of federal highways;
* bridges on and off federal aid highways;
* highway safety;
* traffic congestion;
* public transportation facilities and equipment; and
* intermodal transportation facilities and systems.

The Act also mandated that within metropolitan areas, such systems should be developed in cooperation with metropolitan planning organizations. Such regulations may include a compliance schedule for development of each system and minimum standards for each system. In addition, the Act mandated the issuance of guidelines for the State's development of traffic monitoring systems for transportation facilities and equipment ODOT already has devoted considerable staff time toward implementation of ISTEA's management systems provisions. Because final federal regulations are not expected on this provision until at least autumn of this year, cost estimates are not available for this mandate.

II. COMMERCIAL DRIVERS' LICENSE

The Commercial Motor Vehicle Safety Act (CMVSA) of 1986 prescribed a national system for licensing commercial vehicle operators. The law requires states to meet minimum testing and licensing standards, establish a system of disqualification for traffic convictions, and develop an automated commercial driver information system. The Act required states to enforce these federal provisions in accordance with certain deadlines -- failure to substantially comply would result in loss of federal highway funds. The goal of the CMVSA, and its commercial drivers' license provision, was to improve driver quality, remove problem drivers and establish a system to prevent commercial vehicle operators from having more than one license.

These goals have the full support of the Ohio Department of Public Safety. But from enactment to the present, federal contributions (through reimbursement grants) have been nominal, and have not covered the State's operational costs. In 1992 alone, the Department has incurred administrative, printing, and patrol-related expenses of $2.5 million, of which only $81,337 was reimbursable from federal grants. Ohio expects to incur similar unreimbursed costs of about $2.4 million each year.

III. HAZARDOUS MATERIAL ROUTING

The Hazardous Materials Transportation Uniform Safety Act of 1990 mandated that states designate routes for the transporting of hazardous materials through a new formal proceeding. The Act made any prior local or state designated routes subject to preemption unless the state conducted a review to verify that the existing routes complied with federal requirements.

The proposed rule from the Federal Highway Administration (FHwA) imposes on states a complicated, time-consuming set of activities that must be completed within a limited period of time before a routing designation can be established, maintained and enforced. The Act prescribes an expensive, exhaustive public hearing process. These activities were mandated without providing funding to states to complete these tasks,

thereby creating a heavy administrative burden for the states that establish routing designations.

The Public Utilities Commission of Ohio (PUCO) recommends that FHwA reimburse states for costs incurred. The most logical avenue would be FHwA earmarks to states, beyond their formula funds, through the Motor Carrier Safety Assistance Program. In the absence of some accommodation, PUCO incurs anticipated direct increases in personnel and equipment costs of $184,500 annually.

IV. RAIL INSPECTION ACTIVITY

With passage of the Federal Rail Safety Act in 1970, states were preempted from regulating any aspect of railroad safety. As an alternative, the federal government compelled the establishment of a federal-state program for enforcing uniform rail safety standards. Under the program, the federal government funded state railroad inspection programs, sharing 50 percent of the cost of the inspections. The Federal Rail Administration (FRA) then compiled reports of violations from state inspectors and assessed civil penalties against the railroads. Ohio was one of the first states to be FRA-certified to conduct rail inspections.

In the last decade, however, federal funding for the state rail inspection program has steadily decreased, and was finally eliminated in 1989. The benefit accruing to Ohio is the control over the program in regard to quantity, quality and targeting of inspections. In other words, the State can develop its own expertise in specific safety disciplines, and can also be responsive to localized problems and concerns. The FRA receives the benefit of inspectors not on its payroll, enforcing its regulations according to its guidelines. Further, the federal government retains the proceeds from all enforcement penalties.

A 50 percent reimbursement of the cost of the personnel, equipment, and activities of Ohio's federal rail safety program amounts to $200,000 per year based on current expenditures. The FRA should reinstitute its funding

of state inspection work or remove the preemptive provisions that prevent a state from operating its own program. Restoration of the federal reimbursement would restore integrity to the federal-state partnership which Congress originally envisioned. That the program works fairly well in Ohio is purely attributable to the State's dedication to safety in spite of federal abandonment of responsibility.

V. GAS PIPELINE SAFETY

The importance of gas pipeline safety has long been recognized in Ohio. A comprehensive statewide program was already in place prior to enactment of federal regulations in 1968.

The Natural Gas Pipeline Safety Act requires each state pipeline safety enforcement agency to maintain adequate staff to discharge inspection duties. The state agency also must pay for expenses related to staff training at a federal training facility out of state. More important, U.S. DOT requires that certain inspection procedures be followed, and also now compels states to broaden their enforcement jurisdiction to include all intrastate pipeline operators (formerly only utilities were inspected; now everyone transporting gas -- private individuals and businesses included -- are inspected).

Under the statute, states should receive federal reimbursements up to 50 percent of their pipeline safety programming costs, subject to congressional appropriations. Unfortunately, while PUCO pipeline safety activities resulted in 1992 costs of $528,000, the Commission received only $215,000 in U.S. DOT funding that year. Thus, the State was left to provide $313,000, or 59 percent of the total amount needed to run the program. Ohio has been notified it will receive only $202,991 in federal funding in 1993, though total program costs are projected at $621,000 (this makes Ohio's cost $418,000, or 67 percent). The federal government's failure to live up to the 50-50, federal-state participation prescribed in the 1968 statute provides a clear example of an unfunded federal mandate. Ohio's shortfall

in federal reimbursements, amounting to unfunded mandates of $49,000 in 1992 and $107,500 this year, must be offset by PUCO.

The tendency of Congress to let appropriations lag behind previously established levels of federal participation is well known, but it invariably causes difficulty at the state level. In recent years, only very small states have received close to their full 50 percent federal reimbursement. However, states' problems with this law are no longer strictly, or even chiefly, a question of appropriations shortfalls.

Equally important, the federal government continues to move toward a more performance-based reimbursement system, exerting more cost pressures on pipeline inspection operations. The list of federal requirements on states continues to grow, and new performance criteria are issued often. Examples of federally induced expansions of state responsibility (on which states' performances are rated, and their funding in part is based) have included drug testing for operators and one-call "before you dig" damage prevention phone services. Alcohol testing of operators likely will be required shortly.

This conditional federal reimbursement system results in greater workloads for inspectors. Ohio is in the process of adding inspection staff to try to meet existing federal performance review standards while anticipating issuance of other criteria. Additional staff could cost as much as $140,000 in 1993, and perhaps more in future years. Federal action has had the effect of reducing federal funding to Ohio while increasing State inspectors' jurisdiction and responsibilities.

VI. NATIONAL ENERGY POLICY

The National Energy Policy Act of 1992 requires that publicly owned vehicle fleets begin converting to alternative fuels by 1995. The Act mandates that 10 percent of new state fleet purchases in urban areas be alternatively fueled in 1995, with the percentage requirement rising to 90 percent in the year 2000. These mandates were viewed as necessary because

alternative fuels and the vehicles that can use them are not cost competitive. The "Mandated Demand" theory behind the federal mandate is as follows: If enough public fleets are required to convert, an alternative fuel industry and vehicle manufacturing sector will be spurred to creation to meet the new mandated demand.

The Ohio Department of Transportation has begun a pilot project in the Cleveland district to convert 20 pickup trucks to operate on compressed natural gas. Based on the bids received, it will cost about $4,000 per vehicle ($81,000 in all) to convert these trucks to burn on compressed natural gas. It will cost ODOT another $150,000 to install a refueling garage in Cleveland. Based on the calculations cited above, ODOT will incur the following costs just for vehicle conversions as the requirements of the Act are phased in:

Year	Req'd % of Fleet	Total Vehicles	Cost
1995	10	30	$120,000
1996	15	45	180,000
1997	25	75	300,000
1998	50	150	600,000
1999	75	225	900,000
2000	90	270	1,080,000

In addition, ODOT will need to install at least six refueling facilities at a cost of $175,000 each (a total of $1.1 million over six years). Two such facilities likely would be built in each of the first three years after enactment.

TRANSPORTATION MANDATE COSTS

Mandate	Cost	Year
ISTEA		
a. Rubberized Asphalt	$12.6 million	1994
	$25.2 million	1995
	$37.8 million	1996
	$50.4 million	1997
b. Registration Plan	$2.3 million	1992
c. Carrier Registration	$182,000	1993
	$372,000	1994
	$572,000	1995
d. Guideway System Safety	$200,000	1993
Commercial Drivers' License	$2.4 million	1992
Hazardous Materials Routing	$184,500	1993
Rail Inspection	$200,000	1992
Gas Pipeline Safety	$247,000	1993
National Energy Policy	$470,000	1995
	$410,000	1996
	$470,000	1997

TOTAL TRANSPORTATION COSTS

1992	$4.9 million	1995	$31.3 million
1993	$5.7 million	1996	$43.3 million
1994	$18.1 million	1997	$55.9 million

CHAPTER FOUR

THE CHALLENGES TO LOCAL GOVERNMENT

It has been noted repeatedly throughout this study that local governments have been forced, either by design or accident, to shoulder the burden of unfunded mandates. Some mandates are sent directly from Washington to locals. Others stem from mandates originally foisted on Governors and state legislatures and passed on, wholly or in part, to local entities. It is also true that some mandates on local government can only be traced to state government action.

The Unfunded Mandates Subcommittee of the Ohio State and Local Government Commission (SLGC) has collaborated on a report studying the origins, impact and necessity of various mandates on localities. The report notes certain trends with regard to mandates, points to some recent successes in curbing the growth of mandates and was very helpful in the preparation of this analysis.

I. PROGRESS TO REPORT

Local governments in Ohio feel the challenge of federal- and state-imposed mandates every day. They impact how local officials set their priorities and make decisions. To this end, the issue of mandates repeatedly has surfaced during a series of 18 statewide outreach meetings sponsored by Ohio Lt. Governor Mike DeWine and attended by more than 2,000 local officials. Local officials cite mandated costs as the fastest-growing portion of many of their budgets, especially those involving jails and environmental services.

The SLGC's Subcommittee reports that Ohio government, through the leadership of Governor Voinovich, Lt. Governor DeWine and the General Assembly, has gained a clear understanding of the impact mandates have on local governments. In the past two years, some State mandates have been "turned back" -- either modified in favor of local government decision-making, or by providing State funding. Local governments have realized savings from these changes in excess of $30 million over two years.

There are several excellent recent examples of State mandates that have been amended or turned back, delivering either cost savings and/or greater authority and flexibility to local governments. These include:

* Local Share of Highway Improvements -- The Ohio Department of Transportation has turned back mandated local percentages of the cost of major repairs or construction to State highways through municipalities, saving local governments in Ohio some $14 million annually in each of the past two years;

* Jail Standards -- Ohio's jail inspection program was modified to introduce greater local flexibility into the jail standards process. Local governments may now seek reconsideration of State inspection decisions, may propose changes to established State jail standards, and have substantive representation on an inspection advisory board. This has resulted in several hundred thousand dollars in savings for local governments;

* County Personnel Services -- Previously, the State of Ohio charged counties a fee for managing their personnel records operations. Changes made in 1991 have permitted Ohio's counties idependently to design and administer their own civil service operations, which are subsidized by the State. Local governments have more flexibility and have saved $1.8 million over two years from these changes; and

* Managed Two-Year Audits -- Under newly enacted law, the State auditor was given greater discretion to waive, under certain

circumstances, a two-year audit requirement on local governments, resulting in savings to locals in excess of $200,000.

The Columbus Experience

The City of Columbus has been a national leader in focusing attention on cities' compliance costs incurred through various unfunded mandates. The city's exhaustive 1991 study documenting specific environmental mandates and their immediate and long range impacts have guided the efforts of a host of other cities nationwide, each now wrestling with similar costs and seeking some redress for their mandate-related problems. In Ohio alone, eight other metropolitan areas have completed environmental mandate studies similar to the Columbus model. These cities have documented expected compliance costs totaling $2.8 billion over the next ten years.

Based on the findings of the study, Columbus prescribed four principles to inform future policymaking and steer federal lawmakers away from passing on further environmental costs to local governments.

* Environmental legislation and resulting regulations should be formulated on well-founded, peer-reviewed science -- not speculation, exaggerations or scare tactics.

* Local governments should be able to prioritize their resources to achieve the greatest environmental risk reduction with available funds. One-size-fits-all regulation is counter-productive at the local level because the environment differs from one area to another.

* Because of variable local environmental conditions, flexibility should be incorporated into the federal and state regulatory process.

* Local governments should be afforded the opportunity for fuller participation in the environmental legislative and regulatory process. The costs associated with mandates are so large they can virtually dictate communities' budgets.

The State of Ohio has also maintained several state aid programs that share state revenue with local governments. The two most important aid programs are the Local Government Fund and the Capital Improvement

Program. The Local Government Fund contained $482 million in 1991 and an identical amount in 1992.

In calendar year 1992, the State's Capital Improvement Program totaled $250 million and has totaled $868 million since its inception. At the same time, the SLGC Mandate Subcommittee notes that the Ohio General Assembly has passed fewer mandates in each succeeding recent session, during which a trend toward more permissive legislative proposals has been discerned.

In April 1993, the County Commissioners Association of Ohio (CCAO) confirmed what other recent profiles had determined -- the number of newly passed mandates has declined over the past four years. Increased intergovernmental cooperation, between Ohio's state and local governments, is one apparent welcome result of the recent local effort to spotlight their mandate problems. Additionally, it is significant that a 1992 study prepared for the National League of Cities and the Ohio Municipal League revealed that only 2.5 percent of Ohio cities and villages, compared with 20.5 percent nationally, considered state aid a factor unfavorably influencing their ability to balance their budgets.

II. LOOKING TO THE FUTURE

Local government members of the Unfunded Mandates Subcommittee all agree on two things: Through cooperation with State officials, they have begun to chip away at locals' mandate problem in Ohio; and, they still have a long way to go.

There is a shared understanding among state and local officials that the problem only can be solved partially at the state level. Representatives from both levels will continue to seek solutions and coordinate resources to attack the problem. Already, all levels of government in Ohio continue their coordinated ongoing effort to review all mandates, identify and end outdated ones and, ultimately, turn back new mandates.

However, the Unfunded Mandates Subcommittee recognizes the limitations of all this cooperation among state and local government officials. All agree that serious progress on the mandates question will require cooperation at the federal level before the problem can be addressed fully.

CHAPTER FIVE

TOWARD A NEW FEDERALISM

I. NEW MANDATES

According to the National Conference of State Legislatures (NCSL), which maintains a formal mandate tracking system, the 101st Congress approved 20 new mandates costing the states in excess of $15 billion. Over 200 bills were introduced in the 102nd Congress that impose unfunded federal mandates, and 15 new mandates were enacted despite the fact that no omnibus budget reconciliation packages, the traditional vehicle for many mandates, were considered during this period.

Regrettably, the pace of new mandates continues unabated. NCSL's tracking system has identified over 100 bills containing unfunded mandates introduced thus far in the 103rd Congress. In fact, the first two major bills enacted during the 103rd Congress -- the "Motor Voter" bill and the Family and Medical Leave Act -- both contain unfunded mandates, and Congress is poised to begin serious consideration of several more bills that impose mandated costs on state and local governments.

The Motor Voter bill (The National Voter Registration Act) requires each state to establish procedures for voter registration at state motor vehicle offices, by mail, and at all public assistance offices. The Congressional Budget Office estimated that the costs of implementing the program in the 25 states that do not have a motor voter program would be $100 million over the next five years, but this is not a complete estimate. Although Ohio already has its own motor voter program, which was effective in registering over 40,000 voters in 1990, this legislation still

Judicial Mandates: Adding to the Burden

Congress and federal regulatory agencies are not the only sources of mandates on states. Court decisions also force states to incur costs, change laws, and reorder priorities. These costs are significant. The National Association of State Budget Officers (NASBO) reports that the second-fastest growing category of state spending (after Medicaid) is prison construction, an area strongly influenced by court decisions.

The precise extent to which court decisions impose costs on states is not known. Very little research in this area has been done. This is probably due in part to the fact that court orders directing states to take positive action -- as opposed to decisions that merely stop states from taking action -- are a relatively recent phenomenon. In addition, there are a number of problems involved in trying to pinpoint the impact of judicial mandates.

First, unlike congressional mandates, judicial mandates do not come from just one source. They can originate in state or federal courts at any number of levels, and can be modified at any stage of an appeals process that can take years. In addition, judicial mandates often apply to only one state, and may or may not have consequences in others depending on the subject and the policies being pursued by the other state governments.

Most judicial mandates to states appear to be based on a determination by judges to uphold Constitutional rights. This is true in fields as diverse as voting rights, education funding, and prison construction. Consequently, the costs can reach unlimited proportions.

Finally, it is not always easy to distinguish the costs imposed on states by judicial mandates and those imposed by actions of the state's own legislature. For example, courts in many states have required states to take costly action to relieve prison overcrowding, which in some cases has been aggravated by a trend in state legislatures toward approving longer, often mandatory prison sentences for more types of crime.

The lack of useful data on the cost of judicial mandates places the subject outside the scope of this survey. However, the apparent significance of the costs associated with these mandates, and the importance of the Constitutional issues they frequently involve, suggest that extensive research in this area would be worthwhile.

imposes new costs and administrative burdens. One-time implementation costs for Ohio's Bureau of Motor Vehicles are estimated at $65,000 with $48,000 in annual costs. Additional expenses will be assumed by the Secretary of State, county boards of elections, and other state agencies.

Similarly, the Family and Medical Leave Act requires all employers to offer employees 12 weeks of unpaid, job-protected leave in the event of birth, adoption, or personal or family illness. Employers also are required to fund continued health insurance during the leave period. Even though Ohio already offers liberal leave benefits, the Ohio Department of Administrative Services estimates that this legislation will impose total annual costs of $250,000 to $475,000.

Unfortunately, numerous bills are pending in Congress that contain mandates for state and local governments, and there are countless public policy questions that may receive federal answers over the next year and beyond. For instance, the debate over health care reform may well be decided at the federal level with dire consequences for states, especially if it restricts state flexibility and innovation.

Also, the most prominent piece of environmental legislation pending in the 103rd Congress is reauthorization of the Clean Water Act. This legislation is replete with new mandates in such areas as water quality standards and monitoring, watershed management, and pollution from "non-point" sources such as construction sites, parking lots and farms.

II. CONGRESSIONAL RELIEF

Fortunately, there is also a bright side as a growing awareness within the Congress is emerging about the impact that mandates have on states and local communities. Increasingly, members of Congress, many of them former state legislators and local officials,[13] are recognizing that unfunded mandates cause budgetary havoc outside Washington. This recognition has

[13] Almost 70% of the members in the freshman class of the 103rd Congress are former state legislators or local officials.

resulted in increased sensitivity to the mandate problem as evidenced by the introduction of numerous bills (see table on the following page) in both houses of Congress that would give states varying degrees of relief from unfunded mandates.

For the most part, anti-mandate legislation introduced in the 103rd Congress falls into two categories. The first category would not compel compliance with future mandates unless federal funds are appropriated to reimburse states and local governments for the costs of implementing the mandate.

The second category would tighten current budget law. Under current law, the Congressional Budget Office (CBO) is required to analyze and report on the costs federal legislation imposes on states and local governments. Because of a number of loopholes in the law, cost estimates are the exception, not the rule. Loopholes under which CBO does not have to submit a cost analysis include: amendments made after full committee consideration; legislation that is expected to cost state and local governments less than $200 million a year; if the analysis cannot be provided in a timely matter; and finally, if the mandate is included in a reconciliation or appropriations bill.[14] Consequently, information is rarely available during congressional debate on the cost of the bill to state and local governments as a whole, yet alone the costs to a member's home state or constituent local governments. The result is many mandates are approved by Congress without any information about the costs. At a minimum, members of Congress should be aware of the fiscal impact legislation has not only on the federal budget, but on state and local budgets as well. After all, the taxpayer is required to foot the bill one way or the other.

Frustrated with Congress' inattention to the mandate problem, some members of Congress have proposed innovative, even drastic solutions to the problem. For example, Congressman Paul Gillmor, the former President of the Ohio Senate, has proposed that a Mandate-o-Meter be placed in each

[14]Most mandates, incidentally, are found in reconciliation bills.

House of Congress, highlighting the costs of all unfunded mandates imposed by the current Congress. Congressman Bob Franks, a former state legislator from New Jersey, has introduced legislation that would amend the

Mandate Relief Bills of the 103rd Congress

CBO Cost Estimate Required

Nickles	S. 81
Hatch	S. 490
Moseley-Braun	S. 563
Gregg	S. 648
Ewing	H.R. 830
Clinger	H.R. 886
Shays	H.R. 1006
Baker (LA)	H.R. 1088
Moran	H.R. 1295

Reimbursement

Stump	H.R. 410

Funding Else Requirements Waived

Gregg	S. 648
Kempthorne	S. 993
Condit	H.R. 140
Snowe	H.R. 369
Hefley	H.R. 894
Dreier	H. Con. Res. 51

Source: National Conference of State Legislatures

Constitution to declare that states not be obligated to comply with mandates unless the costs are reimbursed by the federal government.

Several members of Congress also have joined together to form the Task Force on Federal Mandates, chaired by Congressman David Dreier. The task force intends to hold hearings on the impact unfunded mandates have on state and local governments, serve as mandate "watchdogs" and develop a legislative strategy to combat new mandates as well as scale back existing mandates.

While Congress continues to pass on unfunded mandates, there is growing cause for optimism as more and more policymakers come to understand that unfunded mandates cause more problems than they solve. Perhaps the most heartening statement was made by Senate Majority Leader George Mitchell, "I believe we can no longer impose mandates on states and local governments without providing the resources to meet those mandates." Governors unanimously believe it is time for Congress to put all these good intentions to practice and eliminate the practice of unfunded mandates.

III. PRESIDENT CLINTON AND THE GOVERNORS

States had high hopes for better relations with the federal government with the inauguration of a former governor who had promised "a new reality and partnership with state and local government." During the campaign, then-Governor Clinton pledged to local officials, "I'm going to stop handing down mandate after mandate without giving you any money to pay for it. As a governor, I've had to deal with that problem for the last decade, and I know we can do better." Unfortunately, early enactment of two new unfunded mandate bills, the Motor Voter bill and the Family and Medical Leave Act, in the 103rd Congress has been an inauspicious beginning in this new partnership.

During his tenure as Arkansas Governor, Bill Clinton was the chairman of the National Governors' Association and was a long-time member of its Executive Committee. NGA has a long and distinguished

record of opposing federal preemption and unfunded mandates, which then-Governor Clinton strongly supported.

NGA policy also calls for a reduction in the number of joint federal-state programs and a sorting out of responsibilities between the two levels of government. And, in fact, the governors already have attempted to simplify federal-state programs. In response to a recommendation made by President Bush in 1991 to consolidate block grant programs, NGA and NCSL co-developed a proposal to consolidate a variety of functionally similar federal grant programs, which would enhance the States' flexibility in utilizing this assistance while reducing federal costs for oversight.

Governors of both parties remain hopeful that President Clinton will fulfill his commitment to eliminate mandates in partnership with the states, especially in light of the number of former governors and mayors who serve in his Administration and who have had personal experience dealing with this problem. President Clinton recently reaffirmed his support for this position when he told the nation's mayors, "I have told our administration clearly that I don't want us up there on the Hill supporting bills to load up a bunch of new burdens on the mayors and the governors when they're broke, when we're not increasing funding to the states and the cities as we should."

The Republican Governors Association, which is chaired by Governor Voinovich, also has made fighting unfunded federal mandates a top legislative priority. In the RGA's first-ever legislative agenda, the nation's Republican governors called on members of Congress to oppose and President Clinton to veto any legislation that imposes further mandates without also providing adequate funding necessary for the states to provide these services.

The Republican governors met in February of this year with the Republican congressional leadership to enlist their support in combating mandates. To this end, Congressman John Kasich included a provision in the Republican budget alternative requiring that all mandate costs be reimbursed (the Republican budget package was defeated on the House

floor). Similar legislation has been introduced in the Senate, but has yet to receive the same consideration as the House bill.

IV. FEDERALISM

Mandates are merely one often overlooked component of a series of larger challenges states face in their relations with the federal government. Unfunded mandates are just one of many areas of state-federal relations that argue convincingly for a redefinition of the roles of federal, state and local governments to make government more responsive to today's challenges.

Several scholars have noted that there have been two periods of great expansion in the scope of the federal government in this century -- during the Great Depression and the Great Society programs. During these periods, state governments were viewed as unresponsive to the pressing problems of the day, with neither the will nor the resources to address societal needs -- economic recovery in the first case and the war on poverty and racism in the second.

Yet while the situation has changed dramatically since the last period of federal expansion, our system of governing has not. State agency officials are more professional, and states have become the great innovators or the "laboratories of democracy," responding to a broad array of social and economic challenges while maintaining fiscal discipline. The federal government, on the other hand, is too centralized and broke, and is viewed largely as unresponsive to many national concerns.

Unfunded mandates are not just a fiscal issue. Clearly, the costs are great, but even in the absence of federal mandates, states may well have decided to offer many of the services prescribed by the federal government. Mandates reflect the states' diminishing power to develop and implement policies and programs that best meet local concerns by taking policy choices away from governors, state legislatures, and local officials. While mandates often reflect well-intentioned policy goals, some would argue that they are questionable from the standpoint of real effectiveness. Cities, counties, or

states that have effective programs that meet the broad goals of federal legislation sometimes must scrap them entirely in order to develop newer, more costly programs simply to comply with federal fiat.

"Thirty years ago, a bias for federal action made sense. Today, bias for state and local action makes sense," argues David Osborne in *Mandate for Change*. Yet this natural bias for state and local action regularly is circumscribed by congressional mandates that preempt effective state and local programs.

For example, Ohio's comprehensive statewide solid waste management plan includes criteria for siting, building and operating solid waste landfills widely recognized as being thoroughly protective of public health. While this has not been the case in every state, that cannot justify requiring Ohio to change most of its landfill rules to conform to federal standards that in some respects are weaker than the state's. Other examples of federal preemption of state authority already discussed in this study include the Family Support Act of 1988, the Boren Amendment, and rail inspection activities.

States are justified in their concern that the unfunded mandate problem will be aggravated by the federal budget deficit unless immediate action is taken. Any serious effort to reduce the budget deficit is likely to produce two phenomona that will increase the states' burden.

First, necessary reductions in federal expenditures will require significant changes in federal grant funding to state governments. Some programs probably will be consolidated, others will be terminated. States almost certainly will receive less assistance from the federal government as domestic discretionary funding is reduced.

Second, recent history has proven that Congress has looked more and more to state and local governments to mandate the provisions of what they believe are necessary services when budget considerations have inhibited the creation of new domestic programs. As David Osborne and Ted Gaebler point out in *Reinventing Government*, "[A]s the federal deficit widened, Congress increasingly turned to mandates -- in essence, categorical

programs *without* the funds." The combination of these two phenomena, reduced federal assistance and an increasing number of unfunded mandates, would place states under severe pressure to respond to local problems and create their own initiatives while maintaining balanced budgets, which in the vast majority of cases are required by law.

Yet today the argument for federal micromanagement of state and local affairs is weaker than ever. Collectively, the states have made impressive strides in improving the delivery of needed services and in developing innovative solutions to local problems. The federal government, for its part, still has the will to remain involved in local issues, but no longer has either the resources or the justification for prescribing top-down solutions to national problems. As President Reagan said, "While much of the 20th century saw the rise of the federal government, the 21st century will be the Century of the States."

Although there is a need for less federal intervention in state and local affairs, there are many valid reasons for the federal government to remain involved in matters of local policy. For instance, federal guidance on environmental issues is essential. Naturally, air and water flow across borders. They do not belong solely to one city or state. The national interest clearly is not serviced if one state fails to implement programs that produce measurable results in improving environmental quality and preventing identifiable threats to the public health. But, states also need the flexibility to be able to tailor programs to local concerns and conditions.

Federal initiatives should build on existing state programs, not preempt them. States need the flexibility and resources to enforce environmental laws absent compelling justification for federal involvement. The bottom line is if the federal government is to dictate programmatic efforts to improve the environment, they should pay the bill. Setting standards is the easy part when the Congress does not have to worry about how to fund these new initiatives. As former New York City Mayor Ed Koch said, "My concern is not with the broad policy objectives that such mandates are meant to serve, but rather with what I perceive as the lack of

comprehension by those who write them as to the cumulative impact on a single city, and even the nation."[15]

Proponents of reassigning governmental responsibility such as Osborne and Alice Rivlin argue that this approach would have several beneficial effects. First, clarifying overlapping responsibilities would make the federal government and the states more accountable and help reduce voter alienation. Second, state and local governments would have enhanced flexibility in developing innovative programs to respond more effectively to problems by tailoring policies to best meet local conditions. Third, devolving federal responsibility for certain policy areas would reduce federal expenditures and the deficit. Finally, there would no longer be any reason for Congress or regulatory agencies to impose unfunded mandates.

Such radical reforms at all levels of government would surely meet certain challenges. First, redefining responsibilities and finding new sources of funding for some programs while abandoning others would be extraordinarily difficult to enact. Second, there are numerous vested interests that would oppose any change in the status quo. Single issue interest groups naturally would prefer to continue dealing primarily with the Congress to enact preferred reforms rather than 50 separate legislatures. Third, the states might have to raise revenues significantly to fund programs that currently are shared with the federal government. Lastly, there is a question of equity. Poorer states have fewer resources to pick up new responsibilities effectively, and federal assistance traditionally has been intended to help ameliorate the inequities among the states.

A more effective division of governmental responsibilities is essential. States need more flexibility and have demonstrated conclusively over the past decade that they are capable and ready to handle these new responsibilities. At this time, neither the federal government nor the states have focused sufficiently on the best ways to accomplish this objective. As discussed in a previous section, the states have taken an initial step by suggesting the consolidation of functionally related programs into block grants that provide enhanced flexibility. This is just a beginning. More

[15]Edward I. Koch, "The Mandate Millstone," The Public Interest, Fall 1980.

attention is needed from Congress and the Clinton Administration. President Clinton appears to be sympathetic. In a February meeting with the nation's governors he said, "My view is that we ought to give you more elbow room to experiment."

The responsibility of managing state government has become increasingly challenging as budget and revenue decisions have become more difficult each year. Unfunded mandates and other decisions in Washington significantly compound these difficulties.

Success in managing states increasingly depends on an effective partnership with the federal government. Decisions on how states spend scarce dollars should be made by state government officials who are elected by and accountable to state voters. In the final analysis, government would be more effective at all levels if federal and state leaders would work in true partnership.

IMPACT OF UNFUNDED FEDERAL MANDATES ON U.S. CITIES

A 314 - CITY SURVEY

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