Proposed Policy Positions and Amendments

1994 NGA Winter Meeting

Washington, D.C.
January 29 - February 1

NATIONAL GOVERNORS' ASSOCIATION
1994 WINTER MEETING
JANUARY 29-FEBRUARY 1

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NATIONAL GOVERNORS' ASSOCIATION

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SOC

January 14, 1994

TO ALL GOVERNORS:

The enclosed policy positions and amendments, proposed by the Executive Committee and the three Standing Committees, are being transmitted for your review in accordance with the NGA Articles of Organization.

Policy positions will be considered and voted upon on February 1 at the 1994 NGA Winter Meeting in Washington, D.C., including any changes made by the Committees.

Based on the recommendations of the NGA Strategic Review Task Force, these policies and amendments focus on current NGA priorities and, unless otherwise noted, are time limited to two years.

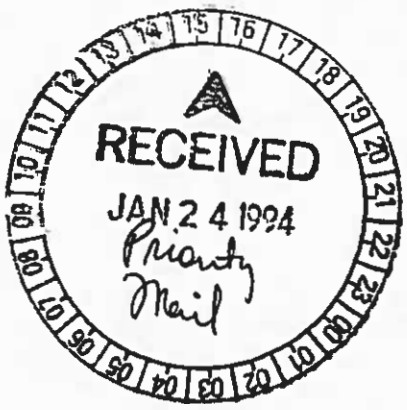
Please note that each Committee's policy positions are accompanied by a cover sheet providing background information and fiscal impact data where appropriate.

The individual Group Directors and I will be pleased to answer any questions you may have concerning the proposed policy positions.

Sincerely,

Raymond C. Scheppach

Enclosures



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ADOPTION OF POLICY STATEMENTS IN PLENARY SESSIONS

Article IX of the National Governors' Association Articles of Organization and the Rules of Procedure determine the procedures necessary to adopt policy statements. In accordance with these Rules, enclosed are the Committee policy statements and amendments proposed for the NGA Winter Meeting. Proposed policy statements are submitted by the Standing Committees and are transmitted to all Governors 15 days before the plenary session.

Based on the recommendations of the NGA Strategic Review Task Force, these policies and amendments focus on current NGA priorities and, unless otherwise noted, are time limited to two years.

1. Germane Committee amendments and floor amendments by individual Governors to proposed Committee policies require a two-thirds vote. Final adoption of a Committee amended policy statement requires a two-thirds vote.

2. Individual Governors must submit proposed policy statements to the Executive Director at least 45 days in advance of the plenary session. These proposals are transmitted to the appropriate NGA Standing Committee for further action.

   If an individual Governor's proposal is not adopted by the Standing Committee and therefore not included in the 15-day advance mailing to all Governors, it is subject to the suspension of the rules if the individual Governor or the Committee chooses to resubmit the proposal at the plenary session.

3. Any proposed new policy or resolution by a Committee or an individual Governor that is not included in the advance mailing requires a three-fourths vote to suspend the rules, a three-fourths vote for final passage, and a three-fourths vote for any amendment.

4 Resolutions do not address new policy, but may affirm existing policy and recognize certain persons, places, and events.

5. Notice procedures: Motions for the suspension of the Rules of Procedure shall be distributed to all Governors present by the end of the calendar day before such motion is put to a vote. The Chairman may request that copies of floor amendments also be available for distribution.

6. Non-debatable motions: Table -- majority vote; Previous Question -- two-thirds vote; Suspend the Rules -- three-fourths vote.

7. A motion to postpone is debatable on the entire policy only and requires a majority vote.

8. Voting may be by voice, show of hands, or roll call. A roll call vote shall be called by a show of hands of ten members.

LIST OF PROPOSED CHANGES IN POLICY

COMMITTEE ON ECONOMIC DEVELOPMENT AND COMMERCE

EDC-6	Proposed Amendments	"Military Base Disposal and Reuse"
EDC-11	Proposed Amendments	"GATT Negotiations"
EDC-12	Proposed Policy Position	"Motor Carrier Transportation Safety"
EDC-13	Proposed Policy Position	"National Highway System"
EDC-14	Proposed Policy Position	"Interstate Commerce in State Lottery Tickets"

COMMITTEE ON HUMAN RESOURCES

HR-3	Proposed Amendments	"Immigration and Refugee Policy" (Immigration)
HR-4	Proposed Amendment	"Income Security" (Supplemental Security Income)
HR-11	Proposed Amendment	"Army and Air National Guard" (Reorganizing and Restructuring of Military Forces)
HR-12	Proposed Amendment	"Public Health Services"
HR-13	Proposed Policy Position	"Head Start"
HR-14	Proposed Policy Position	"FLSA Application to State Prison Inmates"
HR-15	Proposed Policy Position	"Community Policing and Federal Regional Prisons"

COMMITTEE ON NATURAL RESOURCES

NR-8	Proposed Policy Position	"Environmental Priorities and Unfunded Mandates"
NR-9	Proposed Reaffirmation	"The Clean Air Act"
NR-10	Proposed Reaffirmation	"Environmental Compliance at Federal Facilities"
NR-11	Proposed Reaffirmation	"1990 Farm Bill"

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

EXECUTIVE COMMITTEE

Permanent Policy	Proposed Amendments	"Principles for State-Federal Relations" (Defining the Future Federal Role -- Unfunded Federal Mandates) (Administering Intergovernmental Programs)
EC-7	Proposed Policy Position	"Federal Barriers to State Health Care Reform"
EC-8	Proposed Policy Position	"Health Care for Undocumented Immigrants"

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1994 Winter Meeting

COMMITTEE ON ECONOMIC DEVELOPMENT AND COMMERCE

Governor Terry E. Branstad, Chairman
Governor Mike Sullivan, Vice Chairman

Tim Masanz, Acting Group Director

Proposed Changes in Policy

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

The Committee on Economic Development and Commerce recommends the consideration of three new policy positions and amendments to two existing policy positions. Pursuant to the recommendations of the Strategic Review Task Force, these proposals are time limited to two years. Background information and fiscal impact data follow.

1. Military Base Disposal and Reuse (Amendments to Policy EDC-6)

The proposal amends the current policy EDC-6, "Closing Military Bases". Legislation enacted in 1993 addressed several key provisions of that policy. The amendments delete outdated language and add the following new provisions:

- Recommends a more coordinated approach to property disposal by forging better linkages between federal programs aimed at community reuse and providing shelter for the homeless (McKinney Act provisions);

- Recommends more support for converting military airfields to commercial use;

- Recommends federal government responsibility for conversion of properties to which the government retains title; and

- Strengthens language relating to environmental cleanup and remediation, including the development of cooperative measures for those properties that are not on the National Priorities List.

Additional federal funding would be required for the conversion of airfields and environmental cleanup that would be partially offset by more rapid commercial utilization of closed military bases.

2. GATT Negotiations (Amendments to Policy EDC-11)

These amendments to existing policy (formerly numbered H-8) retain much of the sentiment expressed by Governors during the negotiation of the Uruguay Round of the General Agreements on Tariffs and Trade (GATT). Now that the Uruguay Round framework is essentially completed, it awaits congressional approval. The President is expected to begin drafting implementing legislation, which could be introduced as early as April of this year. Meanwhile, negotiations on tariff reductions and other market-opening measures for goods, financial and other services, and government procurement continue between the United States and other GATT member countries through April 15.

Many of the state issues regarding implementation of GATT are similar to those dealt with in the NAFTA implementing package approved by Congress in November 1993. These issues include regulation of service industries, development of product standards and investment measures, and the role of states in international disputes regarding state laws. GATT has some provisions not included in NAFTA that will affect states, including coverage of government procurement and international disciplines on government subsidies (e.g., state economic development programs).

The amendments update the Governors' position with an eye toward development of implementing legislation. They call for strengthening federal-state coordination and for an expanded role for states in the dispute settlement process. They acknowledges that states will incur administrative costs in complying with new GATT reporting and other requirements and call upon the federal government to assist states in identifying and minimizing these costs.

There is no federal fiscal impact from these amendments.

3. Motor Carrier Transportation Safety (New Policy Position, EDC-12)

The proposed policy is a streamlined and updated version of the motor carrier policy that was adopted in 1984, revised in 1987, 1988, and 1989, and sunset last year. The new policy expresses the need for comprehensive programs to facilitate safe and efficient motor carrier transportation and includes several elements:

- Adoption of inspection programs;
- Bus safety efforts;
- Adoption of the recommendations of the Alliance for Uniform Hazardous Materials Transportation Procedures; and
- Coordination of efforts to effectively implement increasingly complicated safety programs.

The policy requires no additional funding beyond currently appropriated funds.

4. National Highway System (New Policy Position, EDC-13)

The proposed policy outlines the Governors' recommendations for the establishment of a National Highway System (NHS), as created by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The proposed policy:

- Calls for full and adequate funding of ISTEA to ensure that it is properly and fully implemented;
- Urges Congress to meet the September 30, 1995 deadline to designate NHS. If the deadline is not met, states will lose more than $6.5 billion in fiscal 1996 NHS and Interstate maintenance funds authorized by ISTEA; and
- Recommends that Governors retain the authority over local officials provided under ISTEA because states are held accountable for NHS route and project selection.

This request for full funding for highway projects would require about $20.5 billion in annual federal spending. Appropriations have fallen about $4.5 billion short of authorized levels over the first three years of ISTEA.

5. Interstate Commerce in State Lottery Tickets (New Policy Position, EDC-14)

This policy is proposed to respond to recent court decisions that have limited state laws prohibiting interstate sales of state lottery tickets. Courts in Pennsylvania have held that the laws do not prohibit companies from buying tickets in one state and selling receipts for these tickets in another state (selling interests in tickets). Because of the risk to state lotteries of potential fraud, the high cost of regulating such companies, the loss in revenue likely to those states with smaller lottery prizes, and the fact that some portion of the contributions to the lotteries would benefit private companies rather than state programs, the committee proposes federal action to close this loophole.

The policy calls on Congress to clarify federal gambling laws to prohibit interstate commerce in state lottery ticket interests.

There is no federal fiscal impact from this policy, and state revenues could be protected.

EDC-6. ~~CLOSING MILITARY BASES~~ MILITARY BASE DISPOSAL AND REUSE

6.1 Preamble

THE EFFICIENT DISPOSAL AND EFFECTIVE REUSE OF SURPLUS MILITARY PROPERTIES CONTINUE TO REMAIN IMPORTANT ECONOMIC ISSUES FOR STATES AND AFFECTED COMMUNITIES, PARTICULARLY AS THE FEDERAL GOVERNMENT BEGINS ANOTHER ROUND OF MILITARY BASE REALIGNMENTS AND CLOSINGS. THE GOVERNORS BELIEVE ECONOMIC DEVELOPMENT AND JOB CREATION MUST BE THE PRIMARY FACTORS GOVERNING THE DISPOSAL OF MILITARY PROPERTIES. THEREFORE, THE GOVERNORS CALL ON THE FEDERAL GOVERNMENT TO IMPROVE EXISTING MILITARY PROPERTY DISPOSAL PROCEDURES. ALTHOUGH THE PRESIDENT'S FIVE-POINT PLAN AND THE FISCAL 1994 DEPARTMENT OF DEFENSE AUTHORIZATION BILL ENACTED BY CONGRESS REPRESENT IMPORTANT PROGRESS, ADDITIONAL LEGISLATION IS NEEDED TO FURTHER EXPEDITE THE PROCESS AND PROVIDE INCENTIVES FOR TIMELY COMMERCIAL REUSE OF SURPLUS MILITARY PROPERTY. ~~As the federal government continues to downsize and restructure the nation's military forces, the Governors are concerned about the impact on state economies and affected communities. Although encouraged by the administration's recently announced initiative to partially mitigate the impact of base closures, the Governors see the need to further address the following issues in order to expedite the transfer of military property to communities and maximize its economic value.~~

6.2 Strategic Planning and Implementation

The impact of closing a base varies with the size of the community and the makeup of the local economy. The Office of Economic Adjustment must provide timely and adequate assistance for strategic planning for base closures and should provide awards to states where they are partners in easing local impacts. Funds also will be needed to implement the strategic plans. In addition to direct assistance, the federal government should consider ways to stimulate job creation AND ECONOMIC DEVELOPMENT in affected communities, including tax incentives such as job-related tax credits or other economic development assistance such as loans, ~~or~~ the streamlined use of tax-exempt financing, OR INSURANCE COVERAGE TO PROTECT FIRMS FROM POSSIBLE ECONOMIC LOSS DUE TO UNDISCOVERED ENVIRONMENTAL CONTAMINATION.

6.3 Property Disposal

~~Legislation must be enacted to improve existing procedures for property disposal. Primarily, the process must be reformed to place an emphasis on timely commercial reuse rather than on maximizing the return to the military services. The Governors believe that economic development proposals meet the test of a public benefit transfer — as defined by the Property Disposal Act — permitting that job creation be given priority.~~

To minimize the time between closure and redevelopment, the federal government must encourage parcelization of properties where appropriate, as well as minimize delays resulting from McKinney Act reviews ~~by conducting those reviews concurrently with the Department of Defense's (DoD) surplus property review.~~ AS LONG AS THE LAW OPERATES WITH SEPARATE AND CONSECUTIVE PROCEDURES FOR MCKINNEY ACT AND COMMUNITY REUSE REVIEWS, THE GOVERNORS BELIEVE IT WILL CONTINUE TO BE A BARRIER TO TIMELY AND BENEFICIAL REUSE OF SURPLUS MILITARY PROPERTY. THEREFORE, THE GOVERNORS BELIEVE THAT THE MCKINNEY HOMELESS ASSISTANCE ACT SHOULD BE AMENDED TO PROVIDE A SINGLE, CONCURRENT SCREENING PERIOD FOR HOMELESS ASSISTANCE PROVIDERS AND COMMUNITY REUSE PLANNERS. TO FACILITATE COOPERATION BETWEEN HOMELESS ASSISTANCE PROVIDERS AND COMMUNITY REUSE PLANNERS, THE MCKINNEY ACT SHOULD ALLOW FOR COMMUNITY REUSE PLANNERS TO PARTICIPATE THROUGHOUT THE DISPOSAL PROCESS, AS WELL AS OFFER ALTERNATIVE LOCATIONS FOR HOMELESS ASSISTANCE PROVIDERS TO CARRY OUT THEIR PROPOSALS. FURTHER, THE FEDERAL GOVERNMENT SHOULD TAKE STEPS TO ENSURE THAT HOMELESS PROVIDER APPLICANTS DEMONSTRATE BOTH HOW PROPERTY WOULD BE UTILIZED AND THE FINANCIAL ABILITY TO CARRY OUT THEIR PROPOSALS TO MEET REGIONAL HOMELESS ASSISTANCE NEEDS. To maximize the resources of local and state governments, public agencies should be permitted to purchase military base assets over a period of time, rather than having to make immediate and full payment. ~~To facilitate expedience and efficiency, the designation of a sole point of contact for final and consistent arbitration within the Office of the Secretary of Defense is essential.~~

THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO EXPAND AND PROVIDE ADDITIONAL FUNDING FOR THE FEDERAL AVIATION ADMINISTRATION'S MILITARY AIRPORTS PROGRAM, WHICH PROVIDES ASSISTANCE FOR THE CONVERSION OF MILITARY AIRFIELDS TO COMMERCIAL USE. IN CASES WHERE THE FEDERAL GOVERNMENT RETAINS OWNERSHIP OF SURPLUS PROPERTY AND MAKES LONG-TERM LEASES AVAILABLE, THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO DEVELOP A UNIFORM POLICY THAT REQUIRES THE FEDERAL GOVERNMENT TO COVER THE CONVERSION COSTS OF FACILITIES FOR COMMERCIAL REUSE. ~~The Governors urge the Department of Defense to seriously consider requests by communities to identify and retain in place on closing military bases personal property that is no longer required for the intended military mission. The Governors recognize that many of these assets could be used for beneficial public purposes or as incentives for economic conversion.~~

6.4 Property and Land Appraisals

Many communities have experienced significant delays because of the procedures followed to complete the appraisal process. In a number of instances, the military has clung to inflated appraisals and insisted on compensation for "full market value." Additionally, the values assigned to buildings that frequently fail to meet fire and safety codes -- not to mention Americans with Disabilities Act (ADA) requirements -- are unrealistically high. Provisions should be made for the military to clear the land in circumstances where the cost of retrofitting exceeds the cost of new construction. Again, a central office must be set up within the Department of Defense (DoD) to set policy and deal consistently with these problems.

6.5 Environmental Cleanup

Successful TIMELY reuse of SURPLUS MILITARY property depends greatly on the ACTIVE COOPERATION OF THE FEDERAL GOVERNMENT AND AFFECTED STATES AND COMMUNITIES IN ~~progress of~~ remediation efforts. All too often the absence of established policies and inconsistent funding have allowed cleanup issues to become outright barriers to reuse. The administration's proposal to permit environmental issues to be addressed concurrently WITH THE REUSE PLANNING PROCESS, rather than sequentially, should be implemented without delay. Local communities must be given more information on a timely basis about the scope of environmental problems at each property, AND ADEQUATE FUNDING ASSISTANCE SHOULD BE PROVIDED FOR COMMUNITY ADVISERS DURING THE REMEDIATION PLANNING PROCESS. Cleanup work often can be performed by local businesses, thus providing interim economic stimulus for the community.

TO ENSURE TIMELY AND SOUND REMEDIATION EFFORTS, THE FEDERAL GOVERNMENT SHOULD WORK WITH THE STATES TO PURSUE COOPERATIVE MEASURES WHEN APPROPRIATE AS AN ALTERNATIVE TO LISTING ADDITIONAL BASES ON THE NATIONAL PRIORITIES LIST. THE FEDERAL GOVERNMENT SHOULD ENSURE THAT THE FEDERAL FACILITIES COMPLIANCE ACT IS EFFECTIVELY ENFORCED ON THOSE BASES SLATED FOR CLOSURE OR REALIGNMENT.

The federal government also must establish a coherent indemnification policy THAT ENCOURAGES INNOVATIVE METHODS OF REMEDIATION. THE GOVERNORS URGE THE PRESIDENT AND CONGRESS TO IMPLEMENT SUCH A POLICY CONSISTENT WITH THE PRESIDENT'S FIVE-POINT PLAN. This policy should address both future purchasers or lessees and cleanup contractors. The lack of an indemnification policy for cleanup contractors deters qualified contractors from using innovative technologies in their remediation efforts. The development and application of new remediation technologies can help make properties available for reuse more quickly. Most important, it is essential that the federal government provide sufficient funding on a timely basis to implement effective remediation efforts at each facility being

closed or realigned, and that there be no delay in dedicating adequate resources for remediation at the facilities and installations to be closed or realigned in the future.

6.6 Cooperation and Coordination with State and Local Governments

As defense downsizing and restructuring continues, the federal government must take steps to enhance cooperation and coordination with state and local governments in order to preserve the integrity of local economies.

Time limited (effective February 1994-February 1996).
Adopted August 1993.

EDC-11. GATT NEGOTIATIONS

11.1 Introduction

The Governors affirm our support for the successful conclusion ~~this year~~ of the Uruguay Round of Multilateral Trade Negotiations ~~now underway~~ within the framework of the General Agreement on Tariffs and Trade (GATT). This multilateral effort to develop a comprehensive set of rules for trade between nations is essential, given the growing trend toward international economic interdependence. The round will help to anchor the emerging democracies of Latin America and Eastern Europe into an open, market-driven trading system. We applaud efforts by GATT members to:

- Expand application of GATT rules beyond manufactured goods to encompass agriculture, services, intellectual property, and investments;
- Strengthen GATT enforcement provisions and improve dispute settlement mechanisms;
- Examine the role of developing countries and seek ways to encourage their full and active participation in the GATT;
- Focus on the impact that broad national policies and practices (e.g., targeting, subsidies, standards, and procurement) may have on international trade; and
- Expand trade and increase market access opportunities.

States, as active participants in the international economy, have a strong interest in the outcome of this effort. The round should bring new opportunities to the states and could provide many potential benefits. States have a special role in certain areas covered by the AGREEMENT ~~negotiations~~, including services and agriculture. States WILL ~~could~~ also be affected by new agreements on government procurement, subsidies, product standards, and investment.

~~Because of the importance of a successful agreement to the future of the international trading system, the Governors are concerned that progress in the talks seems to have stalled. GATT members should make every effort to salvage the negotiations and achieve the mutually agreed upon goals of the Uruguay Round in a timely manner.~~

11.2 Trade in Services

The Governors affirm their support for THE NEW multilateral AGREEMENT ~~negotiations~~ on services trade. IT ESTABLISHES A FRAMEWORK OF PRINCIPLES FOR LIBERALIZING SERVICES TRADE. THE FEDERAL GOVERNMENT SHOULD CONTINUE TO WORK TOWARD ADDITIONAL MARKET ACCESS FOR U.S. SERVICE PROVIDERS IN INTERNATIONAL MARKETS. ~~In seeking to establish an international framework and related sector liberalization commitments, U.S. officials should be guided by the general principles of market access, including the ability to compete with government monopolies, national treatment (no discrimination against foreign firms), the recognition of intellectual property rights, and transparency of laws, regulations, and procedures regarding services transactions.~~

Because of the special state regulatory role, it is imperative that the federal government continue to consult fully with Governors or their designees on international rules affecting service industries and that state views be incorporated in the U.S. ~~negotiating position and~~ implementing legislation. The Governors would oppose efforts to preempt the states' traditional role in regulating service industries, and encourage the federal government to seek voluntary means of achieving state adherence

to an international services agreement. The federal government should work with states to develop mechanisms to keep Governors informed on and to solicit their input for any bilateral and multilateral DISCUSSIONS ~~negotiations~~ on international trade in services.

11.3 Agriculture Trade

Reform of agricultural trade practices IS AN ESSENTIAL COMPONENT TO THE GATT AGREEMENT, ESPECIALLY REDUCTION OF THE WORLD'S EXPORT SUBSIDIES, DOMESTIC PRICE SUPPORT PROGRAMS, AND OTHER TRADE-DISTORTING PRACTICES. ~~must be included in order for the negotiations to be considered successful. In particular, elimination of the world's export subsidies should be prioritized.~~

The Governors urge Congress to adopt legislation implementing THE ~~a successfully negotiated~~ GATT agreement that is consistent with the following principles:

- Priority should be given to measures that ensure the viability of our domestic agricultural industry.
- Income protection for farmers should remain an important means of ensuring adequate supplies of food at stable prices.
- Programs designed to conserve our natural agricultural resources, maintain a strategic food and land supply, protect against the effects of natural disasters, and improve the quality of life in rural areas should not be subject to discipline under GATT as long as they have no significant trade-distorting effects.

Any policies that will substantially change the domestic policy of any GATT participant should be phased in.

11.4 Government Procurement

THE GOVERNORS APPLAUD THE APPROACH TAKEN BY THE U.S. TRADE REPRESENTATIVE (USTR) TO ACHIEVE VOLUNTARY STATE COMMITMENTS TO THE GATT GOVERNMENT PROCUREMENT CODE. THE PROCESS OF OBTAINING INDIVIDUAL STATE COMMITMENTS HAS BEEN AN OPPORTUNITY FOR IMPROVING MUTUAL UNDERSTANDING BETWEEN THE FEDERAL GOVERNMENT'S TRADE POLICY OFFICIALS AND THE GOVERNORS. AS THE FEDERAL GOVERNMENT CONTINUES TO PERSUADE OTHER COUNTRIES TO JOIN THE NEW PROCUREMENT CODE, IT SHOULD CONSIDER A MECHANISM FOR ALLOWING ADDITIONAL STATES TO JOIN THE CODE VOLUNTARILY AT A LATER DATE SO THE UNITED STATES CAN CONTINUE TO EXPAND ACCESS TO THE PROCUREMENT MARKETS ABROAD. ~~The Governors support committing state government procurement that is open on a nondiscriminatory basis for coverage under the GATT Procurement Code. In addition, where there are clearly defined benefits to the states, the Governors support considering the elimination by the states of GATT agreement inconsistent price preferences and set-asides in state government purchasing practices, where such preferences and set-asides discriminate against signatories to the GATT agreement.~~ Participation of states in the procurement code should be made ~~on a negotiated basis and~~ with the advice and full consent of each state that chooses to participate. Obligations should apply only to suppliers from countries that are signatories to the GATT agreement on government procurement

and should be made in exchange for reciprocal commitments by other signatories, including the removal of such preferences and set-asides that discriminate against U.S. suppliers.

11.5 Government Subsidies

Improved disciplines on subsidies are essential to a successful GATT agreement AND REPRESENT A PROFOUND NEW ASPECT OF TRADE POLICY NOT PREVIOUSLY INCLUDED IN INTERNATIONAL TRADE AGREEMENTS. Yet international rules should not unduly restrict the ability of states to pursue efforts aimed at maintaining and improving their economies. Development programs that are generally available within the state should not be defined as a subsidy under international subsidies rules. Programs aimed at helping economically disadvantaged regions; ~~and~~ encouraging research and development; AND PROMOTING ENVIRONMENTALLY SOUND TECHNOLOGIES should be permitted if defined in a manner that limits trade distortions. Also, states should be allowed to continue with smaller development programs that HAVE NO SIGNIFICANT TRADE EFFECT ~~are not significantly trade distorting~~. THE FEDERAL GOVERNMENT SHOULD WORK WITH STATES TO FACILITATE COMPLIANCE WITH NEW NOTIFICATION AND OTHER REQUIREMENTS IMPOSED BY THIS SUBSIDIES CODE.

11.6 International Product Standards Development

The Governors recognize the need to strengthen international disciplines on the development of product standards and technical regulations in order to minimize their use as barriers to trade.

States have a legitimate role in setting standards, especially in matters of HEALTH, public safety, and environmental protection, that should not be unduly constrained. Also, states must have the ability to set standards that are stricter than federal requirements, as long as such standards are nondiscriminatory and scientifically based.

11.7 Administrative Costs of Compliance

A comprehensive GATT agreement will take time and resources to implement. The federal government should make every effort to minimize the administrative costs of implementation to states. Cost estimates should be an integral part of the negotiating and implementing process and states should be consulted to determine the most cost-effective ways to achieve the goals of a GATT agreement.

11.8 State-Federal Consultation AND DISPUTE SETTLEMENT

We support the consultation approach between USTR and the Governors as provided for IN THE NAFTA IMPLEMENTING LEGISLATION. ~~by the USTR Intergovernmental Policy Advisory Committee, as well as the committee process with NGA and various regional Governors' organizations.~~ We recommend that this process be continued and enhanced as the means of state-federal consultation during the Uruguay Round and throughout the phase of domestic implementation. THE IMPLEMENTING PACKAGE FOR THE URUGUAY ROUND AGREEMENTS MUST CONTAIN SPECIFIC PROVISIONS TO ENSURE STATES AN ACTIVE ROLE IN THE SETTLEMENT OF DISPUTES AFFECTING THEM. THIS SHOULD INCLUDE

THE RIGHT TO FULL PARTICIPATION IN PREPARING FOR INTERNATIONAL PROCEEDINGS WHERE STATE LAWS HAVE BEEN CHALLENGED. THE SCOPE OF THE URUGUAY ROUND AGREEMENTS, INCLUDING SUCH AREAS NOT COVERED IN NAFTA AS SUBSIDIES RULES AND GOVERNMENT PROCUREMENT, IS LIKELY TO INCREASE THE POSSIBILITY OF DISPUTES INVOLVING ACTIONS BY STATE GOVERNMENTS, AND THUS THE PROCESS STIPULATED IN NAFTA IMPLEMENTING LEGISLATION SHOULD BE ENHANCED. STATE COMPLIANCE WITH GATT PANEL DECISIONS SHOULD BE ENCOURAGED THROUGH CONSULTATIONS, AND NEITHER AUTOMATIC PREEMPTION OF STATE LAWS NOR PRIVATE RIGHTS OF ACTION SHOULD BE PERMITTED.

~~11.0~~ ~~Failed Negotiations~~

~~In the event that the Uruguay Round does not produce a comprehensive agreement, the Governors urge the administration and Congress to utilize all tools available to achieve the policy goals outlined above. Such tools include but are not limited to expansion of the export enhancement program (EEP), review of policy on mixed credit and tied aid packages, increased appropriations for the Agriculture Market Promotion program, and aggressive pursuit of remedies for unfair trade practices.~~

Time limited (effective February 1994-February 1996).
Adopted February 1988; revised July 1990, February 1991, and August 1991 (formerly Policy H-8).

EDC-12. MOTOR CARRIER TRANSPORTATION SAFETY

12.1 PREAMBLE

SAFE AND EFFICIENT MOTOR CARRIER TRANSPORTATION IS ESSENTIAL TO THE HEALTH AND WELFARE OF THE NATION, AND THE GOVERNORS RECOGNIZE THE NEED FOR COMPREHENSIVE PROGRAMS TO PROVIDE FOR THE SECURE MOVEMENT OF GOODS AND PEOPLE ON OUR NATION'S HIGHWAYS.

12.2 VEHICLE INSPECTION

GOVERNORS ENCOURAGE PARTICIPATION IN INITIATIVES SUCH AS THE STATE-BASED COMMERCIAL VEHICLE SAFETY ALLIANCE (CVSA) AND THE FEDERALLY-SPONSORED MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP). CVSA IS BASED ON VOLUNTARY PARTICIPATION AND RECIPROCITY AMONG STATE INSPECTION AUTHORITIES AND SERVES AS A MODEL PROGRAM FOR COLLECTIVE STATE ACTION IN THE SAFETY AREA. MCSAP HAS ENABLED STATES TO UPGRADE STATE MOTOR CARRIER SAFETY INSPECTIONS AND HAS HELPED TO FOCUS ENFORCEMENT EFFORTS. IN CONJUNCTION WITH MCSAP, THE COMMERCIAL VEHICLE INFORMATION SYSTEM (CVIS) PROGRAM SEEKS TO LINK THE ACT OF REGISTERING A COMMERCIAL MOTOR VEHICLE TO THE SAFETY FITNESS OF THE CARRIER WITH WHOSE FLEET THE VEHICLE IS ASSOCIATED. NGA CALLS FOR FULL FUNDING AND FULL STATE PARTICIPATION IN MCSAP AND CVIS.

12.3 SCHOOL BUS SAFETY

ALL LEVELS OF GOVERNMENT SHOULD DEVELOP COMPREHENSIVE SAFETY POLICIES TO ENCOURAGE THE SAFE TRANSPORTATION OF SCHOOL CHILDREN AND CIVIC/SOCIAL GROUPS ON SCHOOL BUSES AND DEVELOP A MONITORING SYSTEM TO ELIMINATE POTENTIAL PROBLEM DRIVERS AND ENFORCE BUS STRUCTURE SPECIFICATIONS. THE GOVERNORS ENCOURAGE STATES TO REVIEW THE RECOMMENDATIONS OF THE NATIONAL TRANSPORTATION SAFETY BOARD, THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, THE FEDERAL HIGHWAY ADMINISTRATION, AND OTHER FEDERAL AGENCIES.

12.4 HAZARDOUS MATERIALS TRANSPORTATION

THE GOVERNORS SUPPORT THE BASE STATE REGISTRATION AND RECIPROCAL PERMITTING PROGRAM RECOMMENDATIONS OF THE ALLIANCE FOR UNIFORM HAZARDOUS MATERIALS TRANSPORTATION PROCEDURES FOR A

UNIFORM PROGRAM MANDATED UNDER SECTION 22 OF THE HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990. THE WORKING GROUP OF STATE AND LOCAL OFFICIALS PRESENTED ITS RECOMMENDATIONS TO THE SECRETARY OF TRANSPORTATION IN NOVEMBER 1993. THE PROPOSED UNIFORM PROGRAM WILL INCREASE SAFETY, BECAUSE EACH STATE WILL BE ABLE TO DEVOTE ITS RESOURCES TO A MORE THOROUGH REVIEW OF THE CARRIERS BASED WITHIN THEIR JURISDICTION.

12.5 COORDINATION OF EFFORTS

THERE ARE LIMITED RESOURCES DEVOTED TO IMPLEMENTING INCREASINGLY COMPLICATED SAFETY PROGRAMS. STATES ARE ENCOURAGED TO JOIN WITH THE PRIVATE SECTOR TO EXPLORE EVERY OPPORTUNITY TO INCORPORATE MOTOR CARRIER SAFETY OBJECTIVES INTO OVERALL SAFETY PROGRAMS AND TO DISSEMINATE INFORMATION ON SAFETY INITIATIVES. THE NEED FOR ADEQUATE DATA FOR PROBLEM IDENTIFICATION AND EVALUATION IS CRITICAL. NGA RECENTLY DEVELOPED GUIDELINES FOR COLLECTING INFORMATION ON TRUCK ACCIDENTS USING STANDARDIZED DATA ELEMENTS AND DEFINITIONS. MANY STATES HAVE BEGUN IMPLEMENTING THESE GUIDELINES AND THE GOVERNORS ENCOURAGE OTHER STATES TO PARTICIPATE.

Time limited (effective February 1994-February 1996).

EDC-13. NATIONAL HIGHWAY SYSTEM

13.1 PREAMBLE

CONGRESS INSTITUTED THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 (ISTEA) TO ADDRESS THE POST-INTERSTATE TRANSPORTATION NEEDS OF THE COUNTRY. THE PROPOSED NATIONAL HIGHWAY SYSTEM (NHS) WAS CREATED "TO PROVIDE AN INTERCONNECTED SYSTEM OF PRINCIPAL ARTERIAL ROUTES THAT WILL SERVE MAJOR POPULATION CENTERS, INTERNATIONAL BORDER CROSSINGS, PORTS, AIRPORTS, PUBLIC TRANSPORTATION FACILITIES, AND OTHER INTERMODAL TRANSPORTATION FACILITIES AND OTHER MAJOR TRAVEL DESTINATIONS; MEET NATIONAL DEFENSE REQUIREMENTS; AND SERVE INTERSTATE AND INTERREGIONAL TRAVEL."

13.2 RECOMMENDATIONS

THE U.S. DEPARTMENT OF TRANSPORTATION HAS FORWARDED ITS NHS PROPOSAL TO CONGRESS. THE GOVERNORS RECOMMEND THAT CONGRESS ADDRESS THE DESIGNATION OF NHS, WITH HIGH PRIORITY GIVEN TO THE FOLLOWING OBJECTIVES.

13.2.1 FULL AND ADEQUATE FUNDING FOR ISTEA. THE GOVERNORS REITERATE THEIR LONG-STANDING CALL FOR THE ADMINISTRATION AND CONGRESS TO PROVIDE FULL FUNDING FOR ISTEA FOR THE REMAINDER OF ITS AUTHORIZATION. ISTEA WAS A COMMITMENT MADE BY THE FEDERAL GOVERNMENT ACKNOWLEDGING THE FUNDAMENTAL NECESSITY OF AN EFFECTIVE SURFACE TRANSPORTATION INFRASTRUCTURE TO ENSURE NATIONAL ECONOMIC PROSPERITY. ISTEA CANNOT BE PROPERLY AND FULLY IMPLEMENTED UNLESS THE FEDERAL GOVERNMENT FOLLOWS THROUGH ON ITS PROMISE BY APPROPRIATING FUNDS FOR ISTEA AT AUTHORIZED LEVELS.

13.2.2 TIMELY CONGRESSIONAL DESIGNATION OF NHS. CONGRESS WILL HAVE UNTIL SEPTEMBER 30, 1995, TO ACT ON NHS. FAILURE TO MEET THE DEADLINE WILL CAUSE THE STATES TO LOSE MORE THAN $6.5 BILLION IN THEIR AUTHORIZED FISCAL 1996 NHS AND INTERSTATE MAINTENANCE FUNDING. THE GOVERNORS URGE CONGRESS TO FINALIZE ITS DESIGNATION OF NHS ON THE TIMETABLE REQUIRED BY ISTEA.

13.2.3 **RETENTION OF STATE AUTHORITY.** ISTEA PROVIDED A STRONGER PLANNING ROLE FOR LOCAL OFFICIALS AND METROPOLITAN PLANNING ORGANIZATIONS. HOWEVER, STATES CONTINUE TO HAVE OVERALL RESPONSIBILITY, AND THEREFORE ACCOUNTABILITY, FOR NHS ROUTE AND PROJECT SELECTION. THE GOVERNORS RECOMMEND THAT STATES RETAIN THE AUTHORITY OUTLINED UNDER ISTEA AND THAT THERE BE NO FURTHER EXPANSION OF LOCAL PLANNING CONTROL.

THE GOVERNORS ARE WILLING TO WORK WITH CONGRESS TO PROVIDE A COMPLETE PICTURE OF HOW ISTEA IS BEING IMPLEMENTED NATIONALLY AND THE IMPLICATIONS FOR FUTURE SURFACE TRANSPORTATION REAUTHORIZATIONS.

Time limited (effective February 1994-February 1996).

EDC-14. INTERSTATE COMMERCE IN STATE LOTTERY TICKETS

THIRTY-SIX STATES RELY ON LOTTERIES AS ONE FORM OF REVENUE TO ACHIEVE PUBLIC GOALS AND TO PROVIDE NEEDED PUBLIC SERVICES. RECENT COURT DECISIONS HAVE HINDERED THE ABILITY OF STATES TO GUARANTEE THE INTEGRITY AND SECURITY OF THEIR LOTTERY SYSTEMS. SPECIFICALLY, STATE LAWS FORBIDDING SALE OF LOTTERY TICKETS OUT-OF-STATE HAVE BEEN HELD NOT TO APPLY TO COMPANIES SELLING THEIR OWN RECEIPTS FOR STATE LOTTERY TICKETS OUT-OF-STATE (SELLING INTEREST IN LOTTERY TICKETS). PRIVATE CONCERNS ENGAGED IN THIS BUSINESS RAISE ISSUES OF CONSUMER PROTECTION AND LOTTERY INTEGRITY, AS WELL AS UNRESOLVED ISSUES OF SECURITY AND CREDIBILITY. FAILURE OF A CITIZEN TO BE ABLE TO REDEEM WHAT HE OR SHE BELIEVES TO BE A WINNING LOTTERY TICKET PURCHASED THROUGH SUCH A PRIVATE CONCERN COULD RESULT IN A SIGNIFICANT LOSS OF CREDIBILITY IN STATE LOTTERY PROGRAMS AND THUS A LOSS OF REVENUE TO STATES.

THE PRIMARY REASON FOR THE CREATION OF STATE LOTTERIES WAS TO SUPPORT CERTAIN GOVERNMENTAL PROGRAMS WITHIN THAT PARTICULAR STATE. THE SELLING OF INTERESTS IN OUT-OF-STATE LOTTERY TICKETS EXCEEDS THAT PURPOSE. SUCH SALES ALSO VIOLATE THE INTENT AND SPIRIT OF FEDERAL LAWS INTENDED TO PROHIBIT SUCH ACTION. THE NATIONAL GOVERNORS' ASSOCIATION CALLS ON CONGRESS TO CLARIFY FEDERAL GAMBLING LAWS (TITLE XVIII OF THE FEDERAL CRIMINAL CODE) TO PROHIBIT THE SELLING OF INTEREST IN OUT-OF-STATE LOTTERY TICKETS UNLESS THAT BUSINESS IS PERMITTED UNDER AN AGREEMENT BETWEEN THE STATES IN QUESTION OR UNDER APPROPRIATE AUTHORITIES OF THOSE STATES.

Time limited (effective February 1994-February 1996).

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1994 Winter Meeting

COMMITTEE ON HUMAN RESOURCES

Governor Pete Wilson, Chairman
Governor David Walters, Vice Chairman

Margaret A. Siegel, Group Director

Proposed Changes in Policy

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

The Committee on Human Resources recommends the consideration of three new policy positions and amendments to four existing policy positions. Pursuant to the recommendations of the Strategic Review Task Force, these proposals are time limited to two years. Background information and fiscal impact data follow.

1. Immigration and Refugee Policy (Amendments to Policy HR-3)
(Immigration)

These two amendments that deal with issues of state costs regarding the treatment of undocumented immigrants are offered to the existing policy HR-3, "Immigration and Refugee Policy." The Committee on Human Resources will review revised language on these topics at the winter meeting.

The amendments would have a positive fiscal impact on states if the federal government assumes its responsibility for the costs of undocumented immigrants.

2. Income Security (Amendment to Policy HR-4)
(Supplemental Security Income)

The amendment calls on the federal government to return the Supplemental Security Income (SSI) program to its original framework, in which states had flexibility in administering their state supplemental payments, and to obviate the cost-shifting provision in the Omnibus Budget Reconciliation of 1993, in which the federal government imposed fees on states for administering the state supplement.

The policy would have a positive fiscal impact on states by removing federal fees for administration of the state supplemental SSI benefits.

3. Army and Air National Guard (Amendment to Policy HR-11)
(Reorganizing and Restructuring of Military Forces)

The amendment urges the Defense Department not to cut the National Guard below the minimum level of 405,000, and to ensure that remaining guard units have the resources and structures needed to maintain their critical functions and readiness levels.

The policy would have a positive fiscal impact on states by ensuring federal support for adequate National Guard troops and supplies.

4. Public Health Services (Amendment to Policy HR-12)

The existing NGA policy C-5, "Health and Medical Care," that was scheduled to sunset, has instead been amended. Several sections have been deleted, and the amended policy now addresses only public health. The policy is now titled "Public Health Services."

There is no fiscal impact from this amendment.

5. Head Start (New Policy Position, HR-13)

The proposed policy is designed to provide greater collaboration between the state early childhood initiatives and the federal Head Start program. The policy recognizes existing efforts of Governors in including Head Start programs in statewide initiatives to support at-risk children and their families and calls on Congress to encourage Head Start programs to join in on such collaborative efforts. In addition, the policy calls for the identification and elimination of federal- and state-level barriers to providing comprehensive services for at-risk children and their families.

This policy has no fiscal implications for the states.

6. FLSA Application to State Prison Inmates (New Policy Position, HR-14)

Recent federal court decisions have held that the provisions of the Fair Labor Standards Act and other worker protections apply to prison and jail inmates. The policy urges Congress to enact legislation to exclude prison inmates from coverage under the Fair Labor Standards Act, in part because of the fiscal impact on states. The policy also recommends the elimination of any past liability because of the misapplication of FLSA to inmates.

The policy would have a positive fiscal impact on states by eliminating the burden of paying minimum wage to prisoners.

7. Community Policing and Federal Regional Prisons (New Policy Position, HR-15)

This new policy recommends ways in which the federal government can enhance state efforts to combat violent crime through continued funding for the Edward Byrne Memorial Block Grant, which provides flexible support to states. In addition, the policy supports efforts by the federal government to establish regional prisons with the understanding that participation in these prison programs should be based on state commitment to expanded public safety measures.

The policy could have a positive fiscal impact on states if funding for the Byrne program is continued.

HR-3. IMMIGRATION AND REFUGEE POLICY

3.1 Immigration Policy

3.1.1 Preamble. The nation's Governors recognize the important contribution immigrants have made and continue to make to our nation. While the federal government has the primary role in directing overall policy regarding immigration and refugees, the effects of such policy on local communities present challenges that cannot be ignored by the states. These challenges include demands for education, job training, social and health services, and other assistance designed to promote the integration of immigrants into our communities.

Decisions regarding the admission and placement of legal immigrants and refugees rest solely with the federal government. Similarly, the illegal entry of other individuals also is a direct responsibility of the federal government. When these decisions are coupled with federal mandates to serve both legal and undocumented immigrants and refugees in joint federal-state categorical assistance programs, the consequence is a significant increase in the state share of these program costs.

The federal government's unwillingness to provide adequate funding for refugee resettlement and immigrant assistance services has resulted in a dramatic shift of program costs from the federal government to state and local taxpayers. This reduced federal commitment has strained the states' ability to provide the programs and services necessary to promote economic self-sufficiency within the immigrant and refugee community.

Because immigration and refugee policy is under the sole jurisdiction of the federal government, the Governors believe that the federal government must be prepared to bear the costs of such policy.

3.1.2 Principles. Because immigration decisions have a broad influence upon our society and involve the states, the Governors urge Congress to consider the following principles in the deliberation and formulation of immigration policies.

- The decision to admit immigrants is a federal one that carries with it a firm federal commitment to shape immigration policy within the parameters of available resources we as a nation are determined to provide.
- The fiscal impact of immigration decisions must be addressed by the federal government. The states, charged with implementing federal policy, have shared and are sharing in the costs; however, there should be no further shift of costs to the states.
- Immigration policy shall be developed within the context of our national interest, which takes into consideration preservation of the family, demographic trends, economic development, labor market needs, and humanitarian concerns.
- Immigration decisions shall not discriminate against nor give preference to potential immigrants because of their nationality, race, sex, or religion.
- A basic responsibility of the federal government is to collect and disseminate timely and reliable statistical information on immigration and its consequences for the United States.
- The increase of the social and economic strength of our hemispheric neighbors is an efficient method to reduce migration.
- Immigration policies and administrative systems should be modernized and reviewed periodically to ensure that they are fair and workable.

3.1.3 Immigration Ceiling and Preference System. The National Governors' Association supports control of legal immigration at a level consistent with our national interest and resources, under a ceiling adjusted periodically by Congress as conditions warrant. The ceiling should continue to exclude immediate relatives of United States citizens, refugees, asylees, and aliens whose adjustment of status is not subject to immigration quotas under current or future laws.

The ceiling should provide for the separation of the two major types of immigrants -- families and independent immigrants -- into distinct admission categories. In designing the preference system, the principle of family unity should be preserved and the independent immigration system should reflect economic and labor market needs.

3.1.4 Prohibition on the Hiring of Illegal Immigrants. To help control illegal immigration, the employment of illegal immigrants should be prohibited. The federal government should develop enforcement mechanisms that will minimize the administrative burdens on employers and do not discriminate against the employment of workers and potential workers. The appropriate federal agencies selected to enforce this prohibition should have the resources necessary to carry out their task.

3.1.5 **Legalization.** The Governors urge the following.

- The federal government must provide full and timely reimbursement to state and local governments for costs incurred as a consequence of the legalization program. The Governors call upon the federal government to make available without further deferral the state legalization impact assistance funds (SLIAG) promised the states under the Immigration Reform and Control Act of 1986 (IRCA).
- States require maximum flexibility in determining and allocating resources to meet the needs of newly legalized aliens.
- The current legalization program provides the opportunity for illegal immigrants to become lawful residents. Due to insufficient national and community outreach efforts resulting from a compressed timetable as required by law, application deadlines should be extended.

3.1.6 **Supplemental Worker Program.** In implementing any supplemental worker programs, the federal government must conduct timely labor certifications to ensure labor availability in the event of labor shortages. This program should not cause displacement of American workers.

3.1.7 **Cooperation with Western Hemisphere Countries.** A workable immigration program must recognize and involve the major sending countries. The federal government must work cooperatively with Mexico and other western hemisphere countries in the development of mutually beneficial policies. The Governors believe that trade and investment policies are critical elements to reduce illegal immigration.

3.1.8 **Research and Data Collection.** Congress should direct the federal government to develop a reliable data system and strengthen the research capacity on migration and its consequences to the United States, especially concerning the immigration flow, estimate of illegal migration, and impact of immigration on states and local communities. To do so, better coordination of federal agencies is needed.

Congress should implement the findings of the panel on immigration statistics convened by the National Research Council in 1985.

In order to provide the necessary information on immigration flows and secondary migration, alien registration by the federal government must be reinstated. In addition, data collected should be analyzed and disseminated to the states in a timely manner for the purpose of planning, implementation, and evaluation of immigration policy.

3.1.9 **Immigration Law Enforcement.** The federal government should provide sufficient funding to the Immigration and Naturalization Service and other appropriate agencies to enforce the immigration laws, modernize management, and provide for an adequate and reliable data collection system.

3.1.10 **Exclusion/Asylum Proceedings.** Individual claims for asylum should be handled in a fair and expeditious manner. Prompt efforts should be made to address the current backlog problems.

3.1.11 **Emergency Authority and Contingency Plan.** As the President has contingency planning authority, the federal government must develop a contingency plan to deal with unanticipated flows of refugees or asylum applicants. The states expect an immediate federal government response to such a situation. Governors must be consulted in determining the role of the states. The states anticipate full federal reimbursement of any state and local costs.

3.1.12 **Coordination with States.** The Governors are concerned about the lack of information and adequate consultation on issues concerning immigration that affect the states. Federal agencies must develop ongoing communication mechanisms to inform and consult with states on both legal and illegal immigration matters.

3.1.13 **Incarceration and Deportation Costs of Undocumented Alien Felons.** Under IRCA, the federal government is authorized to reimburse state and local governments for the costs associated with the incarceration of undocumented alien felons. However, no funds have ever been appropriated to assist the states and thus fulfill this federal obligation, despite rising costs in many states. The Governors call on the federal government to work in partnership with state and local governments to provide funding as promised under IRCA.

FEDERAL RESPONSIBILITY FOR COSTS ASSOCIATED WITH INCARCERATION OF UNDOCUMENTED ALIEN FELONS. CORRECTION COSTS REPRESENT AN EVER-INCREASING PERCENTAGE OF STATE GOVERNMENT BUDGETS. THIS IS PARTICULARLY TRUE FOR STATES IMPACTED BY ILLEGAL IMMIGRATION, WHERE UNDOCUMENTED FELONS REPRESENT A SIGNIFICANT SEGMENT OF THE STATE PRISON POPULATION.

SECTION 501 OF IRCA AUTHORIZED THE FEDERAL GOVERNMENT TO REIMBURSE STATE AND LOCAL GOVERNMENTS FOR THE COSTS ASSOCIATED WITH THE INCARCERATION OF UNDOCUMENTED ALIEN FELONS. THE NATION'S GOVERNORS REPEATEDLY HAVE CALLED ON THE FEDERAL GOVERNMENT TO APPROPRIATE THE FUNDS AUTHORIZED UNDER SECTION 501, TO NO AVAIL.

SECTION 501 HAS PROVEN TO BE AN INEFFECTIVE MECHANISM FOR FULFILLING THE FEDERAL GOVERNMENT'S RESPONSIBILITY TO PAY THE CORRECTIONAL COSTS OF UNDOCUMENTED FELONS.

THE LEADERSHIP OF THE 103RD CONGRESS HAS PLEDGED TO CONSIDER MEASURES TO REFORM EXISTING IMMIGRATION AND REFUGEE POLICY. THE GOVERNORS BELIEVE THE PRESIDENT AND CONGRESS SHOULD USE THIS OPPORTUNITY TO REPLACE SECTION 501 WITH A POLICY THAT WILL ENSURE THAT STATE AND LOCAL GOVERNMENTS ARE RELIEVED OF THE FISCAL BURDEN ASSOCIATED WITH THE INCARCERATION OF UNDOCUMENTED ALIEN FELONS.

THEREFORE, THE GOVERNORS CALL ON THE PRESIDENT AND CONGRESS TO INCLUDE IN ANY IMMIGRATION REFORM PACKAGE A POLICY THAT PROVIDES FOR:

- FEDERAL INCARCERATION, OR COUNTRY-OF-ORIGIN TRANSFER AND INCARCERATION OF UNDOCUMENTED FELONS CONVICTED OF STATE CRIMES FOR THE FULL DURATION OF THEIR SENTENCE; OR
- IF FEDERAL INCARCERATION OR TRANSFER IS INFEASIBLE, A BILLING MECHANISM TO ALLOW STATE AND LOCAL GOVERNMENTS TO BILL THE FEDERAL GOVERNMENT DIRECTLY FOR THE INCARCERATION OF UNDOCUMENTED FELONS.

[NOTE: THE HUMAN RESOURCES COMMITTEE WILL REVIEW REVISED LANGUAGE ON THIS TOPIC AT THE WINTER MEETING.]

3.1.14 **REIMBURSEMENT OF COSTS ASSOCIATED WITH EDUCATING THE CHILDREN OF UNDOCUMENTED IMMIGRANTS.** THE EDUCATION OF OUR CHILDREN IS ONE OF THE MOST SACRED OF STATE AND LOCAL GOVERNMENT RESPONSIBILITIES. AS GOVERNORS, WE HAVE STRUGGLED TO CONTINUE TO ADEQUATELY FUND EDUCATION SERVICES IN OUR STATES IN THE FACE OF PROLONGED ECONOMIC STAGNATION AND INCREASED PUBLIC SAFETY NEEDS.

THE PRESENCE OF GROWING NUMBERS OF UNDOCUMENTED CHILDREN IN OUR SCHOOL SYSTEMS CAN NO LONGER BE IGNORED -- IT HAS LED TO CLASSROOM OVERCROWDING AND HAS SERIOUSLY EXACERBATED THE FUNDING CRUNCH FACED BY PUBLIC SCHOOL SYSTEMS. EVERY STATE AND LOCAL DOLLAR SPENT PROVIDING EDUCATION TO UNDOCUMENTED CHILDREN IS ONE LESS DOLLAR SPENT EDUCATING THE CHILDREN OF LEGAL RESIDENTS AND CITIZENS.

MORE THAN A DECADE AGO, IN THE CASE OF PLYLER V. DOE, THE U.S. SUPREME COURT UPHELD A LOWER COURT RULING STRIKING DOWN AS UNCONSTITUTIONAL A STATE LAW THAT DENIED EDUCATIONAL SERVICES TO UNDOCUMENTED CHILDREN. THE COURT'S NARROW 5-4 DECISION WAS BASED IN PART ON THE ABSENCE OF ANY "IDENTIFIABLE CONGRESSIONAL POLICY" ON THE SUBJECT AND "ABSENT ANY CONTRARY INDICATION FAIRLY DISCERNABLE IN THE LEGISLATIVE RECORD," THE COURT COULD "PERCEIVE NO NATIONAL POLICY THAT SUPPORTS THE STATE." THE COURT'S DISSENTING OPINION NOTED THAT THE MAJORITY WAS "MAKING NO ATTEMPT TO DISGUISE THAT IT IS ACTING TO MAKE UP FOR CONGRESS' LACK OF EFFECTIVE LEADERSHIP IN DEALING WITH THE SERIOUS NATIONAL PROBLEMS CAUSED BY THE INFLUX OF UNCOUNTABLE MILLIONS OF ILLEGAL ALIENS ACROSS THE BORDER."

THE PLYLER DECISION WAS, IN FACT, A CALL FOR CONGRESS TO LEGISLATE IN THIS AREA. YET, SINCE THAT RULING, THE FEDERAL GOVERNMENT HAS DONE NOTHING TO SET A NATIONAL POLICY REGARDING THE EDUCATION OF UNDOCUMENTED CHILDREN. INSTEAD, THE FEDERAL GOVERNMENT DISINGENUOUSLY CITES PLYLER AS THE FINAL WORD. MEANWHILE, STATE AND LOCAL GOVERNMENTS ARE FORCED TO DEVOTE SCARCE RESOURCES TO COMPLY WITH A CONSTITUTIONAL MANDATE BORN OF FEDERAL INACTION AND IRRESPONSIBILITY.

THE GOVERNORS ARE NOT ADVOCATING THE DENIAL OF EDUCATIONAL SERVICES TO UNDOCUMENTED PERSONS. THE GOVERNORS ARE NOT IN A LEGAL POSITION TO MAKE SUCH POLICY. THE GOVERNORS OPPOSE BEING A CAPTIVE SOURCE OF FUNDING FOR THE COSTS OF EDUCATING MILLIONS OF UNDOCUMENTED CHILDREN. THEREFORE, THE GOVERNORS CALL ON THE PRESIDENT AND CONGRESS TO RECOGNIZE THEIR EXCLUSIVE RESPONSIBILITY FOR COSTS ASSOCIATED WITH FAILED IMMIGRATION POLICIES BY ESTABLISHING A DIRECT BILLING MECHANISM TO ENSURE THAT ANY EDUCATIONAL SERVICES PROVIDED TO UNDOCUMENTED CHILDREN ARE FINANCED ENTIRELY BY THE FEDERAL GOVERNMENT.

[NOTE: THE HUMAN RESOURCES COMMITTEE WILL REVIEW REVISED LANGUAGE ON THIS TOPIC AT THE WINTER MEETING.]

3.2 Refugee Policy

Time limited (effective February 1994-February 1996).
Adopted February 1988; revised February 1992 and February 1993 (formerly Policy C-14).

HR-4. INCOME SECURITY

4.1 **Job-Oriented Welfare Reform**

4.2 **Reform of Income Assistance**

4.3 **The Food Stamp Program**

4.4 **Maintenance-of-Effort**

4.5 **Administrative Integration of AFDC and Food Stamps**

4.6 **Employment and Training for Welfare Recipients**

4.7 **The Supplemental Food Program for Women, Infants, and Children**

4.8 **Supplemental Security Income**

4.8.1 PREAMBLE. ESTABLISHED BY THE 1972 AMENDMENTS TO THE SOCIAL SECURITY ACT, THE SUPPLEMENTAL SECURITY INCOME (SSI) PROGRAM PROVIDES IMPORTANT INCOME ASSISTANCE TO NEEDY AGED, BLIND, AND DISABLED CITIZENS.

THE LEGISLATIVE HISTORY OF THE 1972 AMENDMENTS SHOWS THE CLEAR INTENT OF CONGRESS TO ENCOURAGE STATES TO SUPPLEMENT, WITH STATE FUNDS, THE FEDERAL SSI PAYMENT BY ALLOWING FOR FEDERAL ADMINISTRATION OF THE STATE SUPPLEMENT AT NO COST TO THE STATES. AS A RESULT, THE MAJORITY OF STATES SUPPLEMENT SSI PAYMENTS WITH STATE FUNDS.

4.8.2 STATE AND FEDERAL RESPONSIBILITIES. SINCE THE INCEPTION OF SSI, THE FEDERAL GOVERNMENT HAS IMPOSED INCREASINGLY GREATER RESTRICTIONS ON STATES' ABILITY TO STRUCTURE STATE SUPPLEMENTS. IN MOST CASES, STATE SUPPLEMENTS ARE NOW MANDATED THROUGH MAINTENANCE-OF-EFFORT PROVISIONS; IN THE OMNIBUS RECONCILIATION ACT OF 1993, THE FEDERAL GOVERNMENT IMPOSED FEES ON STATES FOR ADMINISTERING THE STATE SUPPLEMENT.

THE FEES ON STATES VIOLATE THE ORIGINAL COMMITMENT MADE TO STATES WHEN SSI WAS ESTABLISHED AND IMPOSE FEDERAL RESPONSIBILITIES ON STATE GOVERNMENT. ALTHOUGH THE GOVERNORS SUPPORT DEFICIT REDUCTION AND RECOGNIZE THE NEED TO KEEP FEDERAL SPENDING WITHIN AVAILABLE RESOURCES, RESPONSIBLE DEFICIT REDUCTION SHOULD NOT NECESSARILY RESULT IN SHIFTING COSTS TO STATES.

THE GOVERNORS URGE THE ADMINISTRATION AND CONGRESS TO HONOR THE INITIAL RESPONSIBILITIES SET FORTH FOR THE FEDERAL GOVERNMENT WHEN SSI WAS ESTABLISHED.

Time limited (effective February 1994-February 1996).
Adopted August 1980; revised February 1982, March 1983, July 1984, February 1985, August 1985, February 1986, February 1987, February 1989, February 1990, and February 1993 (formerly Policy C-6).

HR-11. ARMY AND AIR NATIONAL GUARD

11.1 Preface

11.2 Training

11.3 Control of the Guard

11.4 Training and Equipment

11.5 Reorganizing and Restructuring of Military Forces

Changes in Eastern Europe and the arms negotiations have caused the Department of Defense to evaluate force structure in light of budgetary constraints. It is recognized that there will be military force structure cuts and some of these cuts may be in National Guard units.

Furthermore, Governors believe that military force reductions prorated across the entire military structure may not be the most cost-effective means of achieving a strong national defense in peacetime. Moving from the active military components into the reserve components could achieve budget savings while continuing to provide for the defense of the nation in a national emergency. Historically, our nation has relied on the National Guard as a mobilization base. National Guard units have achieved high readiness levels, providing a real mobilization asset on short notice. Some units, such as military police, Army and Air Guard air defense, tactical air units, and air transportation units, provide excellent immediate capability for lower peacetime operating costs than active service units.

THE DEFENSE DEPARTMENT'S RECENTLY ANNOUNCED ARMY NATIONAL GUARD FORCE STRUCTURE LEVEL OF 405,000 REPRESENTS THE ABSOLUTE MINIMUM LEVEL ACCEPTABLE TO GOVERNORS. THE GOVERNORS ARE CONVINCED THAT NO FURTHER CUTS CAN BE MADE SAFELY FROM THE FORCE STRUCTURE WITHOUT JEOPARDIZING THE GUARD'S ABILITY TO RESPOND TO NATIONAL AND STATE EMERGENCIES. GOING BELOW THIS FLOOR COULD ADVERSELY AFFECT THE ABILITY OF THE ARMY NATIONAL GUARD TO TRAIN AND DEVELOP PERSONNEL, EFFECTIVELY MANAGE CAREER OPPORTUNITIES, PROVIDE OPPORTUNITIES FOR UPWARD MOBILITY FOR WOMEN AND MINORITY GROUPS, SUPPORT THE WAR ON DRUGS, AND MAKE THE MOST COST-EFFECTIVE CONTRIBUTIONS TO NATIONAL DEFENSE.

WE MUST ENSURE THAT SUFFICIENT STRUCTURE REMAINS TO RESPOND TO BOTH FEDERAL AND STATE MISSIONS. ENGINEERING, MEDICAL, AIRLIFT, MILITARY POLICE, AND TRANSPORTATION UNITS ARE PARTICULARLY IMPORTANT. IT IS IMPERATIVE THAT THESE NATIONAL GUARD UNITS BE RESOURCED TO MAINTAIN A READINESS LEVEL THAT PROVIDES THE CAPABILITY TO MEET THE NEEDS OF THE STATES AND THE NATION.

~~We wish to commend Congress for its continuous support of the Guard and urge that in considering any Department of Defense force drawdown proposal and/or force restructuring and reorganizing, reductions in the Guard should achieve a floor of not less than 450,000 force structure allowance, and a 420,000 end strength floor for the Army National Guard. Going below this floor could adversely affect the ability of the Army National Guard to train and develop personnel, effectively manage career opportunities, provide opportunities for upward mobility for women and minority~~

~~groups, perform state missions, support the war on drugs, and make the most cost-effective contributions to national defense.~~

Overall, the National Guard continues the involvement of the citizens in national defense, provides a low-cost, quality defense that is essential in times of national emergencies, and simultaneously furnishes a force to meet community and state emergencies. Therefore, Governors believe that no restructuring of military forces should occur without a cost-benefit analysis that takes into account the dual role of the National Guard, and a review of any proposed reductions of units with appropriate state officials.

11.6 Equal Opportunity in the National Guard

Time limited (effective February 1994-February 1996).
Adopted August 1986; revised July 1990, February 1991, and August 1992 (formerly Policy B-5).

HR-12. ~~HEALTH AND MEDICAL CARE~~ PUBLIC HEALTH SERVICES

~~12.1~~ ~~Health Care For Uninsured Individuals~~

~~12.1.1~~ ~~Preface. The Governors believe all Americans have the fundamental right to basic health care, and to medical treatment for their illnesses and injuries, at prices they can afford. This right must be guaranteed through a combination of individual, private sector, and governmental resource commitments.~~

~~Tragically, despite making a huge investment in health care, during the last fifteen years the nation has been losing ground in meeting this guarantee. The proportion of the public with no insurance has increased from 11 percent to 17 percent in the past few years. More than 37 million non-elderly citizens have neither private health insurance nor benefits under Medicare, Medicaid, or Veterans Health programs. The percentage of America's poor who are covered by Medicaid has dropped below 50 percent.~~

~~Several fundamental and extremely troublesome dilemmas confront government at all levels and the private sector in dealing with the gaps in health care financing and access to care.~~

- ~~The United States currently devotes 11 percent of its gross national product to health care. This is far higher than the shares of GNP most other western nations devote to health care. In most nations, there is typically universal availability of health care benefits.~~
- ~~Americans who can afford comprehensive health insurance, or to pay directly for their medical care, have the benefit of the finest medical care the world has ever known. This fact contrasts starkly with the situation faced by tens of millions of Americans who have neither health insurance nor the money to pay for the care they need. Many of these individuals end up seeking very costly care, such as in hospital emergency rooms.~~
- ~~After a slow down in the mid-1980s, health cost inflation has now accelerated again. This is causing major budget problems for the states and the federal government. It is also causing employers to eliminate and cut back health insurance benefit plans and others to decline to initiate coverage for their employees. In addition, it exacerbates the problem for the uninsured by driving up the cost of insurance.~~
- ~~Many health care providers are caught in a financial squeeze — between pressures to provide services to those who have no health insurance and the efforts of government, private employers, and the insurance industry to control costs.~~
- ~~The financing of growing Medicaid costs is a major budget problem in all states. Even though the federal government pays, on average, 55 percent of the costs of the program, new federal mandates related to catastrophic coverage for the elderly, and nursing home services for the elderly and disabled, and maternal and infant care have increased the already substantial cost growth in this program.~~
- ~~Organ transplantation and other "high tech" services are posing difficult ethical dilemmas while increasing cost pressure on all payors.~~
- ~~The nation delivers health care through an array of interconnected, often overlapping systems, rather than a single cohesive system. The current approaches entail tremendous inefficiencies.~~

~~States have taken the lead on innovations in providing health care coverage for those in need and in health care cost containment. Despite these creative activities, however, the states alone cannot bring order to the overall health care system.~~

~~The Governors are convinced that the federal government must take the lead in effectively addressing these dilemmas. The nation must not be allowed to continue drifting in this crucial area of national need. Additional public and private investments must be made in health care on top of the present huge investments. But that added investment must be devoted primarily to closing the existing unacceptable gaps in coverage — rather than fueling more health cost inflation.~~

~~12.1.2~~ ~~Principles. The Governors believe there needs to be a national commitment to systematically increase and eventually ensure that health care coverage is provided to all Americans. Such action should conform with the following principles:~~

- ~~There is an obligation on the part of both the private and public sector to help resolve the problem. The federal and state government have a shared responsibility to alleviate the problem.~~

- The Governors believe in retaining the best elements of the current system while considering positive innovations.
- The uninsured population is not a monolithic group with identical characteristics, but rather different populations, uninsured for different reasons. Resolution of the problem will require multiple strategies, but we seek a comprehensive solution.
- Employers should be primarily responsible for providing their employees and dependents with health care coverage.
- Federal and state government have primary responsibility for assuring that health care coverage is provided for those outside the parameters of employer based coverage, those in transitional situations, and those with income insufficient to purchase coverage for themselves.
- Direct service providers, such as community health centers, should continue to be supported since health insurance alone will not ensure access to appropriate health care services.
- A process must be established for addressing cost control within the system in a comprehensive way. The problem of the uninsured cannot be addressed effectively without such action. There must be a renewed effort by both the public and private sector to bring about more order and efficiency to the system.

12.2 Health Care Costs and Financing

12.2.1 Preface.

The Governors strongly believe health care costs must be brought under control in order that gaps in health services can be filled and such costs will not unnecessarily consume resources needed in other areas of national need. Controlling escalating health care costs can be accomplished only through a comprehensive effort that addresses the entire system. Altering one part will not succeed in controlling costs. Efforts on the part of the public sector alone will not control costs. The public and private sector must explore ways in which they can work together to deal with the problem.

More specifically, it is essential that cost containment efforts succeed if the problem of the uninsured is to be resolved. The problem of the uninsured is exacerbated by the continued escalation of health care costs. Providing insurance to those without it, however, in the absence of effective cost controls, would fuel the escalation in costs.

The Governors are committed to bringing about more order and efficiency to what is now a fragmented system. Each of the independent sectors within the system must share responsibility in bringing about cost containment.

The key to cost containment will be using incentives for the promotion of more efficient utilization of services and resources by payors, providers, and consumers. Governors encourage third party payors to enhance their cost containment efforts. The Governors endorse employer based health insurance and believe the use of managed care will lead to more efficient utilization of resources.

Encouraging innovations is another important piece to controlling health care costs. We do not have all the answers on how to control health care costs, but a great deal of innovation has occurred in recent years. State Medicaid programs have led the way in restructuring their programs to bring down costs. Private corporations have become involved in planning their health care benefit plans as they never have before. Other innovations should be encouraged in both the public and private sectors.

One specific problem is the increase in the cost of malpractice. The cost of insurance for professional liability is driving up physician fees and is reducing the supply of critically needed physicians in certain fields and geographical areas. Fear of malpractice claims has caused physicians to practice defensive medicine that leads to unnecessary laboratory tests and other procedures that further drive costs up. States should look for innovative ways to solve the problem, as some states already have begun to do.

12.2.2 Federal and State Roles

12.2.2.1 Cooperation. Cooperative federal and state policies can foster innovation that builds upon the strengths of our current medical care system while moving to correct its deficiencies. The federal government has a broader perspective encompassing the entire system and direct control of Medicare, and therefore can significantly influence the changes within the system to control costs and more efficiently utilize services and resources. Federal policies should provide incentives for the development of more efficient financing and delivery systems and should strongly encourage state initiatives toward that end. The federal government, however, must not pass to state governments the respon-

~~sibility for additional costs resulting from mandated federal expansions in eligibility, benefits, or reimbursement levels for the Medicaid program.~~

~~12.2.2.2~~ ~~State Role. It is clear that Governors can play a major role in influencing health care costs. States are responsible for administering not only the Medicaid program, but also state employee health plans. In addition, states are providers. If we view our role in a broader context, it is clear that we have a substantial influence on the health care costs in each of our states.~~

~~States can work to control the cost of health plans they manage, while moving toward innovation. States are in a position to develop effective policies that are sensitive to unique local needs, circumstances, and delivery system characteristics. States must, therefore, continue to have the authority to plan, regulate, and develop health care resources.~~

~~12.2.2.3~~ ~~Health Care Information. The federal government should commit to a larger effort to collect and disseminate information regarding health care in the country that will assist Governors and others in controlling costs. Such information includes data regarding total health care costs, and utilization and quality of care, and is essential to decisionmakers in allocating resources. The federal government also should provide for the assessment of the cost-effectiveness and efficacy of major new technologies, procedures, and the development of quality measures for providers.~~

~~Similarly, states should provide for the development, dissemination, and annual revision of provider specific data on costs, utilization, case mix, and quality. This information will facilitate purchasers' and individual consumers' ability to identify cost effective providers and plans.~~

~~12.2.2.4~~ ~~Alternative Financing and Delivery Structures. States should adopt payment, insurance regulation, health planning, licensure, certification, and employee benefit policies that encourage the growth of alternative financing and delivery structures to improve accountability for costs. The Governors endorse current financing and delivery entities such as HMOs and preferred provider plans.~~

~~12.2.2.5~~ ~~Utilization Review. The federal government should take the lead in developing new and innovative "all-payor" utilization review pilot programs. By developing joint federal-state and private insurer utilization review mechanisms, the leverage to reduce overuse and unnecessary expenditures can be enhanced. The goal should be to have a variety of techniques tested so that an improved nationwide utilization review system can be in place in five years.~~

~~12.2.2.6~~ ~~Medicare. As a large payor in the health care marketplace, the federal Medicare program exerts considerable influence. The federal government should continue to enact Medicare policies that improve the incentives for the efficient provision of care and the development of cost effective alternative financing and delivery structures.~~

~~Medicare physician payment policies should be restructured to provide more consistent and comprehensive incentives for the efficient provision of health care services. The current physician reimbursement system continues to encourage a greater use of expensive technologies and services, and does not make physicians accountable for the costs of the decisions they make. A restructured system of physician reimbursement should provide greater relative incentives for primary care services, and reduced incentives for expensive procedures and technology intensive practices. A new payment system should greatly improve incentives for the most cost effective package of patient care and should discourage inappropriate services and the use of costly settings.~~

~~Medicare should proceed with projects to measure the efficacy of various procedures. Such studies will give the provider community guidance on avoiding unnecessary procedures. Medicare should also provide beneficiaries with the needed information and incentives to choose physicians who are the most efficient.~~

~~Medicare should continue to improve the diagnosis related group (DRG) reimbursement system, while refraining from using it as a budget cutting device. This system has been very successful in providing the federal government with a tool to control hospital costs, but can be refined to further encourage efficient behavior on the part of hospitals without negatively affecting the quality of care provided to beneficiaries.~~

~~12.3 Medicaid~~

~~13.3.1~~ ~~Preface. The Governors strongly believe that Medicaid and other basic income support programs for the poor are a fundamental federal responsibility. The Medicaid program is a critical component of the federal role in meeting the basic needs of our most vulnerable citizens. Although a significant number of low income individuals are not covered by the program, Medicaid has substantially improved access to needed health care for the nation's poor.~~

~~While health care costs constitute a major problem for all purchasers of medical services, they represent the greatest problem with respect to the Medicaid program. Health care cost escalation has~~

~~consistently exceeded increases in the fiscal capacity of the states, which has been eroded by economic downturns and constrained through public referenda and constitutional limitations. Medicaid is the largest state-administered program in state budgets, and along with other health care financing programs, the most rapidly escalating cost. States with the most depressed economies and resulting sharp reductions in state revenues have simultaneously experienced an increased need for Medicaid and similar programs. States with disproportionately large poor populations have very limited resources to meet their medical needs. Such limitations on the states' abilities to adequately fund Medicaid make the federal fiscal commitment to the program essential. The Governors will strongly oppose any reduction in the federal share of financing health care for the poor. Low-income beneficiaries of the federal Medicare program must be protected from any increase in their share of health care costs. Proposals to reduce federal Medicare outlays for the poor and to increase state Medicaid expenditures for individuals eligible for both programs are unacceptable.~~

~~13.3.2 Cost-Effectiveness. It is appropriate for the federal government to establish a national floor for Medicaid eligibility and service coverage. However, so long as the states are given the responsibility to manage the program and share its costs, it is critical that they have the latitude to administer the program efficiently, and the authority to use the most cost-effective financing mechanisms to provide recipient access to needed care of adequate quality. For example, states should have the authority to selectively contract with efficient providers, to make payments on a per capita basis, and to adopt other risk-sharing payment policies. Federal statutory and waiver authorities must be exercised in a way that facilitates state development of more efficient Medicaid financing and delivery structures. To reduce costs and improve the health of eligible individuals, state and federal Medicaid policies should encourage cost-effective preventive and ambulatory services to reduce the need for curative and institutional care.~~

~~13.3.3 Long-Term Care. Federal Medicaid policies must allow states to develop balanced long-term care service structures consistent with the NGA position on continuing care. Federal Medicaid eligibility and service coverage policies historically were biased towards institutional settings, and precluded the development of a continuum of care that allows an individual's identified needs to be met in the most appropriate, cost-effective setting that maximizes self sufficiency. States must have the ongoing authority to use federal Medicaid funds to develop and sustain such a continuing care system to meet our growing populations needs, so long as total federal Medicaid outlays are no greater than growing institutional care costs would have been without the development of community-based alternatives.~~

~~13.3.4 Budget Cuts. The Governors strongly support reductions in the federal deficit. We are dealing with the impact of disproportionate reductions in state and local grants-in-aid as a result of federal budget cuts. However, Governors oppose federal Medicaid cuts that would compromise the states' ability to meet the basic health care needs of the poor. Medicaid plays a critical role as the nation's principal financing source for the health care of poor mothers and children. The states and the federal government have a responsibility to assure the availability of high quality, comprehensive preventive maternal and infant care for all citizens needing such services. It is in the long-term financial interest of this nation to finance preventive care to childbearing women and young children with incomes below the federal poverty level. Preventive maternity and child health care services can reduce the need for costly treatment services. The importance of providing comprehensive health care services for needy pregnant women and children through the Medicaid program is underscored by the significant cost savings that result from the provision of preventive health care services to this population.~~

~~13.3.5 Preventive Care. The availability of preventive care for women and infants has been greatly impeded by counterproductive Medicaid criteria that have produced obstacles rather than opportunities. For many poor women and children, Medicaid coverage has been available only after the incidence of costly and painful conditions that could be avoided through the early provision of preventive care. Improvements must continue to be made in Medicaid policies to provide better health care opportunities for women and children. The Governors continue to support efforts to amend the Medicaid law to permit states to target Medicaid assistance to children ages six to eighteen with family incomes above 50 percent, but below 100 percent of the federal poverty level.~~

12.1 Preamble

Effective community-based public health services improve the health of our citizens and prevent illness that results in the use of expensive medical services. The association is concerned that the current cost and institutional bias of the major publicly financed medical care programs has diminished our capacity to provide community-based public health services. Public health services are particularly critical for low-income individuals and families who are not eligible for Medicaid or other health care financing coverage. The association therefore believes that renewed emphasis on the provision of community-based public health services should be an integral element of cooperative federal/state initiatives to improve the health of our nation's citizens and the efficiency of our delivery systems.

12.2 Federal, State, and Local Responsibilities

Since the enactment of the first quarantine law, the delivery of public health services has been a responsibility of state and local governments. States continue to be in a better position to allocate resources and develop policies that respond to differing local needs and health care characteristics. The National Governors' Association, however, believes that the federal government has a responsibility to provide financial assistance to state and, in turn, local governments for the delivery of public health services. The association also calls on the federal government, in cooperation with state and local governments, to assume more responsibility for certain public health functions that are primarily national in nature. Federal assistance to state and local governments should be based on the following principles.

- The responsibility for the delivery of public health services must remain with state and local governments.
- Federal financial assistance must be flexible enough, preferably in the form of broad-based grants, to permit states to target available resources on the highest priority health problems affecting the citizens of each state.
- State government, through a state health plan, should be responsible for the design of public health programs that account for national priorities, while focusing on local needs.
- All public health activities financially assisted by the federal government within a state should be under the sponsorship of agencies specified by the state.
- The federal government should establish policies for the surveillance of environmental threats to the public health and the establishment of health registries to monitor health trends and identify the long-term chronic health effects of exposure to toxic substances and other environmental contaminants.
- The federal government, in concert with state and local governments, should provide the leadership necessary to establish nationwide health promotion efforts such as those focused on childhood immunization and the hazards of smoking.

12.3 Coordination of Services

The association believes that cooperative federal, state, and local initiatives based on these principles will assist the development of a coordinated intergovernmental delivery system for public health services. The development of a coordinated system of public health services can help to ensure that our citizens have the optimal opportunity to lead healthy lives in an environment that minimizes exposure to hazardous practices, environments, and products. Towards this end, the association calls on the President and Congress to review and expand on the following elements of federal public health services assistance.

12.3.1 Health Services Block Grants. Although the association continues to strongly support the block grant concept, states have been forced to adjust to severe reductions at the time of initial program consolidation. The Governors oppose additional federal fund reductions, even if associated with further consolidation of federal public health programs. The establishment of the three health services block grants in the Omnibus Reconciliation Act of 1981 has enhanced the states' ability to target limited federal resources. However, the association believes that the effectiveness of the block grants could be greatly improved by:

- removing the remaining categorical elements, such as the complex allocation and set-aside requirements in the alcohol, drug abuse, and mental health services block grant;

- establishing uniform reporting requirements; and
- establishing uniform provisions for transferring funds between block grants.

The association also believes that any increased state responsibility for federal programs should be accompanied by adequate federal financial assistance.

12.3.2 **Maternal and Child Health Services.** The health status of American children has improved dramatically over the last two decades. Federal programs such as Medicaid, AFDC, and food stamps have contributed significantly to this improvement, and the association recognizes the important link between health care and income security. As a result, the association is concerned that millions of children living below the federal poverty level are not covered by Medicaid or lack access to a regular source of health care or adequate income assistance.

The association believes that meeting the health care needs of underserved or unserved children should be a priority as well as a responsibility of all levels of government. Federal support for maternal and child health services and nutrition programs such as WIC should be increased. A Harvard University study concluded that every dollar spent in WIC services resulted in three dollars of Medicaid savings. Despite these savings, the current level of federal support will enable far less than half of the potentially eligible women and infants to participate in the WIC program.

12.3.3 **Health Promotion and Prevention.** The association calls on the federal government to expand its health promotion activities and encourage critical state preventive health initiatives and programs. Most health care professionals believe that personal behavior and habits such as smoking, exercise, diet, and alcohol and drug abuse are major determinants of morbidity and mortality. In many instances, health education and promotion programs can play an important role in modifying unhealthful practices. Federal financial assistance should be made available to states on a flexible basis for public health services that can be demonstrated to reduce net federal expenditures by preventing illness and expensive hospitalization and are demonstrated to be of special need in the affected state.

In addition, the federal government should enhance the capacity of federal agencies, such as the Centers for Disease Control, that work in concert with state public health officials to maintain high levels of childhood immunization, reduce chronic diseases, and respond to public health emergencies.

~~12.4 Chronic Fatigue Syndrome~~

~~The nation's Governors call on Congress and the White House to foster greater understanding of, and to better coordinate research into, the disease Chronic Fatigue Syndrome.~~

~~The Governors recognize that there is an urgent need to expand the public health response to this disease, which has been identified in every state, and which the Centers for Disease Control has called an emerging epidemic. Estimates of the afflicted range as high as 1.5 percent of the populace, or approximately 3,750,000 individuals.~~

~~Recent biomedical research has identified Chronic Fatigue Syndrome as a serious illness that affects a number of systems of the human body including the immune system. The syndrome is characterized primarily by chronic debilitating fatigue and is often accompanied by a variety of cognitive dysfunctions. Victims of this syndrome often experience symptoms of sufficient severity to legally qualify for Social Security disability.~~

~~The apparent increase in this disease during the 1980s argues for better exchange of information about Chronic Fatigue Syndrome between concerned federal and state public health authorities.~~

~~Therefore, the Governors call on Congress and the White House to act to increase the coordination of Chronic Fatigue Syndrome research and programs within the public health community for the exchange of information about this disease.~~

Time limited (effective February 1994-February 1996).
Adopted August 1980; revised August 1981, February 1982, July 1984, February 1986, August 1986, February 1988, February 1989, August 1989, and February 1990 (formerly Policy C-6).

HR-13. HEAD START

13.1 PREAMBLE

THE GOVERNORS RECOGNIZE THE ESSENTIAL ROLE THAT HEAD START PLAYS IN PROVIDING COMPREHENSIVE CHILD DEVELOPMENT AND SUPPORT SERVICES TO YOUNG CHILDREN AND THEIR FAMILIES WITH INCOMES AT OR BELOW THE POVERTY LEVEL. AS GOVERNORS TAKE A GREATER LEADERSHIP ROLE IN ORCHESTRATING COMPREHENSIVE SERVICES FOR YOUNG CHILDREN, THE NATIONAL GOVERNORS' ASSOCIATION BELIEVES THAT MUCH CAN BE LEARNED FROM THE HEAD START EXPERIENCE, NOT ONLY IN PROVIDING COMPREHENSIVE SERVICES, BUT ALSO IN EDUCATING POLICYMAKERS AND THE PUBLIC ABOUT THE NEED TO INVEST IN YOUNG CHILDREN.

ALTHOUGH SEVERAL STATES ARE INTEGRATING THE HEAD START PROGRAM INTO LARGER COMPREHENSIVE SERVICE INITIATIVES FOR CHILDREN, THE GOVERNORS BELIEVE THAT ADDITIONAL STEPS SHOULD BE TAKEN AT BOTH THE STATE AND FEDERAL LEVEL TO DEVELOP STRONGER TIES BETWEEN HEAD START PROGRAMS AND OTHER STATE AND FEDERAL RESOURCES THAT SUPPORT AT-RISK CHILDREN AND THEIR FAMILIES. THE GOVERNORS APPLAUD THE EFFORTS OF THE ADVISORY COMMITTEE ON HEAD START QUALITY AND EXPANSION TO ENCOURAGE SUCH LINKAGES AT THE FEDERAL, STATE, AND LOCAL LEVELS.

13.2 STATE ROLE

AT THE STATE LEVEL, THE HEAD START COMMUNITY SHOULD BE INCLUDED IN POLICY DEVELOPMENT AND IMPLEMENTATION OF STATEWIDE COMPREHENSIVE SERVICE INITIATIVES FOR YOUNG CHILDREN. HEAD START CAN SERVE AS A BRIDGE OR LINK FOR AT-RISK CHILDREN AND THEIR FAMILIES FOR CARE AND SERVICES BEYOND HEAD START. STATE-LEVEL BARRIERS TO PROVIDING COMPREHENSIVE SERVICES SHOULD BE IDENTIFIED AND ELIMINATED.

13.3 FEDERAL ROLE

IN REAUTHORIZING THE HEAD START PROGRAMS, CONGRESS SHOULD ENSURE THAT THE HEAD START PROGRAM OF THE 21ST CENTURY IS BUILT ON THE CONCEPT OF COLLABORATION WITH OTHER STATE AND FEDERAL PROGRAMS THAT PROVIDE SERVICES AND RESOURCES TO AT-RISK CHILDREN

AND THEIR FAMILIES. THE STATE COLLABORATION GRANT PROGRAM SHOULD BE EXPANDED AND STATES SHOULD BE ALLOWED TO ASSIGN RESPONSIBILITY FOR ADMINISTERING THE GRANTS TO ENSURE THE HIGHEST LEVEL OF COMMITMENT TO BUILDING AND OPERATING COMPREHENSIVE SERVICE PROGRAMS FOR YOUNG CHILDREN AND THEIR FAMILIES. THE COLLABORATION GRANT AND ALL COLLABORATIVE ACTIVITIES SHOULD BE RECOGNIZED AS AFFECTING THE EARLY CHILDHOOD COMMUNITY OVERALL AND SHOULD SERVE AS ADVOCATES FOR COMPREHENSIVE SERVICES FOR YOUNG CHILDREN AND THEIR FAMILIES. FEDERAL-LEVEL BARRIERS TO PROVIDING COMPREHENSIVE SERVICES SHOULD BE IDENTIFIED AND ELIMINATED. ALTHOUGH MORE THAN TWENTY STATES CURRENTLY SUPPORT COLLABORATION PROJECTS, OTHER MECHANISMS TO STRENGTHEN STATE-LEVEL LINKAGES AND ENCOURAGE STATE INVESTMENT IN EARLY CHILDHOOD PROGRAMS SHOULD BE DEVELOPED.

Time limited (effective February 1994-February 1996).

HR-14. FLSA APPLICATION TO STATE PRISON INMATES

IN RECENT YEARS, FEDERAL COURTS HAVE RULED THAT THE PROTECTIONS PROVIDED TO THE AMERICAN WORKFORCE UNDER THE FAIR LABOR STANDARDS ACT (FLSA) AND ITS IMPLEMENTING REGULATIONS ALSO APPLY TO PRISON AND JAIL INMATES. THESE DECISIONS ARE OF GREAT CONCERN TO GOVERNORS.

THE FISCAL IMPACT OF APPLYING FLSA TO PRISON INMATES IS STAGGERING. STATES WOULD BE REQUIRED TO PAY INMATES A MINIMUM WAGE FOR TYPICAL PRISON WORK, SUCH AS LAUNDRY, CUSTODIAL CHORES, AND FOOD SERVICE. INMATES COULD SEEK BACK PAY AND OTHER WORKPLACE GUARANTEES GOVERNED BY FLSA, INCLUDING OVERTIME PAY. THE RESULT WOULD BE MILLIONS OF DOLLARS IN ADDITIONAL LIABILITY FOR STATES AND LOCALITIES ALREADY STRUGGLING WITH LIMITED FISCAL RESOURCES.

AT THE VERY LEAST, THE THREAT OF LIABILITY UNDER FLSA COULD FORCE MANY STATES AND LOCALITIES TO DRAMATICALLY CUT OR EVEN ELIMINATE JOB TRAINING AND OTHER INNOVATIVE EDUCATIONAL PROGRAMS. PRISONERS WOULD LOSE THE OPPORTUNITY TO LEARN JOB SKILLS DURING THEIR INCARCERATION AND, THUS, THE OPPORTUNITY TO RETURN TO SOCIETY IN A PRODUCTIVE CAPACITY.

THE GOVERNORS BELIEVE FLSA WAS NEVER INTENDED TO COVER PRISON INMATES INVOLVED IN TYPICAL PRISON DUTIES. HISTORICALLY, CONGRESS HAS SOUGHT TO REGULATE PRISON LABOR AND PRISON WORK PROGRAMS UNDER THE ASHURST-SUMNERS ACT, WHICH WAS ENACTED THREE YEARS BEFORE FLSA. YET, RATHER THAN FOLLOW THE LETTER OF THE LAW, FEDERAL COURTS ARE WILLING TO FORCE STATES TO PROVIDE THE SAME DEGREE OF WAGE PROTECTIONS TO PRISONERS THAT IS PROVIDED TO THE LAW-ABIDING CITIZEN. TO DO SO IS ANTITHETICAL TO THE NEED FOR STATES TO BE ACCOUNTABLE TO THEIR TAXPAYERS FOR THE EXPENDITURE OF PUBLIC FUNDS.

THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO CLARIFY THE JUDICIAL MISINTERPRETATION OF FLSA. THE GOVERNORS BELIEVE CONGRESS SHOULD ENACT, WITHOUT DELAY, LEGISLATION THAT WOULD:

- EXCLUDE PRISON AND JAIL INMATES FROM FLSA; AND

- **ELIMINATE ANY LIABILITY THAT MAY HAVE ACCRUED TO STATE AND LOCAL GOVERNMENTS AS A RESULT OF THE MISAPPLICATION OF FLSA TO INMATES.**

Time limited (effective February 1994-February 1996).

HR-15. COMMUNITY POLICING AND FEDERAL REGIONAL PRISONS

DRUG TRAFFICKING AND VIOLENT CRIME CONTINUE TO PLACE ENORMOUS STRAINS ON THE MATERIAL AND FINANCIAL RESOURCES OF STATE AND LOCAL GOVERNMENTS, PARTICULARLY ON LAW ENFORCEMENT AND PRISON CAPACITY. IN ORDER TO IMPROVE COMMUNITY SAFETY AND IMPLEMENT TOUGH AND APPROPRIATE SENTENCES AGAINST SOCIETY'S MOST VIOLENT OFFENDERS, MANY STATES ARE DIRECTING A GREATER PROPORTION OF THEIR BUDGETS TO LAW ENFORCEMENT AND PRISON CONSTRUCTION.

THE GOVERNORS SUPPORT CONTINUED FEDERAL ASSISTANCE TO REDUCE VIOLENT CRIME. THE EDWARD BYRNE MEMORIAL BLOCK GRANT PROGRAM IS THE PRIMARY FORM OF FEDERAL SUPPORT OF STATE AND LOCAL ANTICRIME INITIATIVES, WHICH INCLUDES THE HIRING AND REHIRING OF LAW ENFORCEMENT OFFICERS. THE GOVERNORS DO NOT SUPPORT ANY ATTEMPT BY THE FEDERAL GOVERNMENT TO REDUCE EDWARD BYRNE FUNDS. THE GOVERNORS BELIEVE THAT ANY NEW COMMUNITY POLICING INITIATIVE SHOULD PROVIDE STATE GOVERNMENTS THE SAME FLEXIBILITY AS IN THE EDWARD BYRNE PROGRAM.

THE GOVERNORS ALSO SUPPORT EFFORTS BY THE FEDERAL GOVERNMENT TO ESTABLISH REGIONAL PRISONS TO ASSIST STATES IN THE INCARCERATION OF VIOLENT FELONS. THE GOVERNORS BELIEVE THAT PARTICIPATION IN ANY FEDERALLY FUNDED AND OPERATED REGIONAL PRISON PROGRAM SHOULD BE BASED NOT ON A CONTRIBUTION OF LIMITED STATE FUNDS, BUT ON A DEMONSTRATED COMMITMENT BY THE STATES TO EXPANDED PUBLIC SAFETY. THE GOVERNORS FURTHER BELIEVE THAT PARTICIPATION IN A FEDERAL REGIONAL PRISON SHOULD NOT BE BASED ON A FEDERALLY IMPOSED STRINGENT SET OF CRIMINAL PROCEDURES AND SENTENCING REQUIREMENTS. STATE GOVERNMENTS ALSO SHOULD NOT BE REQUIRED BY THE FEDERAL GOVERNMENT TO PASS LAWS THAT WOULD RESULT IN MORE COSTS TO THE STATES THAN THE BENEFITS REALIZED FROM THE USE OF FEDERAL REGIONAL PRISON FACILITIES. STATE GOVERNMENTS HAVE AND ARE TAKING ACTION AGAINST VIOLENT OFFENDERS BY ENACTING TOUGH MEASURES SUCH AS ELIMINATION OF "GOOD TIME" CREDITS; MANDATORY MINIMUM SENTENCES; MANDATORY LIFE IN PRISON WITHOUT PAROLE FOR PERSONS CONVICTED OF A THIRD SERIOUS OR VIOLENT FELONY; MANDATORY LIFE IN PRISON FOR

FIRST-TIME RAPISTS AND CHILD MOLESTERS; AND PROCEDURES AND PROGRAMS RECOGNIZING THE RIGHTS OF CRIME VICTIMS AT ALL APPROPRIATE STAGES OF CRIMINAL PROCEEDINGS. EFFORTS BY STATES, PAST AND PRESENT, TO COMBAT VIOLENT CRIME, IN CONJUNCTION WITH STATE PRISON CAPACITY, SHOULD BE CONSIDERED IN ALLOCATING ANY REGIONAL PRISON SPACE OFFERED BY THE FEDERAL GOVERNMENT.

Time limited (effective February 1994-February 1996).

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1994 Winter Meeting

COMMITTEE ON NATURAL RESOURCES

Governor Bob Miller, Chairman
Governor Fife Symington, Vice Chairman

Thomas W. Curtis, Group Director

Proposed Changes in Policy

New language is typed double-spaced and in ALL CAPS.

The Committee on Natural Resources recommends the consideration of one new policy position and the reaffirmation of three existing policy positions. Pursuant to the recommendations of the Strategic Review Task Force, these proposals are time limited to two years. Background information and fiscal impact data follow.

1. Environmental Priorities and Unfunded Mandates (New Policy Position, NR-8)

   The proposed new policy recommends that federal environmental policy be based on a clear set of priorities and that the federal government commit to certain principles when adopting new environmental mandates. First, the federal government should pay for new requirements. Second, if the federal government cannot pay for new requirements, it should allow states to address relevant issues in their own ways. Third, if the federal government must mandate and cannot pay for a new requirement, it should balance existing workloads so that the new work can be accomplished within existing budgets.

   The policy would reduce the cost of environmental mandates on states and allow states to set priorities to accomplish the most important issues within existing budgets.

2. Reaffirm Existing Policy

   The committee recommends reaffirming existing policies on the Clean Air Act (formerly D-3), Environmental Compliance at Federal Facilities (formerly D-14), and the 1990 Farm Bill (formerly G-10).

NR-8. ENVIRONMENTAL PRIORITIES AND UNFUNDED MANDATES

8.1 PREAMBLE

THE NATION'S GOVERNORS ARE COMMITTED TO PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT FOR THE AMERICAN PEOPLE. THE GOVERNORS STRONGLY SUPPORT AND ARE COMMITTED TO ACHIEVING THE NATIONAL ENVIRONMENTAL GOALS OUTLINED BY CONGRESS IN RECENT DECADES. THE SUCCESSFUL IMPLEMENTATION OF MANY ENVIRONMENTAL PROGRAMS AT THE STATE LEVEL DEMONSTRATES THE GOVERNORS' SIGNIFICANT CONTRIBUTION TO ENVIRONMENTAL PROTECTION. IN ORDER TO FURTHER ENVIRONMENTAL PROGRESS IN THE STATES, THE GOVERNORS PLEDGE TO CONTINUE WORKING WITH CONGRESS AND THE ADMINISTRATION ON THE DEVELOPMENT OF NEW OR REVISED FEDERAL ENVIRONMENTAL PROGRAMS.

8.1.1 COSTS OF ENVIRONMENTAL PROTECTION. YET THE GOVERNORS ARE DEEPLY CONCERNED ABOUT THE HIGH AND GROWING COSTS OF ENVIRONMENTAL PROTECTION, INCLUDING BOTH THE PROGRAMMATIC AND CAPITAL COSTS REQUIRED TO COMPLY WITH FEDERAL ENVIRONMENTAL MANDATES. THESE COSTS, BORNE BY STATES, LOCAL GOVERNMENTS, AND THE PRIVATE SECTOR, RESULT IN PART FROM NEW FEDERAL REQUIREMENTS RELATED TO AIR, DRINKING WATER, WATER QUALITY, AND WASTE MANAGEMENT THAT REQUIRE SUBSTANTIALLY MORE SOPHISTICATED PROGRAMS AND ADDITIONAL ENVIRONMENTAL INFRASTRUCTURE THROUGHOUT THE NATION.

8.1.2 REDUCTION OF UNFUNDED MANDATES. THE GOVERNORS ALSO ARE COMMITTED TO REDUCING UNFUNDED FEDERAL MANDATES, INCLUDING ENVIRONMENTAL REQUIREMENTS. ALTHOUGH MANY ENVIRONMENTAL REQUIREMENTS HAVE MERIT, THE CUMULATIVE EFFECTS OF UNFUNDED MANDATES CHALLENGE STATES EITHER TO FUND THE FEDERAL REQUIREMENTS FROM VERY LIMITED REVENUES OR TO DIVERT FUNDS FROM OTHER STATE PRIORITIES. THEREFORE, THE GOVERNORS BELIEVE THAT CONGRESS MUST PROVIDE ADEQUATE RESOURCES TO FUND MANDATORY ENVIRONMENTAL PROGRAMS.

IN THIS ERA OF REINVENTING GOVERNMENT, THE FEDERAL GOVERNMENT AND THE STATES MUST COMMIT TO A NEW PARTNERSHIP FOR ENVIRONMENTAL PROTECTION THAT AGGRESSIVELY PROMOTES HIGH STANDARDS OF PERFORMANCE -- NOT BUREAUCRATIC PROCESSES. ALL LEVELS OF GOVERNMENT MUST STRESS THE IMPORTANCE OF MAXIMIZING EFFICIENCY IN

THE USE OF AVAILABLE RESOURCES, IN ORDER TO WORK MORE EFFECTIVELY FOR THE PROTECTION OF THE ENVIRONMENT. IN TURN, THE GOVERNORS CALL UPON THE FEDERAL GOVERNMENT TO COMMIT TO THE FOLLOWING IMPORTANT PRINCIPLES.

8.2 PRINCIPLES

8.2.1 FEDERAL ENVIRONMENTAL LAWS AND REGULATIONS MUST RECOGNIZE THE NEED TO SET PRIORITIES AND FOCUS ON THE MOST IMPORTANT ENVIRONMENTAL OBJECTIVES AT THE NATIONAL, STATE, AND LOCAL LEVELS. IN ORDER TO PROMOTE RISK-BASED PRIORITY SETTING, ENVIRONMENTAL REQUIREMENTS SHOULD BE BASED UPON SOUND SCIENCE AND RISK-REDUCTION PRINCIPLES, INCLUDING THE APPROPRIATE USE OF COST-BENEFIT ANALYSIS. SUCH ANALYSES WILL ENSURE THAT FUNDS EXPENDED ON ENVIRONMENTAL PROTECTION ADDRESS THE GREATEST RISKS FIRST AND PROVIDE THE GREATEST POSSIBLE RETURN ON INVESTMENT.

8.2.2 THE FEDERAL GOVERNMENT MUST DISCIPLINE ENVIRONMENTAL LEGISLATION AND REGULATION BASED UPON THE FOLLOWING CRITERIA.

- IF AN ENVIRONMENTAL PROBLEM WARRANTS PASSAGE OF FEDERAL LEGISLATION OR ADOPTION OF REGULATIONS, STATE AND LOCAL GOVERNMENTS SHOULD RECEIVE FEDERAL ASSISTANCE TO CARRY OUT THE RESULTING REQUIREMENTS.
- IF THE FEDERAL GOVERNMENT DOES NOT PROVIDE THE NECESSARY FINANCIAL ASSISTANCE FOR STATES TO COMPLY WITH FEDERAL ENVIRONMENTAL MANDATES, THE FEDERAL GOVERNMENT SHOULD ALLOW STATE AND LOCAL GOVERNMENTS TO CARRY OUT ENVIRONMENTAL PROTECTION ACTIVITIES BASED UPON THEIR OWN PRIORITIES AND PROGRAMS.
- IF NEW PROBLEMS EMERGE THAT REQUIRE FEDERAL ATTENTION BUT ADDITIONAL FEDERAL RESOURCES ARE NOT AVAILABLE, THE FEDERAL GOVERNMENT SHOULD BALANCE EXISTING REQUIREMENTS AGAINST NEW REQUIREMENTS SO THAT THE HIGHEST PRIORITY WORK CAN BE ACCOMPLISHED WITHIN EXISTING BUDGETS.

8.3 RECENT ACTIONS

THE PRINCIPLES OF THIS POLICY POSITION ARE CONSISTENT WITH THE INTENT OF EXECUTIVE ORDER NO. 12866 ON REGULATORY DEVELOPMENT AND REVIEW ISSUED BY PRESIDENT CLINTON ON SEPTEMBER 30, 1993 AND EXECUTIVE ORDER 12875 ON ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP ISSUED ON OCTOBER 26, 1993. THE OBJECTIVE OF THE EXECUTIVE ORDER IS TO "REFORM AND MAKE MORE EFFICIENT THE REGULATORY PROCESS" IN ORDER TO PROVIDE THE AMERICAN PEOPLE WITH A "SYSTEM THAT PROTECTS AND IMPROVES THEIR HEALTH, SAFETY, ENVIRONMENT, AND WELL-BEING AND IMPROVES THE PERFORMANCE OF THE ECONOMY WITHOUT IMPOSING UNACCEPTABLE OR UNREASONABLE COSTS ON SOCIETY." THIS POLICY POSITION ALSO IS CONSISTENT WITH THE RECOMMENDATIONS MADE IN 1990 BY THE ENVIRONMENTAL PROTECTION AGENCY'S (EPA'S) SCIENCE ADVISORY BOARD ON THE NEED TO ADDRESS THE GREATEST ENVIRONMENTAL NEEDS FIRST BY SETTING PRIORITIES ACCORDING TO THE RISK INVOLVED. IN 1993 THE ENVIRONMENTAL FINANCIAL ADVISORY BOARD ALSO OFFERED ITS SUPPORT WITH A RECOMMENDATION THAT EPA EXPAND THE ROLE OF FINANCIAL ANALYSIS IN ITS REGULATORY DEVELOPMENT PROCESS TO FACILITATE COMPLIANCE WITH AFFORDABILITY TESTS AND FISCAL PLANS.

Time limited (effective February 1994-February 1996).

NR-9. THE CLEAN AIR ACT

9.1 Preface

The Governors strongly support the reauthorization of the Clean Air Act to continue the national effort to attain and maintain ambient air quality standards that protect the public health and welfare. Streamlining the act, particularly through the greater delegation of administrative responsibility to the states, can go a long way toward ensuring that the goals of protection of public health and expansion of energy and economic development can be achieved simultaneously.

9.2 State Role

The Governors affirm that the states must have the primary responsibility and authority for the control and abatement of air pollution. States must not be precluded from setting standards more stringent than federal minimums or from acting in the absence of federal standards. This state authority should include both the design and implementation of air quality programs. The federal government should establish air quality standards and deadlines, and should review and certify the design of state implementation plans for air quality. The Governors favor a review of the federal government's process for establishing air quality standards in a timely fashion and consistent with congressional intent regarding the protection of public health. Further, when the time period for setting standards is lengthy, states should not be precluded from acting in the interim to protect public health. Audits of state performance should be carried out by the Environmental Protection Agency (EPA), but detailed federal review and approval is neither necessary nor desirable. In reviewing a state implementation plan, EPA should approve strategies that result in attainment of the ambient standard and that satisfy federal minimum technology standards. EPA should be given a reasonable time to review the state plan and should assume the burden of proof in disapproving any elements of it. If EPA does not act within such reasonable time, the state plan should be considered approved.

9.3 Policy for Areas Not Meeting the National Standards (Nonattainment Policy)

With greater responsibility, the states can and should be able to accommodate new industrial growth in nonattainment areas in accordance with a policy of achieving net air quality benefits and ensuring reasonable, steady progress toward attainment of the standards.

The Governors support the establishment of binding deadlines for the achievement of ambient air quality standards. The Clean Air Act should contain a provision allowing EPA to provide an extension for up to a statutorily specified period for areas with severe and persistent air quality problems. For an area to qualify for such an extension, increasingly more stringent control strategies would have to be implemented over time. Failure to implement such strategies successfully should result in federal sanctions, tailored to the magnitude and nature of the failure. Use of inspection and maintenance programs is an appropriate strategy that should be implemented in areas currently not in attainment with national air quality standards, or that fail to meet expected milestones under applicable EPA agreements. The Governors also encourage the use of effective tampering and misfueling control measures as a contribution towards attainment of national air quality standards.

The lowest achievable emission rate (LAER) requirement for new sources that emit more than 100 tons per year of any regulated pollutant in a nonattainment area is a limitation on economic development in urban areas with no significant improvements in air quality. In addition, it encourages urban sprawl. All new sources should be evaluated equally under the best available control technology. The LAER concept should be dropped. The Governors oppose the extension of nonferrous smelter deadlines.

9.4 Policy for Areas Cleaner Than the National Standards (Prevention of Significant Deterioration Policy)

The Governors believe that the Clean Air Act must continue to rely upon Class I increments to protect against deterioration of air quality in areas of prime national interest, such as national parks and wilderness areas. In no case should any area cleaner than national standards be allowed to deteriorate into nonattainment status. In other areas cleaner than the national standards, a Class II increment system should be implemented and states should have the primary responsibility for the

implementation of visibility programs. Best available control technology should continue to be required in attainment areas.

9.5 Policy for Automotive Pollutants

The Governors favor the strengthening of existing automotive emission standards and the development and implementation of strict diesel and heavy duty standards, including attainment of standards at altitude and their enforcement during the vehicle's useful life. The Governors recognize that any relaxation of federal standards for automobile control would place a burden on the states to regulate industrial growth more stringently in order to achieve national air standards. This trade-off between automobile control standards and regulation of industrial growth must be weighed carefully by Congress in determining appropriate auto standards.

The Governors encourage a variety of alternative fuels programs and emissions control technologies in order to attain and maintain air quality standards. The Governors endorse a hierarchy of controls that focuses most heavily on the most seriously polluted areas, pushes wider application of available control technologies as soon as practicable, and forces the development of new technologies.

In the near term, cleaner burning reformulated gasoline meeting the highest performance standard achievable for that fuel should be required in seriously polluted ozone nonattainment and transport areas. Also, as soon as practicable, centrally fueled and maintained fleets should begin to convert to alternative fuels in these areas. Other areas should be authorized to opt in to these requirements.

States with the worst ozone nonattainment problems should be required to develop a variety of alternative fuels programs in concert with both auto manufacturers and fuel producers. All potential combinations of alternative fuels, including ethanol, methanol, compressed natural gas, electricity, and other comparably low emitting power sources, should be fairly considered.

States, through the state implementation plan process, should specify the required number of vehicles and fuel types needed for fleet conversions, reformulated gasoline, and alternative fuels. EPA should be required to ensure that vehicle manufacturers and fuel producers are responsible for the production, availability, and distribution of competitive products that meet certification and recall standards in order to meet the requirements of state implementation plans.

By 2003, a technology-forcing "second phase" emissions standard, which achieves substantial emissions reductions from the 1993 "California" car, should be required nationwide. By this date, all new vehicles, regardless of the fuel used, should meet this standard.

Finally, high priority should be placed on ensuring progress toward the development of a new generation of ultra-low emissions vehicles.

9.6 Policy for Interstate Transport

The Governors recognize that the long-range transport of air pollutants creates serious institutional, equity, and air quality problems for many areas of the country. The Governors support a program to control acid deposition. The Governors believe that any federal program aimed at controlling long-range transport must involve the designation by Congress of regional transport corridors, including both source and receptor states. EPA should be empowered to designate additional corridors as the need arises. The states within designated corridors should be granted a reasonable period of time to reach agreement on reducing the long-range transport of air pollutants. If the concerned states fail to reach such an agreement, EPA should be authorized to take specific appropriate action in the designated corridor. Congress should make certain that EPA effectively implements Section 126 of the Clean Air Act to ensure that interstate pollution does not violate state or federal air quality standards, consume significant portions of another state's PSD increments, or adversely affect air quality related values in Class I areas. The Clean Air Act should be amended as necessary to provide such assurance.

9.7 Policy for Ozone Attainment

As many as seventy urban areas throughout this country did not meet health-based ozone standards by the December 31, 1987 deadline established in the Clean Air Act. Eighty million people live in these areas. Approximately 30 million of these people are particularly sensitive to the health effects of ozone.

Many states, acting individually, cannot achieve the national ozone standard. There is a need for strong national leadership by the federal government in order to address this major public health problem.

Therefore, the United States Environmental Protection Agency should take a number of aggressive actions including:

- Immediately developing and implementing a nationally comprehensive ozone control strategy building on state and federal plans and actions already in place;
- Working with states to maximize the effectiveness of our nation's air pollution control program;
- Defining and adopting reasonably available controls on existing hydrocarbon air pollution sources, with special emphasis on areas where the emissions contribute to violations of the National Air Quality Standard for ozone without regard to whether they are in the same area or state as the violation;
- Expeditiously adopting additional motor vehicle control measures such as gasoline evaporation standards, more stringent regulations on trucks, nationwide onboard control of gasoline vapors, and strengthened test and certification procedures, including a cold start test at 20°F; and
- Providing guidance and alternatives to the states for initiating or improving automobile inspection and maintenance requirements as may be needed dependent on the severity of nonattainment.

9.8 Policy for Toxic Air Pollutants

The Governors support simplifying the current system for listing hazardous air pollutants under Section 112 of the Clean Air Act and believe EPA has been too slow in making listing decisions. The Governors believe that any air pollutant believed to be hazardous should be expeditiously reviewed, and if the administrator finds it to be a hazardous air pollutant under the meaning of Section 112, it should be immediately listed. The Governors support effective statutory deadlines requiring EPA to regulate toxic air pollutants on an expedited basis. Once such a pollutant has been listed, existing significant sources should be required to comply with control measures adequate to protect public health, and in no case less stringent than that provided by the best available technology, determined by the permitting agency. To assist states in permitting existing sources, EPA should publish control guidelines within two years of listing a pollutant and should implement a national air toxics clearinghouse on hazardous pollutants. Significant new or modified sources of listed pollutants should be required to comply with more stringent control measures than existing sources are required to meet. EPA should provide technology guidance to the states for new sources designed to achieve public health protection with an ample margin of safety. EPA should review such guidance for new sources periodically.

States should be explicitly authorized to require controls more stringent than the federal guidance. In addition, for hazardous pollutants determined to be of local rather than national scope, states should develop control strategies through a state implementation plan process. Federal technical assistance should be provided to states to develop such control strategies. Such control strategies should be federally enforceable. States should be explicitly authorized to act in instances where EPA has not promulgated a standard and a state has developed a control strategy to address an immediate problem.

9.9 Urban Visibility

The Governors recognize that impaired visibility due to air quality degradation is a growing concern in major urban areas of the United States. A strengthened research effort to provide a greater understanding of the broad causes of this phenomenon must be undertaken with the development of appropriate standards and control mechanisms. In areas where sufficient understanding of the problem exists, control measures should be implemented. The Governors further recognize the important role fine particulates play in urban visibility and urge the implementation of appropriate fine particulate standards.

Time limited (effective February 1994-February 1996).
Adopted August 1980; revised February 1982, August 1983, February 1984, July 1984, February 1985, February 1987, February 1989, and February 1990 (formerly Policy D-3).

NR-10. ENVIRONMENTAL COMPLIANCE AT FEDERAL FACILITIES

10.1 Preface

The problems of environmental cleanup and compliance at federal facilities are deep rooted. Contamination and environmental degradation are the result of years of mismanagement and neglect. They reflect noncompliance with federal policies, unclear or inadequate laws and regulations, institutional attitudes that devalue environmental concerns, and the reluctance of federal agencies to work with federal and state regulators. The problems are not, however, beyond solution, and a new attitude has recently been seen in the federal establishment. Building on this new federal openness, the National Governors' Association makes the following recommendations, consistent with the report of the joint NGA-National Association of Attorneys General Task Force on Federal Facilities:

10.2 Improve Environmental Compliance

Under federal environmental statutes, federal agencies are directed to comply with federal and state environmental laws to the same extent as private facilities, but many have failed to do so. Although the Environmental Protection Agency (EPA) is aware of numerous violations, its enforcement powers have been crippled by a Department of Justice policy prohibiting EPA from filing lawsuits or issuing unilateral enforceable orders against its sister agencies. Hamstrung by the Justice Department's "unitary theory of the executive," the nation's chief environmental watchdog is forced to sit by as basic environmental statutes and regulations are routinely ignored at federally owned facilities.

10.2.1 Recommendations:

- Congress should amend applicable federal laws to more clearly waive federal sovereign immunity from the application and enforcement of federal and state environmental laws and ensure that states may seek penalties, fines, and criminal sanctions.
- Congress should require that federal facilities conduct environmental management and compliance audits.
- Congress should enact legislation to improve reporting of environmental violations and strengthen EPA's and the states' ability to require environmental compliance by all federal agencies.
- Congress should amend applicable federal laws to ensure that all wastes, including radioactive, are within the purview of state and EPA authorities.
- Congress should require that all quasi-federal sovereign businesses and corporations also meet the same environmental compliance requirements as other federal agencies.

10.3 Establish Independent Oversight

State and federal regulators face numerous barriers to effective law enforcement at federal facilities. In their attempts to monitor and improve environmental practices on federal properties, regulators often have been thwarted by claims of national security and sovereign immunity, narrow readings by federal agencies of state and federal environmental laws, and restricted access to sites and information. These barriers have resulted in a system in which many federal facilities have become their own guardians.

10.3.1 Recommendations:

- Congress should ensure that state environmental personnel are given full access to sites and compliance data. Security clearances, when necessary, should be approved expeditiously.
- Congress should ensure that federal and state "right to know" requirements apply to federal facilities.
- Federal agencies should submit annual reports to Congress, EPA, and the states documenting compliance and cleanup efforts in the previous year and identifying the work planned for the next fiscal year. This and other compliance information should be readily available to the public.
- The President should form a state-federal work group on environmental compliance to discuss and resolve federal facility issues at a high policy level.

- U.S. EPA or state agencies should be designated as the lead agency for activities conducted at federal facilities on the National Priority List.

10.4 Set a National Agenda and Deadline for Cleanup and Compliance

While many federal agencies will have to conduct remedial actions at individual sites in the coming years, no overall plan exists for cleaning up and restoring the environment at all federal facilities. A plan for concerted and expeditious cleanup of all sites is needed.

10.4.1 Recommendations:

- The President should request and Congress should adopt a goal of not more than thirty years for completion of all environmental compliance and restoration at federal facilities. Where feasible at a particular site, cleanup should be accomplished in a much shorter period. Action plans and interim milestones should ensure continued progress toward the national goal.
- Action plans with milestone dates should serve as a blueprint for funding and ensure continued progress toward the national goal.
- Congress or the President should require the development of national criteria to guide decisions regarding priority and phasing of cleanups.

10.5 Fund Environmental Restoration and Compliance

Because sound environmental management has not been a high priority for most federal agencies, adequate funds for cleanup and compliance activities have not been requested or budgeted. There is an urgent need for secure, sustained funding for environmental compliance activities at federal facilities. In addition, money must be made available to reimburse states for the costs of overseeing environmental activities at federal installations in the same manner that private facilities generally reimburse regulators for their oversight services.

10.5.1 Recommendations:

- Congress and the President should ensure adequate funding for environmental restoration and compliance activities by all federal agencies.
- Separate environmental restoration accounts should be created within the budgets of agencies facing significant environmental cleanup work.
- Firm federal policies for reimbursing states for the costs associated with oversight work at federal facilities should be established.
- Funds for compliance activities should be treated as operating expenses, and should not be subject to prioritization schemes or other efforts that separate them from operating costs.

10.6 Develop Comprehensive Waste Management Programs

Operations at federal facilities over the last forty years have produced huge amounts of hazardous, solid, and radioactive wastes. Little attention has been given to planning for the eventual disposal of these wastes. There is an urgent need for all federal agencies to develop comprehensive waste management programs that address the most serious problems in a prioritized manner.

10.6.1 Recommendations:

- Congress or the President should direct federal agencies to prepare comprehensive waste management plans that are based on the maximum feasible pollution prevention, waste reduction, and recycling, and that provide assurance of adequate capacity to treat, store, or dispose of all hazardous, solid, and radioactive materials.
- Where waste treatment and disposal technologies are utilized, environmental regulations must protect public health and the environment.
- Knowledge gained from federal research and development efforts should be shared with the business community, EPA, and the states to bring new technologies into commercial use quickly.

Time limited (effective February 1994-February 1996).
Adopted February 1990 (formerly Policy D-14).

NR-11. 1990 FARM BILL

11.1 Preface

The Food Security Act of 1985, with minor adjustments, provides an appropriate framework for agricultural legislation to lead this country through the first half of the 1990s. The Food Security Act has had a significant effect on both the domestic farm economy and on the world market. Programs provided for in that act have successfully retarded further soil erosion and degradation, enhanced environmental quality, and provided for the conservation of wetlands and rangelands. In light of growing concern about global climate change, nonpoint source pollution, and other environmental issues, these conservation programs are taking on increasing significance. The Food Security Act of 1985 provided the American consumer with an abundant and wholesome supply of food. The Governors are supportive of the principles embodied in that act; however, they do advocate certain revisions to the Food Security Act of 1985 when developing the 1990 Farm Bill.

11.2 Recommendations

The National Governors' Association called upon Congress to adopt a 1990 Farm Bill that included the following.

11.2.1 **Farm Base Flexibility.** The Governors believe that farm program requirements should provide for greater flexibility to allow farmers greater latitude in meeting consumers' needs, adjusting to optimum market opportunities, and addressing environmentally sound farm management practices. Proposals for increasing base flexibility must be formed with due consideration to the potential market distortion impacts of such changes. Current farm program base acreage provisions can unnecessarily limit maximum economic and environmental benefits. Greater flexibility will not resolve all current problems regarding farm price and income objectives, or agriculture and water quality impacts, but such flexibility will contribute to accomplishing national goals in these areas.

11.2.2 **Conservation Programs.** The Governors recommend promoting and expanding eligibility for the Conservation Reserve Program to:

- Include areas inhabited by endangered species and environmentally sensitive areas such as wetlands, riparian areas, and lands that influence water quality.
- Prioritize eligible environmentally sensitive acres in conjunction with areas identified in state nonpoint source pollution management plans submitted in accordance with Section 319 of the Clean Water Act.
- Provide additional incentives, as needed, to establish long-term conservation practices such as the planting of trees for windbreaks, wildlife, and other conservation purposes and to encourage the retention of existing trees and windbreaks.
- Provide additional incentives for restoration of wetlands and riparian habitats, and for establishment of native vegetation on other lands vital to water quality.
- Provide cost-share for pilot projects in the establishment of artificial wetlands for the control and cleansing of runoff waters from feedlots, livestock operations, and packing plants.
- Conduct additional research and provide incentives to encourage the reduced use of energy, water, and agricultural chemicals in order to improve net farm income and protect the environment.
- Recognize and preserve the role of states in identifying and implementing conservation management programs, including targeting priority protection areas and developing sound agricultural-chemical management programs.

11.2.3 **Enhancing Competitiveness.** The Governors favor enhancing competitiveness through the Export Enhancement Program and through agricultural research and extension systems.

- Continue the availability and use of the Export Enhancement Program as an export trade policy tool.
- Provide support for research on agricultural production systems that may reduce the use of energy, water, and agricultural chemicals. Research should include analysis of the impact of current farming practices on water quality, the economic impact of various "best management

practices," and development of more efficient production systems. The research should be transferable to agricultural practices.

- Provide funding to agricultural research and extension systems to meet the constant economic and technical changes in agriculture and rural America.
- Place a higher priority on research programs regarding additional uses of agricultural products and on identifying potential new uses.

11.2.4 **Water Quality Assessment.** The Governors support the need for appropriate baseline and background databases on water quality. A comprehensive water quality database is essential in the development of pollution abatement programs and evaluation of ongoing efforts. Development and maintenance of such a database should be coordinated among ongoing state, local, and federal efforts.

11.2.5 **Coordinating Programs.** The Governors recommend that states retain the primary authority for water resource management. The efforts of the federal government must be conducted in concert with state activities. Duplication among programs run by different federal agencies must be eliminated and overall coordinated efforts should be implemented. The nation must approach ground and surface water resources as an integrated system and adopt a national ground and surface water quality protection strategy that utilizes this integrated approach.

11.2.6 **Rural Development.** The Governors recommend placing additional emphasis on rural development. Rural assistance programs must be directed toward the enhancement and creation of jobs in rural areas. This can be accomplished through education programs, infrastructure investment programs, and economic development projects.

11.2.7 **Funding.** The recommendations as presented should be implemented at a cost of no more than the total cost of the Food Security Act of 1985. Target prices should be adjusted for real farm inflation costs.

The Governors should work actively with the President and Congress to develop an effective and workable 1990 Farm Bill.

Time limited (effective February 1994-February 1996).
Adopted August 1989; revised February 1990 (formerly Policy G-10).

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1994 Winter Meeting

EXECUTIVE COMMITTEE

Governor Carroll A. Campbell Jr., Chairman
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Raymond C. Scheppach, Executive Director

Proposed Changes in Policy

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The Executive Committee recommends the consideration of two new policy positions and amendments to one existing permanent policy position. Pursuant to the recommendations of the Strategic Review Task Force, these proposals are time limited to two years, except for the amendments to the permanent policy position. Background information and fiscal impact data follow.

1. Principles for State-Federal Relations (Amendments to Permanent Policy Position)
(Defining the Future Federal Role – Unfunded Federal Mandates)
(Administering Intergovernmental Programs)

The existing permanent policy position outlines broad principles to guide judicial, legislative, and executive branches of the federal government with regard to issues that impact state government. The amendments deal with the specific issues of unfunded mandates (4.4 of the section on "Defining the Future Federal Role") and federal dictates with regard to state administration of federal programs, especially education (6.1 of the section on "Administering Intergovernmental Programs").

The amendment dealing with unfunded mandates replaces current policy language and calls for cost analysis and reimbursement, points of order against violations of cost reimbursement, broad agency waiver authority, and reenactment of the Paperwork Reduction Act that would codify the President's Executive Orders in these areas.

The amendment to section 6.1 adds another general principle that calls upon the federal government to respect the constitutional and statutory laws of the states with regard to the allocation of administrative and financial responsibilities within states. This language is aimed specifically at the "governance" issue in current legislation for Education 2000, School-to-Work, and the Elementary and Secondary Education Act.

If enacted, these changes could save the states millions of dollars in future mandate costs and provide administrative savings by using state laws and procedures to manage federal programs.

2. Federal Barriers to State Health Care Reform (New Policy Position, EC-7)

This policy calls on Congress and the administration to remove federal barriers to state health care reform. Specifically, Governors urge Congress to change Medicaid statutes so that states may establish managed care networks for Medicaid beneficiaries without the cumbersome waiver process. They call for new waiver authority for projects that have been shown to be effective under current research and demonstration authority in the Social Security Act. Governors also call for relief from the Boren Amendment that limits states' flexibility in establishing institutional care reimbursement rates; finally, they call for some new statutory authority in the Employee Retirement Income Security Act (ERISA) to give states more flexibility in establishing health care initiatives.

3. Health Care for Undocumented Immigrants (New Policy Position, EC-8)

This policy calls upon Congress and the administration to recognize the federal government's sole responsibility in immigration policy by repealing the federal mandates that require state and local governments to fund health care and other public services to undocumented individuals. The policy further calls upon Congress and the administration to develop a system by which the federal government will fund emergency and other public health care for this population.

PRINCIPLES FOR STATE-FEDERAL RELATIONS
~~PRINCIPLES FOR INTERGOVERNMENTAL RELATIONS~~

1 **Preamble**

2 **Protecting State and Local Borrowing Capacity**

3 **Creating a Consensus for Action**

4 **Defining the Future Federal Role**

To ensure that legitimate demands for federal actions are met in a responsible manner and that the role of states and localities is preserved, several steps are needed.

4.1 **State Responsibility.** The Governors strongly support the principles of federalism, but the public will insist on federal action should states fail to act collectively on issues of legitimate concern. The states reaffirm their strong commitment to continued leadership and effective state action.

4.2 **Federal Protection and Special Populations.** The states reaffirm their support for a federal role in ensuring equality of access and due process. The federal government also has a responsibility to help states meet the needs of special populations.

4.3 **Federal Forbearance.** Not all problems require a uniform solution. Priorities and preferences may vary from state to state. The lack of universal action or uniform solutions does not in and of itself provide a sufficient rationale for federal action. Instead, Governors recommend that the development of future federal programs be guided first by five fundamental principles.

- Federal action should be taken where constitutional authority for action is clear and certain.
- Federal action should be limited to problems that are national in scope, where the national interest requires a universal or uniform solution, and should not merely address problems that are common to all states.
- Federal action should be sensitive to each state's ability to bring a unique blend of resources and approaches to common problems.
- Unless the national interest is at risk, federal action should not preempt additional state action.
- Federal action should depend on risk-based priorities and cost-benefit analysis and should avoid inflexible earmarking.

4.4 **Unfunded Federal Mandates.** ALTHOUGH UNFUNDED FEDERAL MANDATES MAY REFLECT WELL-INTENTIONED POLICY GOALS, THEY OFTEN IMPOSE SUBSTANTIAL COST AND REGULATORY BURDENS ON STATES. FEDERAL ACTION INCREASINGLY HAS RELIED ON STATES TO CARRY OUT POLICY INITIATIVES WITHOUT PROVIDING NECESSARY FUNDING TO PAY FOR THESE PROGRAMS, THEREBY ROBBING STATES OF THEIR RIGHT AND RESPONSIBILITY TO SET PRIORITIES AND DEVELOP POLICIES THAT BEST MEET LOCAL NEEDS.

IN NEW YORK V. UNITED STATES, 112.S.CT. 2408 (1992), THE U.S. SUPREME COURT UNEQUIVOCALLY REAFFIRMED THE VITALITY OF STATE GOVERNMENTS IN THE FEDERAL SYSTEM AS SEPARATE AND INDEPENDENT POLITICAL ENTITIES.

THE COURT HELD THAT STATE GOVERNMENTS CANNOT AND SHOULD NOT BE TREATED AS MERE SUBDIVISIONS OR AGENTS OF THE FEDERAL GOVERNMENT. STATES MUST BE FREE TO MAINTAIN THE INTEGRITY OF THEIR GOVERNMENTAL STRUCTURES AND GOVERNING PROCESSES.

STATE GOVERNMENTS CANNOT, HOWEVER, FUNCTION AS FULL PARTNERS IN OUR FEDERAL SYSTEM IF THE FEDERAL GOVERNMENT APPROPRIATES STATES' ABILITY TO DEVISE AND LEGISLATE THEIR OWN SOLUTIONS TO DOMESTIC PROBLEMS BY REQUIRING STATES TO DEVOTE THEIR LIMITED RESOURCES TOWARD COMPLYING WITH UNFUNDED FEDERAL MANDATES.

THE GOVERNORS CALL ON MEMBERS OF CONGRESS TO OPPOSE, AND THE PRESIDENT TO VETO, LEGISLATION THAT IMPOSES FURTHER MANDATES WITHOUT ALSO PROVIDING ADEQUATE FUNDING TO COVER THE COSTS OF IMPLEMENTATION. THE FOLLOWING ADDITIONAL ACTIONS ARE RECOMMENDED.

- GOVERNORS MUST WORK WITH STATE LEGISLATORS, COUNTY OFFICIALS, MAYORS, AND CITY OFFICIALS IN SUPPORT OF FEDERAL LEGISLATION THAT PROVIDES STATE AND LOCAL GOVERNMENTS WITH REAL, PERMANENT RELIEF FROM THE MANDATE BURDEN. CONGRESS SHOULD ACT TO GUARANTEE THAT COSTS TO STATE AND LOCAL GOVERNMENTS ASSOCIATED WITH ALL NEW MANDATES ARE REIMBURSED BY THE FEDERAL GOVERNMENT.
- LEGISLATION MUST BE ENACTED TO REQUIRE THE CONGRESSIONAL BUDGET OFFICE TO REPORT ON THE COSTS IMPOSED BY UNFUNDED MANDATES ON STATE AND LOCAL GOVERNMENTS PRIOR TO CONGRESSIONAL ACTION BY A FULL COMMITTEE AND THE FULL HOUSE OR SENATE.
- CONGRESS SHOULD EXTEND THE PRINCIPLE OF PAY-AS-YOU-GO, REVENUE-NEUTRAL REQUIREMENTS, NOW USED FOR FEDERAL ENTITLEMENT PROGRAMS, TO ANY NEW STATE AND/OR LOCAL MANDATE.
- A POINT OF ORDER SHOULD BE PROVIDED AGAINST ANY MANDATE ON STATE OR LOCAL GOVERNMENTS THAT VIOLATES THE ABOVE THREE REQUIREMENTS, WITH A THREE-FIFTHS MAJORITY NECESSARY TO OVERRIDE THE POINT OF ORDER.

- STATE AND LOCAL ELECTED OFFICIALS OF GENERAL PURPOSE GOVERNMENTS AND THEIR REPRESENTATIVE NATIONAL ORGANIZATIONS SHOULD BE EXEMPTED FROM THE FEDERAL ADVISORY COMMITTEE ACT AND THE ADMINISTRATIVE PROCEDURES ACT.
- THE NATIONAL PERFORMANCE REVIEW RECOMMENDATIONS FOR BROAD AGENCY WAIVER AUTHORITY AND BOTTOM-UP GRANT CONSOLIDATION SHOULD BE ENACTED.
- BURDENSOME AND COSTLY REPORTING REQUIREMENTS SHOULD BE REDUCED THROUGH ENACTMENT OF THE PAPERWORK REDUCTION ACT.
- A SUMMIT CONFERENCE ON FEDERALISM SHOULD BE FORMED TO DISCUSS THE BREAKDOWN OF FEDERALISM AND TO RENEW OUR NATIONAL COMMITMENT TO THE FEDERALIST SYSTEM OUR FOUNDING FATHERS ENVISIONED.

~~Although unfunded federal mandates may reflect well intentioned policy goals, they often impose substantial cost and regulatory burdens on states. Federal action increasingly has relied more on states to carry out policy initiatives, thereby robbing states of their right and responsibility to set priorities and develop policies that best meet local needs. The following actions are recommended.~~

- ~~Congress should immediately pass legislation to require the Congressional Budget Office to report on the costs of mandates prior to congressional action.~~
- ~~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.~~
- ~~The Governors call on members of Congress to oppose, and the President to veto, legislation that imposes further mandates without also providing adequate funding to cover the costs of implementation.~~

5 Ensuring Program Flexibility and Accountability

6 Administering Intergovernmental Programs

To provide maximum flexibility and an opportunity for innovation, as well as to foster administrative efficiency and cross-program coordination, intergovernmental grant legislation should be designed to meet the following principles.

6.1 General. The following principles should apply.

- Legislative authorization should be kept current, and all grant programs should be subject to periodic review.
- There should be a congressional determination of a compelling need for federal action.
- Legislation should include clear statements of measurable program objectives to reduce administrative confusion and facilitate judicial interpretation of congressional intent.
- States should be actively involved in a cooperative effort to develop policy and administrative procedures.
- Grant requirements should be tied to the purpose of the grant.

- THE FEDERAL GOVERNMENT SHOULD RESPECT THE AUTHORITY OF STATES TO DETERMINE THE ALLOCATION OF ADMINISTRATIVE AND FINANCIAL RESPONSIBILITIES WITHIN STATES IN ACCORDANCE WITH STATE CONSTITUTIONS AND STATUTES. FEDERAL LEGISLATION SHOULD NOT ENCROACH ON THIS AUTHORITY.

6.2 **Financing. The following principles should apply.**

- Federal revenues that are earmarked for federal aid programs should be made fully available for the purposes enacted.
- Legislation should authorize and appropriate sufficient funds to meet identified program objectives.
- Federal assistance funds, including funds that will be passed through to local governments, should flow through states according to state laws and procedures.
- States should be given flexibility to transfer a limited amount of funds from one grant program to another, or to administer related grants in a consolidated manner.
- Federal assistance appropriations should be enacted on a timely basis, possibly even one year in advance.
- Federal funds or letters of credit should be provided in a timely manner.

6.3 **Administrative Requirements. The following principles should apply.**

- Federally mandated administrative requirements should be uniform across federal agencies and programs and should allow the substitution of comparable state requirements.
- Federal grant programs should not impose unreimbursed administrative costs on states or localities.
- Congress should limit administrative authority over planning and reporting requirements by specifying the product of planning rather than the process, by delegating planning to existing state organizations, and by requiring that reporting requirements be clearly justified.
- States should be given broad flexibility in establishing federally mandated advisory groups, including the ability to combine advisory groups for related programs.
- Governors should be given the authority to require coordination among state executive branch agencies, or between levels or units of government, as a condition of the allocation or pass-through of funds.
- Federal government monitoring should be outcome-oriented and should not focus on process or procedural measures.
- Federal reporting requirements should be minimized, and states should be encouraged to develop cooperative reporting efforts.
- The federal government should not dictate state or local government organization.
- States with prior programs and acceptable performance should be excused from detailed federal requirements or certified as meeting federal requirements.
- Federal agencies should accept state and local administrative structures and program administration.

7 **Avoiding Federal Preemption of State Laws and Policies**

8 **Preserving Intergovernmental Communication**

9 **Conclusion**

Permanent Policy
Adopted August 1993.

EC-7. FEDERAL BARRIERS TO STATE HEALTH CARE REFORM

7.1 PREAMBLE

THE NATION'S GOVERNORS ARE COMMITTED TO COMPREHENSIVE HEALTH REFORM THAT CALLS FOR A FEDERAL FRAMEWORK WITH SIGNIFICANT STATE FLEXIBILITY, AND THEY WILL WORK WITH CONGRESS AND THE ADMINISTRATION TO DEVELOP SUCH A SYSTEM. AT THE SAME TIME, HOWEVER, THE GROWING DEMAND FOR AFFORDABLE QUALITY HEALTH CARE, COUPLED WITH THE IMMEDIATE BUDGETARY PRESSURES CAUSED BY THE MEDICAID PROGRAM, REQUIRES IMMEDIATE ACTION. VIRTUALLY EVERY GOVERNOR HAS SOME HEALTH REFORM INITIATIVE IN PROGRESS. THESE INCLUDE COMPREHENSIVE STATE-BASED REFORM INITIATIVES, PROGRAMS THAT ASSIST SMALL BUSINESSES IN SECURING AFFORDABLE HEALTH INSURANCE, PROGRAMS THAT EXPAND HEALTH CARE COVERAGE TO A GREATER NUMBER OF UNINSURED POOR, AND PROGRAMS THAT IMPLEMENT MANAGED CARE NETWORKS FOR MEDICAID BENEFICIARIES. NONE OF THESE STATE INITIATIVES ARE INCOMPATIBLE WITH NATIONAL REFORM; INSTEAD, THEY CONTINUE TO BUILD A STRONG POLICY FOUNDATION FOR REFORM AT THE FEDERAL LEVEL.

AS STATES HAVE MOVED AHEAD, HOWEVER, THEIR SUCCESS HAS BEEN LIMITED BY BARRIERS RESULTING FROM CURRENT FEDERAL STATUTES. THE NATION'S GOVERNORS CALL UPON THE ADMINISTRATION AND CONGRESS TO IMMEDIATELY REMOVE THOSE FEDERAL BARRIERS.

7.2 MEDICAID

BY FAR, MEDICAID REPRESENTS THE LARGEST HEALTH CARE EXPENDITURE FOR STATES. ON AVERAGE, ONLY SPENDING FOR ELEMENTARY AND SECONDARY EDUCATION CONSTITUTES A LARGER PORTION OF STATE BUDGETS. GOVERNORS BELIEVE THAT IRRESPECTIVE OF ANY NATIONAL HEALTH REFORM STRATEGY, MEDICAID COSTS MUST BE BROUGHT UNDER CONTROL. SHOULD CONGRESS MOVE TO LIMIT OR CAP THE FEDERAL CONTRIBUTION TO MEDICAID, A MOVE THE GOVERNORS ADAMANTLY OPPOSE, THE GOVERNORS BELIEVE THESE CHANGES AND OTHER RELIEF WILL BECOME EVEN MORE URGENT. THE GOVERNORS RECOMMEND THE FOLLOWING CHANGES THAT WILL CONTRIBUTE TO CONTROLLING THOSE COSTS.

7.2.1 **MANAGED CARE WAIVERS.** THERE IS A NATIONAL TREND IN HEALTH CARE SERVICE DELIVERY TOWARD SYSTEMS OF CARE. THESE SYSTEMS OR NETWORKS HAVE BEEN SHOWN TO PROVIDE COST-EFFICIENT CARE WHILE ENSURING THAT THE PATIENT HAS A RELIABLE PLACE FROM WHICH TO SEEK PRIMARY CARE AND TO WHICH SPECIALTY CARE CAN BE DIRECTED. ALTHOUGH THE PRIVATE SECTOR IS MOVING AGGRESSIVELY TOWARD THESE NETWORKS, THE MEDICAID PROGRAM CONTINUES TO REQUIRE STATES, IN VIRTUALLY ALL CASES, TO APPLY FOR A WAIVER FROM FEE-FOR-SERVICE CARE IN ORDER TO ENROLL MEDICAID BENEFICIARIES IN SUCH NETWORKS. AND WHILE THE BUSH AND CLINTON ADMINISTRATIONS HAVE TAKEN SIGNIFICANT STEPS TOWARD SIMPLIFYING THE APPLICATION AND RENEWAL PROCESS, STATES STILL MUST APPLY FOR RENEWALS EVERY TWO YEARS. MOREOVER, STATES HAVE BEEN UNABLE TO SUSTAIN NETWORKS WHERE THERE IS A PREDOMINANCE OF MEDICAID BENEFICIARIES BECAUSE, UNDER CURRENT LAW, STATES ARE PERMITTED ONLY ONE NONRENEWABLE THREE-YEAR WAIVER TO HAVE BENEFICIARIES SERVED IN A HEALTH MAINTENANCE ORGANIZATION (HMO) WHERE MORE THAN 75 PERCENT OF THE ENROLLEES IN THE HMO ARE MEDICAID BENEFICIARIES. THIS REQUIREMENT SHOULD BE REPEALED.

IF THE NATION IS SERIOUS ABOUT CONTROLLING HEALTH CARE COSTS, IT IS ESSENTIAL TO GIVE STATES THE OPPORTUNITY TO ESTABLISH NETWORKS IN MEDICAID (INCLUDING FULLY AND PARTIALLY CAPITATED SYSTEMS) THROUGH THE REGULAR PLAN AMENDMENT PROCESS. GOVERNORS RECOGNIZE THE SPECIAL SIGNIFICANCE OF CONSUMER PROTECTIONS AND ASSURANCE OF SOLVENCY IN ESTABLISHING THESE SYSTEMS OF CARE AND SUPPORT FEDERAL GUIDANCE THROUGH THE REGULATORY PROCESS.

7.2.2 **COMPREHENSIVE WAIVERS.** STATES HAVE BEGUN TO LOOK SERIOUSLY AT COMPREHENSIVE SYSTEMS OF HEALTH CARE WHERE THE ARTIFICIAL CATEGORICAL BARRIERS OF MEDICAID ARE REMOVED AND WHERE THEY CAN ESTABLISH STATEWIDE NETWORKS OF CARE FOR MEDICAID BENEFICIARIES. UNFORTUNATELY, THERE ARE NO PROVISIONS IN THE SOCIAL SECURITY ACT THAT CAN BE USED TO ESTABLISH SUCH PROGRAMS ON AN ONGOING BASIS.

CURRENTLY, STATES HAVE BEEN DEVELOPING THESE MORE COMPREHENSIVE NETWORKS THROUGH THE RESEARCH AND DEMONSTRATION PROVISIONS OF THE SOCIAL SECURITY ACT (SECTION 1115A). SECTION 1115A,

HOWEVER, WAS DESIGNED FOR RESEARCH PURPOSES AND HAS SOME IMPORTANT LIMITATIONS. STATES MUST DEMONSTRATE, THROUGH THE APPLICATION PROCESS, THAT THEY ARE TESTING AN INNOVATION. THE LAW REQUIRES AN EVALUATION THAT, IN SOME CASES, REQUIRES CONTROL GROUPS. PROJECTS APPROVED UNDER THE 1115A PROCESS ARE APPROVED FOR A LIMITED TIME PERIOD, USUALLY THREE TO FIVE YEARS AT THE DISCRETION OF THE ADMINISTRATION, AND REQUIRE SPECIAL STATUTORY CHANGES TO GO BEYOND THE DEMONSTRATION PERIOD. FINALLY, THESE PROJECTS MUST BE COST NEUTRAL OVER THE LIFE OF THE PROJECT.

SECTION 1115A IS ESSENTIAL TO ENSURE THE TESTING OF ALTERNATIVE HEALTH AND SOCIAL POLICIES. HOWEVER, THE CURRENT STATUTE FALLS SHORT BY REQUIRING STATUTORY CHANGES IF A STATE WANTS TO CONTINUE ITS SUCCESSFUL EFFORT. IN SHORT, ONCE A STATE HAS PROVEN THAT ITS RESEARCH PROJECT WORKS, IT CANNOT CONTINUE WITHOUT CONGRESSIONAL ACTION. GOVERNORS SUPPORT CHANGES TO THE SOCIAL SECURITY ACT SO THAT A STATE MAY APPLY THROUGH THE EXECUTIVE BRANCH OF GOVERNMENT FOR RENEWABLE WAIVERS OF THEIR INNOVATIONS. THIS WAIVER PROCESS SHOULD BE CONSISTENT WITH THE STREAMLINED APPROACHES USED BY THE CLINTON ADMINISTRATION AND STATES SHOULD HAVE TO REAPPLY FOR THESE WAIVERS NO LESS THAN EVERY FIVE YEARS.

7.2.3 BOREN AMENDMENT. THE BOREN AMENDMENT TO THE MEDICAID PROVISIONS OF THE SOCIAL SECURITY ACT WAS PASSED IN THE EARLY 1980S TO GIVE STATES GREATER FLEXIBILITY IN ESTABLISHING REIMBURSEMENT RATES FOR HOSPITALS AND NURSING HOMES AND TO ENCOURAGE HEALTH CARE COST CONTAINMENT. INSTEAD, IT HAS LED TO HAVOC IN THE ADMINISTRATION OF MEDICAID PROGRAMS. COURT DECISIONS HAVE INTERPRETED THE BOREN AMENDMENT TO EMBODY A RESTRICTIVE AND UNREALISTIC SET OF REQUIREMENTS IN SETTING REIMBURSEMENT RATES, AND HAVE IN EFFECT GIVEN JUDGES THE POWER TO ESTABLISH REIMBURSEMENT RATES LEVELS AND CRITERIA. BECAUSE OF THESE DECISIONS, STATES REMAIN FRUSTRATED IN THEIR ABILITY TO BRING SOME DISCIPLINE TO THEIR BUDGETS AND HAVE BEEN THWARTED IN THEIR ATTEMPTS TO ACHIEVE THE ORIGINAL PURPOSE OF THE AMENDMENT.

THE NATION'S GOVERNORS BELIEVE THAT ANY COHERENT APPROACH TO NATIONAL HEALTH REFORM MUST ADDRESS THE ISSUE OF THE BOREN AMENDMENT. THEY BELIEVE THAT A STATUTORY CHANGE TO THIS AMENDMENT IS AN IMPORTANT TOOL NECESSARY TO BRING MEDICAID INSTITUTIONAL COSTS UNDER CONTROL. THEREFORE, THE GOVERNORS URGE THE ADMINISTRATION AND CONGRESS TO ADOPT THESE OR OTHER CHANGES TO THE BOREN AMENDMENT THAT WILL GIVE STATES THE RELIEF THEY NEED.

7.2.3.1 STATUTORY AND REGULATORY CHANGES. THE GOVERNORS AGREE THAT STANDARDS FOR ESTABLISHING ADEQUATE REIMBURSEMENT RATES FOR HOSPITALS, NURSING FACILITIES, AND INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MRS) MUST BE DESIGNED TO PROMOTE ACCESS TO CARE FOR MEDICAID PATIENTS, QUALITY OF SERVICES, COST CONTAINMENT, AND EFFICIENT SERVICE DELIVERY. THE GOVERNORS SUPPORT A STRATEGY THAT WOULD REPLACE THE CURRENT COST-EFFICIENCY-BASED STANDARD IN THE BOREN AMENDMENT WITH PROVISIONS THAT ESTABLISH "SAFE HARBOR" STANDARDS WHERE A STATE MEETING ANY OF THESE "SAFE HARBOR" PROVISIONS WOULD SATISFY THE STATUTE. STANDARDS MIGHT INCLUDE THE FOLLOWING.

- THE PAYMENT RATE IS EQUAL TO THE MEDICARE-BASED UPPER PAYMENT LIMIT.
- THE PAYMENT RATE IS NO LESS THAN THE RATE AGREED TO BY THE FACILITY FOR COMPARABLE SERVICES PAID FOR BY ANOTHER PAYER (E.G. PAYMENT RATES FOR MEDICAID PATIENTS WOULD NOT HAVE TO BE HIGHER THAN RATES PAID BY ANY LARGE MANAGED CARE PLANS OR LARGE BUSINESS).
- REGARDING NURSING FACILITIES, THE AGGREGATE NUMBER OF PARTICIPATING LICENSED AND CERTIFIED NURSING HOME BEDS IN THE STATE (PLUS RESOURCES DEVOTED TO HOME OR COMMUNITY-BASED CARE FOR THE ELDERLY) IS AT LEAST EQUAL TO A SPECIFIED PERCENTAGE OF THE POPULATION AGE 65 OR OVER.
- THE REIMBURSEMENT RATE IS SUFFICIENT TO COVER AT LEAST 80 PERCENT OF THE ALLOWABLE COSTS OF THE FACILITIES IN THE STATE IN THE AGGREGATE.

- THE REIMBURSEMENT RATE IS EQUAL TO A BENCHMARK RATE PLUS INFLATION NO LESS THAN THE RATE OF INFLATION FOR THE OVERALL ECONOMY ACCORDING TO A GENERAL INDEX (NATIONAL OR STATE), SUCH AS THE CONSUMER PRICE INDEX (CPI) OR THE GROSS DOMESTIC PRODUCT (GDP-IPD). THE BENCHMARK RATE WOULD BE THE APPROVED RATE AS OF THE DATE OF ENACTMENT OF THE STATUTE OR THE CURRENT RATE APPROVED BY THE HEALTH CARE FINANCING ADMINISTRATION.

THE GOVERNORS ALSO BELIEVE THAT THE PROCEDURAL REQUIREMENTS IN THE CURRENT BOREN AMENDMENT MUST BE STREAMLINED. FINALLY, THE GOVERNORS SUPPORT STRATEGIES THAT WOULD REDUCE OR ELIMINATE THE COSTS OF PROLONGED AND COSTLY LITIGATION.

7.3 EMPLOYEE RETIREMENT INCOME SECURITY ACT

ALTHOUGH THE GOVERNORS ARE EXTREMELY SENSITIVE TO THE CONCERNS OF LARGE MULTISTATE EMPLOYERS, THE FACT REMAINS THAT ONE OF THE GREATEST BARRIERS TO STATE REFORM INITIATIVES IS THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA). ERISA PREEMPTS ALL SELF-INSURED HEALTH PLANS FROM STATE REGULATIONS AND SUBJECTS THOSE PLANS ONLY TO FEDERAL AUTHORITY. AS A RESULT OF JUDICIAL INTERPRETATIONS OF ERISA, STATES ARE PROHIBITED FROM:

- ESTABLISHING MINIMUM GUARANTEED BENEFITS PACKAGES FOR ALL EMPLOYERS;
- DEVELOPING STANDARD DATA COLLECTION SYSTEMS APPLICABLE TO ALL STATE HEALTH PLANS;
- DEVELOPING UNIFORM ADMINISTRATIVE PROCESSES, INCLUDING STANDARDIZED CLAIM FORMS;
- ESTABLISHING ALL PAYER RATE-SETTING SYSTEMS;
- ESTABLISHING A STATEWIDE EMPLOYER MANDATE;
- IMPOSING PREMIUM TAXES ON SELF-INSURED PLANS; AND
- IMPOSING PROVIDER TAXES WHERE THE TAX IS INTERPRETED AS A FORM OF DISCRIMINATION ON SELF-INSURED PLANS.

7.3.1 ERISA FLEXIBILITY. GOVERNORS CALL ON THE ADMINISTRATION AND CONGRESS TO MODIFY THE ERISA STATUTE TO GIVE STATES THE FLEXIBILITY THEY NEED

TO MOVE AHEAD ON HEALTH REFORM. THIS MAY BE DONE EITHER BY ESTABLISHING THE FLEXIBILITY DIRECTLY IN STATUTE OR THROUGH THE ESTABLISHMENT OF WAIVER AUTHORITY. THE FLEXIBILITY SHOULD BE CRAFTED NARROWLY, SO AS NOT TO INTERFERE EITHER WITH THE ABILITY OF SELF-INSURED PLANS TO OPERATE EFFICIENTLY OR WITH THE OPERATION OF MULTISTATE PLANS. THE FLEXIBILITY COULD INCLUDE A REQUIREMENT THAT THE STATE DEMONSTRATE BROAD-BASED SUPPORT FOR THE CHANGE, SUCH AS BY PASSAGE OF STATE LEGISLATION. STATES MUST BE ASSURED, HOWEVER, THAT THE FLEXIBILITY IS STABLE AND NOT TIME LIMITED.

Time limited (effective February 1994- February 1996).

EC-8. HEALTH CARE FOR UNDOCUMENTED IMMIGRANTS

THE GOVERNORS RECOGNIZE THAT EVERY INDIVIDUAL IN THE UNITED STATES MUST CONTINUE TO HAVE ACCESS TO EMERGENCY AND OTHER PUBLIC HEALTH CARE SERVICES. HOWEVER, SINCE THE U.S. CONSTITUTION REQUIRES THAT OUR NATION'S IMMIGRATION POLICY BE PLACED UNDER THE EXCLUSIVE JURISDICTION OF THE FEDERAL GOVERNMENT, ALL COSTS RESULTING FROM IMMIGRATION POLICY SHOULD BE PAID BY THE FEDERAL GOVERNMENT. THE GOVERNORS BELIEVE THAT UNDER NO CIRCUMSTANCES SHOULD STATE AND LOCAL GOVERNMENTS BE REQUIRED TO SHARE IN COSTS RESULTING FROM FEDERAL POLICY DECISIONS THAT WOULD PROVIDE HEALTH CARE AND OTHER FEDERAL ENTITLEMENTS TO UNDOCUMENTED INDIVIDUALS.

THE GOVERNORS BELIEVE THAT THE PRESIDENT AND CONGRESS SHOULD USE THE ONGOING DEBATE OVER NATIONAL HEALTH CARE REFORM AS AN OPPORTUNITY TO CONSIDER WHAT HEALTH BENEFITS ARE TO BE PROVIDED BY THE FEDERAL GOVERNMENT DIRECTLY TO UNDOCUMENTED IMMIGRANTS, AND TO DETERMINE A PAYMENT STRUCTURE UNDER WHICH THE FEDERAL GOVERNMENT WILL PAY DIRECTLY FOR THESE BENEFITS.

THE GOVERNORS OPPOSE STATE AND LOCAL GOVERNMENTS BEING FORCED TO SUBSIDIZE FEDERAL IMMIGRATION POLICY. THEREFORE, THE GOVERNORS CALL ON THE PRESIDENT AND CONGRESS TO RECOGNIZE THE FEDERAL GOVERNMENT'S SOLE RESPONSIBILITY IN IMMIGRATION POLICY BY REPEALING ALL CURRENT FEDERAL MANDATES THAT REQUIRE THAT STATE AND LOCAL FUNDS BE USED TO PROVIDE HEALTH CARE AND OTHER PUBLIC SERVICES TO UNDOCUMENTED INDIVIDUALS. IN ITS PLACE, THE GOVERNORS CALL UPON CONGRESS AND THE ADMINISTRATION TO DEVELOP A DIRECT BILLING SYSTEM TO ENSURE THAT EMERGENCY OR PUBLIC HEALTH CARE NEEDS THAT ARE PROVIDED TO UNDOCUMENTED IMMIGRANTS BE FINANCED FULLY BY THE FEDERAL GOVERNMENT. THE PROVISION OF HEALTH CARE TO UNDOCUMENTED IMMIGRANTS MUST REMAIN A FUNDAMENTAL FEDERAL RESPONSIBILITY, FINANCED EXCLUSIVELY WITH FEDERAL DOLLARS, NOT AN UNFUNDED MANDATE OR A COST SHIFT TO THE STATES, LOCAL GOVERNMENTS, OR HEALTH CARE PROFESSIONALS.

Time limited (effective February 1994-February 1996).