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SPECIAL ISSUE
**COMMERCE, INSURANCE
& ECONOMIC DEVELOPMENT**



State Highway System Performance: Some States Have Work to Do

By Adrian Moore, Reason Foundation

When American Companies Face Foreign Government-Subsidized Competitors

By State Sen. William (Bill) H. Payne (NM)

State Spotlight: "Right to Work" - Iowa and Missouri

By Rep. Dawn Pettengill (Iowa) and
Sen. Ron Richard (Missouri)



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Risky Business

The conservative case for public sector investments in property mitigation

BY Eli Lehrer, Heartland Institute

Public sector involvement in property risk mitigation has not typically been an attractive concept to conservatives. After all, installing storm shutters, reinforcing foundations to resist earthquakes, and protecting onsite wetlands hardly seem like the government's responsibility and more so the individual's. Even so, property risk mitigation ought to garner more support from conservatives than it does. Well-designed public sector investments in property mitigation can help correct the government's own regulatory mistakes, save taxpayer dollars, and encourage self-reliance.

"Mitigation" means getting ready for disasters before they happen. "Property mitigation" can refer to almost any effort or incentive to make a given building or area of land safer against the forces of nature. Many agree that certain aspects of mitigation are extremely useful; making sure that fire/rescue departments have the resources they need and reinforcing existing levees to keep out rising water. Other examples of mitigation are more controversial among conservatives; such as efforts to avoid development in certain areas and to reinforce individual homes. However, a case can be made that public sector investments do have an expanded role in property mitigation and misgivings about that role can be against conservative principles.

For example, property mitigation efforts can correct the regulatory mistakes of government that suppress property insurance rates. Many state governments in disaster-prone areas have let politics, rather than risk factors, dictate insurance rates. Residents of risky areas and the developers who build there do not want to pay full costs and have organized to suppress insurance rates. For decades, this has provided an implicit subsidy for building in disaster-prone areas. The subsidy is a result of people living in safer areas. Insurers raise rates in safer areas in order to extend subsidized rates to disaster-prone area residents.


Unfortunately, the answer is not to just allow property insurance rates to reach risk-adjusted levels immediately – that is both politically impossible and morally suspect. It is politically impossible because it would force people living on fixed incomes to sell their homes at a loss, and morally suspect because it violates the clear reliance many individuals have placed on suppressed rates. The most practical solution could be to provide modest, direct subsidies for mitigation to reduce the mistake governments made in suppressing insurance rates. Withdrawing explicit subsidies like road construction and implicit subsidies like insurance rate suppression from disaster-prone, environmentally sensitive areas are corrective measures that support conservative principles. Quite simply, they involve getting government out of the way.

Mitigation policies are fiscally responsible. While more progressive policy emphasizes saving money "in the long run," preparing for a disaster in advance is almost always going to be cheaper



than rebuilding after one. Government should not aim to subsidize retrofits against every possible disaster, but it is much cheaper to provide modest upfront help with retrofits in hurricane-prone coasts and active earthquake fault areas than it is to provide humanitarian and reconstruction assistance after a disaster. The best-designed mitigation policies, particularly those that withdraw subsidies from construction in disaster-prone areas such as wetlands, can produce short-term budget savings.

Finally, above other government policies, mitigation does the most to encourage self-reliance. The best designed mitigation programs offer discrete, time-limited assistance rather than ongoing subsidies. An individual that receives subsidies in the form of a suppressed insurance premium has a personal, legitimate, ongoing interest in continued government controls on private insurance. On the other hand, individuals that receive credits against property taxes for installing storm shutters, have no ongoing reason to rely on government. Instead, these individuals have plenty of reason to believe they will not be receiving public sector reconstruction assistance if they fail to adequately prepare their home for a storm. Likewise, the withdrawal of development subsidies from disaster-prone areas encourages residents and developers to realize that they are on their own.

Not every proposal labeled as "mitigation" should find support from conservatives. Some environmental groups may attempt to violate property rights, other progressive activists may use mitigation as a guise for broader efforts to remake housing or land use policy. Mitigation should never become a purely governmental program; most mitigation efforts can and should be undertaken by private individuals acting on their own initiative in response to price signals that insurance rates send. However, overall, a public sector role in property mitigation is consistent with conservative principles of fiscal responsibility and self-reliance. 



Eli Lehrer is advisor to ALEC's Commerce, Insurance, and Economic Development Task Force and a Vice President of the Heartland Institute.

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“Right to Work” and “Ready to Work” in Iowa



BY Rep. Dawn Pettengill, IA

Through an executive order in July of 2000, Iowa's Governor Vilsack ordered the removal of all Right to Work references from the Department of Economic Development (IDED) website and brochures.

Eleven years later, HF149 sailed through the Iowa House requiring IDED to include the phrase, “Iowa is a Right-to-Work State” in BOLD letters on all business recruitment and promotional literature and their website. Today, although the bill stalled in the Senate, the Iowa Department of Economic Development's webpage “Why Iowa?” proudly announces Iowa as a Right to Work state. The “Business Advantages” page showcases Iowa's Right to Work at the top of the list of reasons for a business to bring their commerce to our state. Whether you are a business or an individual, the rights of workers and employers are every bit as important as tax implications, a skilled workforce and a great quality of life when making that location decision.

According to the National Institute for Labor Relations, Right to Work (RTW) states benefit from faster growth and higher purchasing power than non-RTW. Their November 2010 report shows significantly higher percentages in the growth of non-farm private sector employees, real manufacturing GDP, real personal income, disposable personal income, value added per production worker, housing starts, the number of bachelor degrees attained and people covered by employment based and private health insurance. The report also notes RTW states have a welfare recipient

rate per 1,000 citizens of 7.6, while forced unionism states have an average of 17.3.

In the seven years I've served in the Iowa House, there has been continual movement to tip the scale toward one side of the bargaining equation, the labor side. Every year, bills have been debated regarding any or all of the union bills, which include a ‘fair share’ fee for non-union workers receiving union benefits, prevailing wages, increasing the number of items requiring collective bargaining (i.e. scheduling, insurance carriers, leaves of absence, shift differentials, overtime compensation, supplemental pay, health or safety matters, evaluation procedures, preparation time, class sizes, work uniforms, staffing levels, retirement systems, adjudicators and more), arbitration, and executive orders requiring Project Labor Agreements on public projects. It has required constant vigilance on the part of the Legislature to keep the balance between employers and workers fair.

Under the leadership of the House Labor Committee Chair, Rep. Lance Horbach, who has long been a champion of fair and balanced labor relations, moved several bills out of committee that brought the needle back toward the middle. He assigned freshman lawmaker Rep. Ron Jorgensen HF525, the collective bargaining bill. Rep. Jorgensen heroically floor managed the bill through three days of debate to a resolution of 57 – 39.

HF525 basically did three things:

1. Created a “free agent” worker. Many opponents of the RTW law say the worker who does not want to join the union, still benefits from the union negotiations and should have to pay a “fair share” of a union due. The non-union workers do not want to affiliate with a union and feel they could rise further in the company on their own merits. The “free agent” took the “fair share” argument away and allowed a worker to negotiate their own wages and benefits.
2. Removed from the scope of negotiations, staff reduction decisions and

procedures and required a public employee to pay at least \$100 a month on their health insurance. Over 80% of state employees receive a rich family plan for zero dollars. If they choose a plan that they already pay \$100, they would not be impacted. This provision would not take effect until the next contract negotiation.

3. If negotiations go to an arbitrator, the arbitrator is not to consider prior collective bargaining contracts. The arbitrator is to consider the ability to pay without raising taxes and private sector wages and benefits for similar positions.

When employers are deliberating on job creation and investment, along with the uncertainty of labor relations and the economy, they also have to consider the regulations. Due to federal and state laws, a Democrat controlled Legislature and Executive Branch, and little or no oversight over the departments, Iowa's regulatory climate has shifted to benefit government and perpetuate the bureaucracy.

Since the Vilsack Executive order, the shift of the balance to the unions in negotiations and an unfriendly regulatory climate, we have lost population in two-thirds of our counties and 222 factories were shut down in 2009 alone. That is unacceptable.

In 2011, the Legislature and Executive Branch are hard at work developing a job creation toolbox with budget reform, regulatory and rules reform, tax relief, collective bargaining reform, and energy policies to meet future demands. With the “Right to Work” law, our toolbox will be complete, making Iowa “Re-Opened for Business” and our highly skilled labor force “Ready to Work”. Come on to Iowa...we're ready!



Dawn Pettengill is an Iowa Representative and member of ALEC's Commerce, Insurance, and Economic Development Task Force.

Keeping Missouri Competitive with “Right to Work”



BY Senator Ron Richard, MO

While there are many stories on how we got the name, Missouri truly is the “Show-Me” state. Missourians are a people who want to see the products of a hard day’s work. For this reason, we have some of the most dedicated workers in the country, and I am proud of the many Missouri-made products available throughout the nation. Right now, we are working to make sure our tradition of being a center of manufacturing stays strong by supporting legislation that keeps our state competitive on a national and even global level.

From the first day of the legislative session, my colleagues and I in the Missouri Senate sent a clear message that our main goal during the session is putting Missourians back to work. With 9.4 percent or more than 200,000 of workers in our state unemployed, we are willing to explore a variety of ways to stimulate job growth and attract businesses to the state.¹ One of these proposals is making Missouri a Right to Work state. This legislation would increase our state’s economic attractiveness and give employees the choice of whether or not to join a union.

Right to Work is an issue that has attracted a lot of attention from both advocates and those in opposition. Simply put, the legislation makes sure that Missouri employees only join a union and pay dues

if they want to, rather than as a condition of getting or keeping a job. During a Senate hearing on the bill, the committee room was packed with those wanting to testify on the issue. One of the most interesting pieces of testimony was from a site selection consultant who said that 75 percent of the manufacturers he works with prefer to be in a Right to Work state, with half of his clients refusing to consider forced-union states as a future location. These are employers with thousands of potential jobs for hard-working Missourians that are writing off Missouri immediately due to our labor laws.

For me, the issue ultimately boils down to the potential for job growth. With unemployment as it is, we must be willing to consider every piece of legislation that would create a better economic environment in our state. Six of Missouri’s eight neighboring states are Right to Work, putting our state behind when it comes to securing new employers and encouraging the businesses already in our state to grow.

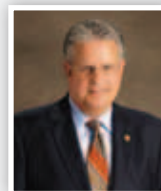
Between 2003 and 2008, according to the U.S. Department of Labor, job creation in Right to Work states grew 2.5 times faster than in other states. Data also shows that unemployment is lower in the 22 states that have adopted Right to Work laws. In the last decade, those states have added 1.5 million private sector jobs, while the remaining states have lost 1.8 million jobs. According to the U.S. Bureau of Economic Analysis, from 2003 to 2008 personal income levels increased by 15.8 percent in Right to Work states, compared to 9.1 percent growth in forced-union states.² In all of these instances, Missouri is being left behind because of our labor laws.

Workers are voting with their feet. Recent census results cost Missouri a congressional seat due to the fact that our population growth did not match up to other

states. That same data shows that businesses with jobs and the workers who take them are moving to states with worker protection laws. While forced-union states lost a total of nine congressional seats due to shifting populations, Right to Work states gained 11 congressional seats.

Some argue that Right to Work would result in lower wages for workers, but that doesn’t hold up when looking at the numbers. A study published in 2005 by Professor Barry W. Poulson, Ph.D. at the University of Colorado determined real disposable income in metropolitan areas in Right to Work states is higher, with nearly \$4300 more in after-tax purchasing power than its counterpart in another state.³

Many have tried to turn the issue of Right to Work into a fight between business and labor, but that should not be the case. Making Missouri a Right to Work state would make us more competitive for businesses looking to relocate and promise liberty to employees. Economic development is not a partisan issue because finding and holding down a job has nothing to do with politics. As we explore the many ideas out there to better our state economically, it is my goal to look at each idea with a fresh outlook, not through the perspective of party lines. I support Missouri becoming a Right to Work state because it is what is best for our workers. It’s time we show them our commitment to protecting and keeping their jobs. 🇺🇸



Ron Richard is a Missouri Senator and member of ALEC’s Commerce, Insurance, and Economic Development Task Force.

¹<http://www.bls.gov/web/laus/laumstrk.htm>

²<http://www.senate.mo.gov/10info/members/d27/taxcredits/Right%20to%20Work%20Statistics.pdf>

³<http://www.nilrr.org/files/Poulson%20SOL%20Study.pdf>

Plain Packaging: A Government Seizure of a Company's Most Valuable Asset

BY Karla Jones, ALEC

In a move that threatens to dismantle over a century of international intellectual property rights (IPR) protections, Australia has officially begun the process of implementing a law passed last year that requires the plain packaging of tobacco products sold in that country. Plain packaging for cigarettes as defined in Australia's "Tobacco Plain Packaging Bill 2011" would consist of dark olive brown matte-finished flip-top boxes devoid of logos or any other design features either on the cigarettes themselves or the packages. The brand name would be printed in a uniform font style and size. Additionally, graphic health warnings would cover 90 percent of the back surface of the box and 75 percent of the front. Additional warnings would cover one side panel leaving the second side panel for manufacturer's details and bar codes. The target date for full enactment of the Bill is January 2012 followed by full implementation in July 2012. Comments on the implementing legislation will be accepted until June 6, 2011.

Although this ill-considered legislation targets tobacco packaging, the alarm over the policy relates to the effects it will have on international intellectual property rights and protections. For if enacted and implemented, this law threatens free market principles and amounts to a government seizure of what is often a company's most valuable asset – its trademark. The importance of IPR protection to economic health cannot be overstated, and trademarks are fundamental to market competition – enabling a company to differentiate itself and its brand from others. Intellectual property (IP), including trademarks, are essential to a company's ability to compete and thrive in the global economy, and this legislation will seriously undermine the value of trademarks and trade dress used by companies that sell cigarettes in Australia. A company's logo empowers consumers to differentiate between its products and

materially inferior ones and protect the reputation of its products.


IP is the engine driving the innovation economy. America's intellectual property is valued at between \$5 and \$5.5 trillion and IP-intensive industries account for roughly 60 percent of total U.S. exports and employ more than 18 million Americans. IP protections are vital to the functional, global economy and initiatives that undermine them should be countered. Protecting IPR is so important that it has been codified in the most significant multilateral and bilateral international economic agreements for over 100 years.

The "Tobacco Plain Packaging Bill 2011" is inconsistent with Australia's obligations in several international agreements to which Australia is a signatory. The Bill violates IP provisions in the Paris Convention for the Protection of Industrial Property (Paris Convention), the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement), the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the Australia-U.S. Free Trade Agreement (AUSFTA). Even Nicola Roxon, Australia's Health Minister acknowledges that the Bill might lead to property rights violations and as such the Bill contains provisions to compensate companies that successfully challenge the law on the grounds that IPR were violated.

While the Australian government is slowly conceding this legislation's inconsistency with international IP law, it overlooks the Bill's unintended consequences. If implemented, Australia's plain packaging policy will send the wrong message to the developing world where IP cooperation is already difficult to obtain. If Australia does not live up to its IP commitments, it frustrates efforts to convince less wealthy nations of the importance of protecting IPR. Plain packaging also sets a dangerous precedent for producers of legal products that can potentially pose a risk to public health. Although tobacco is the first to be targeted

with plain packaging, if this legislation succeeds and proliferates, enterprises marketing alcoholic beverages and products containing sugar and excess salt will be vulnerable to future versions of plain packaging policy. Many retailers oppose the measure. The Australian Retailers Association has cited the costs of altering store fittings and increased transaction times as a source of concern and small retailers fear that they will be unable to sustain the additional costs associated with compliance.

However the most troubling aspect of this Bill is that there is no compelling evidence that it will succeed in its stated objectives to reduce the initiation of tobacco use and consumption and to remove the package's ability to mislead and deceive consumers. In fact, evidence exists that plain packaging could lead to an increase in tobacco use. Plain packaged products are much easier to reproduce and thus more vulnerable to counterfeiting. Counterfeit products tend to be significantly cheaper and while there is no established correlation between plain packaging and reduction in cigarette use, there is a correlation between low cigarette prices and increased consumption. Current tobacco packaging is neither misleading nor deceptive – health warnings are on every pack – but the same cannot be said of contraband, plain packaged products, which are completely unregulated.

The motivation behind plain packaging legislation is as clear as the possible ramifications of its implementation. Plain packaging policies are unlikely to achieve their stated objectives but will undermine the international system of IPR protections setting in motion a precedent that could ultimately devitalize the free market system while exacerbating the very challenges it purports to address. All eyes are on you, Australia, and we fervently hope that you reconsider this misguided policy before it spreads. 

Karla Jones is the Director of the International Relations Task Force.

National Popular Vote Versus the Electoral College: Debating the Arguments

BY Trent England, Evergreen Freedom Foundation

Many people are unaware of the anti-Electoral College “National Popular Vote” (NPV) campaign and its influence across the country. The campaign lost support in last November’s elections and lost several electoral votes this year through reapportionment, but is still popping up on state committee schedules. ALEC membership has passed two model resolutions in opposition to NPV.

NPV’s plan is for states to enter into an interstate compact, each agreeing to cast all their electoral votes for the presidential candidate who wins at least a plurality nationwide.

Following the November elections, NPV has worked hard to repackage their plan as an ideologically neutral idea that upholds “states rights.” Most recently their strategy has been to reframe the NPV movement as an opportunity for conservatives to retake the Executive Branch.

The arguments put forward by NPV deserve to be answered. Here are four of NPV’s claims followed by the truth about where their ideas really come from and what would happen if they ever succeed in changing our presidential election process.

Argument One: NPV is ideologically neutral. There were two revolutions in the second half of the 18th Century, based on different ideas and with vastly different outcomes. One set of ideas propelled a rag-tag revolution to become the American Founding, the establishment of the most successful political order in human history. The other ideas, those of the French Revolution, demanded the tearing down of institutions in order to give all power directly to “the people.” This is a legitimate debate: whether government is about liberty and justice or only the popular will. But it is a debate (just ask Edmund Burke and Thomas Paine, or Abraham Lincoln and Stephen A. Douglas).

NPV flows naturally from the ideas that animated the French Revolution and that were revived in American politics by progressives and modern liberals during the 20th Century. The political left has long criticized federalism, including both the Electoral College and the United States Senate, as institutions that must eventually be cast aside in favor of more direct democracy.

NPV is a progressive-style “reform” meant to move the United States farther from our founding principles and more in the direction of European centralized government.


Argument Two: NPV may be good for federalism. Supporters of NPV claim they are upholding federalism because their proposal relies on state legislation. Yet states have no say on the details--NPV creator and former scratch-ticket inventor John Koza has already dictated nearly every term of the agreement. The only remaining

question is when NPV would take effect, but because of the proposal’s electoral-vote trigger, no legislator can know when or if Koza’s plan might become a reality. In the same way, even though a state could later repeal its own NPV law, whether this would deactivate NPV is out of any individual state’s control.

The very purpose of the NPV system is to wipe away state lines for the purpose of presidential campaigns. This is a danger to federalism. Again, NPV’s soundbites obscure the fundamental debate: federalism versus centralized government.

Argument Three: NPV could help conservatives win elections. NPV-backer Saul Anuzis has told conservatives that they should support NPV because it will help them retake the Executive Branch. This argument about something as important as the political structure and stability of our nation should make all legislators wary. A simple check of census data reveals that a majority of the population of the United States lives in the 40 largest metropolitan areas. Because of this, and because political organizing is relatively cheaper and easier in higher population density areas, NPV would be a boon to urban political machines that are seldom friendly to conservatives or even centrists.

More important, however, than short-term winners and losers is the reality that moving from a tested election process with known incentives to a wholly new and uncertain system is a step into the dark. What is certain is that NPV would bring many unintended consequences and would decrease both the stability and moderation of American politics.

Argument Four: NPV will make “every voter equal,” and every state, too. Political campaigns spend millions on pollsters and consultants who slice-and-dice up the electorate to figure out which voters to talk to, what to say to whom, and who to ignore. The suggestion that eliminating the Electoral College and turning the entire nation into one gigantic single-member district for president will result in every voter being treated equally by presidential campaigns is misleading and unfounded. The truth: wiping state lines out of presidential campaign strategy shifts more power to political consultants, not to voters. 

Trent England is vice president of policy and director of the Save Our States Project at the Evergreen Freedom Foundation, a member of ALEC’s Public Safety and Elections Task Force.



Balancing the State Checkbook: “Do No Harm” to Small Business

BY Holly Wade, NFIB Research Foundation

Small businesses are slowly recovering from one of the worst economic recessions in U.S. history. Only recently have small business owners shown signs of improvement, all while facing strong headwinds of political and economic uncertainty. Unlike previous recoveries which experienced sharp growth from the small business sector, the current recovery of small business is more akin to a half-inflated basketball - there's a bounce but it's not very enthusiastic. Sluggish sales, higher taxes, mounting regulatory burdens, and uncertainty continue to weigh down the recovery. The recovery for small businesses will likely proceed at a slow pace, much slower than many of their larger counterparts.

There are two key takeaways for state legislators that may help to speed up this recovery. First, research indicates that the number one problem for small business owner operations is poor sales. Second, lawmakers and state regulators would do a service to small businesses by focusing on policy that avoids higher taxes and additional regulatory burdens. Doing so would make a state a better place to start a business, stay in business and grow a business.

The History

The monthly Small Business Economic Trends (SBET) survey, conducted by NFIB, tracks changes in business conditions such as employment, earnings, inventory, finance, and capital expenditures. The declining health of the small business economy began in 2007 and hit bottom around March 2008. The decline was rapid and steep. The surveys, started in 1973, have covered four previous recessions and their recoveries: 1973-75, 1980-82, 1991-92, and 2001. While the 1980-82 recession still holds the historic low of the Index of Small Business Optimism, many individual indices broke historic record lows this time around and many still remain near record low levels including earnings, job creation, and capital expenditures.

Access to Credit – The Real Problem?

So what's holding small businesses from a more robust recovery? Small business owners continue to cite poor sales as the most important problem in operating their business. Over the last three years, poor sales have reigned as the number one problem for small business owners. The distant 2nd and 3rd place problems reported by owners are taxes and regulations.

These problems are clear and well documented, but the federal and many state governments are still focusing on access to credit rather than the issue of poor sales. A flurry of laws and regulations has been passed to help improve access to credit. But in reality, access to credit remains a relatively minor problem for

small business owners. Only 4 percent of owners report financing as their most important problem and 92 percent report that all credit needs are met. Approximately 30 percent of small business employers reported poor sales as their most important finance problem and 26 percent reported the unpredictability of business conditions.

The Policy

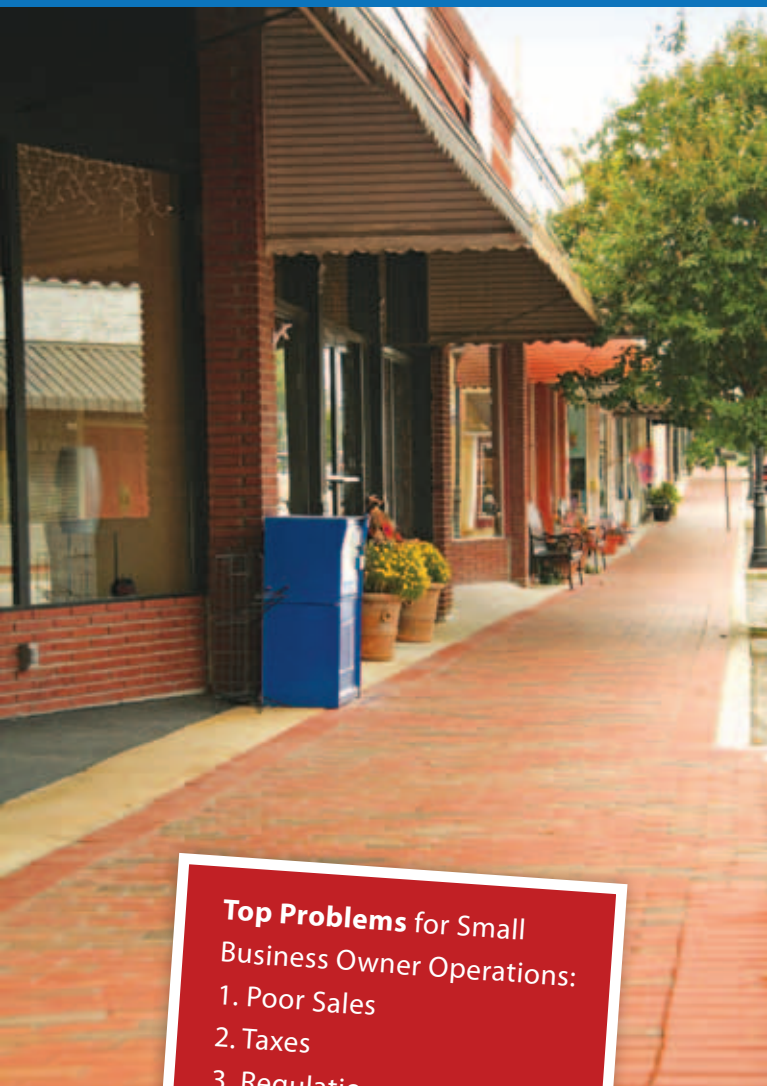
A misunderstanding of the top issues facing small business often promulgates policies that miss the mark. Thirty billion dollar loan programs were a year or more late in being established and did not address the basic problem – poor sales. Interest free loans and 100 percent depreciation allowances may make equipment cheaper, but it is a bad investment if the firms have no use for it because they cannot sell what is produced. Reports of actual capital outlays, and plans to make such outlays, are at record low levels in spite of the Federal Reserve's low interest rate policies. Not only are legislative priorities misaligned with the top problems facing small business owners, the attention to access to credit also misses the mark as the policies focus exclusively on providing more liquidity to banks.

Moving Forward

While small businesses are working to find their footing in the recovery, so too are state legislatures as many face daunting budget deficits. Over the past three years many small businesses closed their doors, some adjusted their business operations and survived, and other reinvented themselves to find new opportunities. The days of large stimulus handouts are over and states are furiously trying to balance their budgets in order to stay afloat.

As states continue to debate and pass legislation to help ease their budget deficits, small businesses owners ask that they follow the principle of “do no harm” to the small business economy. Small businesses are starting to emerge from the recession, gaining traction and starting to hire again. But while the economy is improving, small businesses already face numerous obstacles beyond the weak economy that will continue to test their resilience. These obstacles include the known and unknown costs of the new healthcare reform, increasing energy costs, and new regulatory burdens. These new or developing obstacles are more than enough to test the survival of many small businesses, therefore states should do all they can to not add to these burdens. Unfortunately, those states with the biggest deficit problems are also the same states where small business owners struggle the most.

Many of the actions introduced in legislatures only increase recordkeeping and reporting burdens on top of an already overly complex regulatory and tax system for small businesses. A 2010



**Top Problems for Small
Business Owner Operations:**

1. Poor Sales
2. Taxes
3. Regulations


study by the Small Business Administration's Office of Advocacy found that the cost of tax compliance is 206 percent higher in small firms than the cost in large firms.¹ Lawmakers need to understand that increasing payroll taxes will only disincentivize small employers to hire. Small businesses are also disproportionately affected by measures to close the tax gap. The Taxpayer Advocate suggests compliance can be improved through better education and outreach efforts without overly burdening small businesses with intrusive audits and expansive recordkeeping and reporting requirements.²

It is important to understand that new or increased taxes decrease that which is taxed, including job creation and a new

firm formation when those taxes affect small businesses. The persistence of this imbalance is detrimental for the small business economy as profits are important for the support of capital spending, hiring, and employee compensation. Increasing the tax burden on this income significantly affects small businesses' ability to recover and compete with their larger competitors that are not affected.

The importance of a healthy small business economy cannot be overstated as it accounts for about half of the U.S. private-sector Gross Domestic Product and nearly two-thirds of net new jobs. They employ about 40 percent of high-tech workers and produce 13 percent more patents per employee than large companies.³ Over 90 percent of small business employers have contributed to their communities in the last year by volunteering, making in-kind contributions and/or directly donating cash. In fact, 44 percent of contributors or 41 percent of the entire small-employer population say that they did all three.⁴ All of these factors contribute to state economies and create much need jobs for cash-strapped states.

The standard of "do no harm" however is sorely missed in many states including Illinois. A recent 66 percent increase of their personal income tax directly affects the vast majority of small business owners in the state. About 75 percent of small businesses are structured as pass-through entities where their business income is taxed at the personal income tax rate. Nationally, earnings for small business owners have deteriorated significantly over the last three years. Record levels of small business owners report lower earnings than those reporting higher earnings each month.⁵

As state governments look to ways to balance their budget, it is important to remain cognizant of how regulations and tax burdens will affect small business in the state. The most important asset a small business has is the time of the entrepreneur. The more of the entrepreneur's time that is used up in complying with relatively useless regulations, the less time is devoted to growing the business and creating jobs. It is important for states to "do no harm" to small business when passing legislation that aims to balance state budget checkbooks. 



Holly Wade is a Policy Analyst at the National Federation of Independent Business (NFIB) Research Foundation, a member of ALEC

¹The Impact of Regulatory Costs on Small Firms, Crain and Crain, U.S. Small Business Administration, Office of Advocacy, 2010. <http://www.sba.gov/advo/research/rs371tot.pdf>.

²National Taxpayer Advocate, 2009 Report to Congress.

³Small Business Administration's Office of Advocacy.

⁴NFIB "Contribution to Community" poll.

⁵NFIB "Small Business Economic Trends" survey.

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Education Task Force Releases its 10 Questions State Legislators Should Ask About Higher Education

BY Monica Mastracco, ALEC

America's future economic security is directly affected by our current education policies. In order to maintain our competitive advantage over other countries throughout the globe, we must prepare our nation's colleges and universities—and thus our students—to meet this goal. With this challenge before us, ALEC has released its second edition of *10 Questions State Legislators Should Ask About Higher Education*, written by Dr. Vicki Murray, Education Studies Associate Director and Senior Policy Fellow at the Pacific Research Institute, to equip legislators with the information they need to ensure our economic success.

Higher education continues to face immeasurable problems—from finances and organizational structure to staff and content. These problems affect everyone: frustrating students who are trying to earn a degree without going into lifelong debt; taxpayers who want an educated populace, but cannot afford to throw money at a system without accountability; and legislators who want to make available the best education system, but often do not know where to begin improving things. In order to ride the path of financial success as a nation, we must find the answers to the most pressing problems facing higher education. But first, we must ask the right questions.

ALEC's *10 Questions State Legislators Should Ask About Higher Education* provides those questions legislators need to ask to make the most well-informed policy decisions for their state. Focusing on 10 central questions, this publication reveals the facts about the current state of postsecondary institutions and the certain detrimental consequences they will suffer if the status quo is accepted.

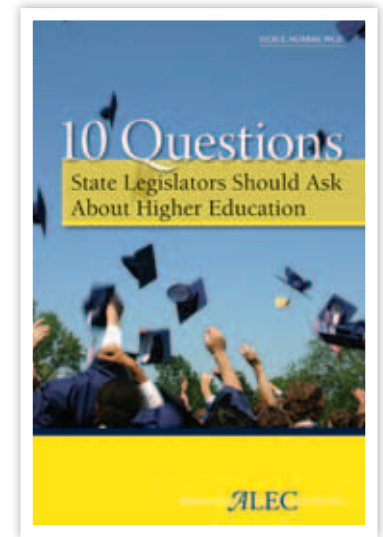
A one-stop shop for any legislator

looking to conquer the higher education dilemma, this publication provides in-depth information and resources on all the questions it presents. In addition to the central 10 questions, there are other questions for each discussion point that are vital in getting to the root of the answer. These topics range from improving transparency and accountability, to college-preparatory systems, to affordability. Questions such as: What funding structures work best? How accessible is higher education for American students? Or, How is my state identifying and certifying the workforce skills of students? Various resources and their contact information can be found for further inquiry, including public policy think-tanks, auditing agencies, and legislative budget advising agencies.

The 10 Questions guide emphasizes that job creation only stimulates the economy—an important action, no doubt. But it is successful postsecondary education that drives and inspires the creators of our economy.

In today's fast-paced and ever-changing society, nine out of ten jobs require some amount of postsecondary education. And with an entire generation of baby-boomers nearing retirement, it isn't hard to wonder if our youth are prepared to fill these vacant shoes. But to have a strong workforce, America's students must first be prepared for higher education.

Reforming the higher education system can seem to be an overwhelming task. However, this publication makes it more attainable by providing the best information and directory of resources. As the costs for higher education increases and state budgets steadily decrease, legislators cannot afford to sweep this issue under the rug any longer. Unemployment rates are soaring among those without any postsecondary



education—at a rate more than twice then those with degrees—which ultimately hurts taxpayers, states, the nation, and our future.

ALEC believes all students should have the opportunity to succeed in the classroom, and works to ensure that our nation's institutions of higher education are effectively meeting this standard.

As legislators, you are pulled in a number of different directions. Therefore, it is vital that you not only understand the leading issues, but also know the best questions to ask. ALEC provides the answers to the most pressing issues, and also conveniently supplies an entire index of useful resources to further aid you in your legislative process.

Our states must ensure public higher education institutions are taking the proper steps toward continued excellence. With the help of ALEC's 10 Questions guide, you will not only receive the help you need as a legislator, but you will also discover the answers America needs to remain viable in an increasingly competitive international environment. 📖

10 Questions State Legislators Should Ask About Higher Education is available on ALEC's website at www.alec.org/10Questions. For more information on this publication, contact Dave Myslinski, Director of ALEC's Education Task Force at (202) 742-8531 or dmyslinsk@alec.org.

Monica Mastracco is the Legislative Assistant for the Education Task Force.

State Highway System Performance: Some States Have Work to Do

BY Adrian Moore, Reason Foundation

It is not a silver lining by any stretch, but the recession has to be partly responsible for improvements in the performance of state highway systems: people are driving less which has helped slow pavement deterioration and reduced traffic congestion and fatalities. While we often hear that our infrastructure is crumbling, state highway conditions are the best they've been in 19 years.

Reason Foundation's 19th Annual Highway Report documents this trend, but also shows that some states are doing a far better job than others.¹

The Annual Highway Report looks at eleven performance indicators covering highway expenditures, pavement and bridge condition, urban interstate congestion, fatality rates and narrow rural lanes. The data uses spending and performance data submitted to the federal government by the state highway agencies. The specific measures are listed here, and we combine them to create an overall performance ranking:

1. Mileage under State Control
2. Total Revenues, All Sources
3. Total Expenditures
 - a. Expenditures, Capital/Bridges
 - b. Expenditures, Maintenance
 - c. Expenditures, Administration
4. Highway Construction Price Index
5. Rural Interstate, Percent Poor Condition
6. Urban Interstate, Percent Poor Condition
7. Rural Arterial, Percent Poor Condition
8. Urban Interstate, Percent Congested
9. Bridges, Percent Deficient
10. Fatality Rate per 100 Mil Miles Driven
11. Rural Roads, Percent Narrow Lanes

Figure 1 shows the trend in recent years on the key indicators of system condition up to 2008, the most recent year for which complete data is available. National performance in all of those key areas improved in 2008. And, of course, individual parts of the system (roads, bridges, pavement) may have deteriorated during this time.

This overall improvement in performance came at appreciable cost. Disbursements for state-administered highways increased about 8.4 percent, and administrative costs surged 36 percent in 2008. But capital and bridge expenditures rose just 0.5 percent, and maintenance expenditures actually declined about 3.8 percent. Some of this surge is because beginning in late 2008 federal stimulus funding contributed an additional 22 percent to resources.

The recession played a role as well. During 2008, miles traveled fell nearly 3.5 percent, which reduced congestion and fatality rates and slowed deterioration of the roads. But this also means that fuel tax revenue is down which may affect maintenance budgets in subsequent years.

States That Did Well—And Those That Did Not

Standing out from the overall performance trends are states that did particularly well or poorly overall, or on some crucial measures. We combine all of the performance metrics into a cost-effectiveness measure that looks at how much states spend relative to their system performance, thus equalizing things across large and small, rural and urban, states.

Looking at overall performance the top ratings in 2008, as in previous years, tend to be dominated by relatively small rural states. North Dakota is the most cost-effective, followed by Montana, Kansas, New Mexico and Nebraska. At the bottom of the

rankings were Rhode Island, Alaska, California, Hawaii and New York. Table 1 and Figure 3 show the rankings of all states.

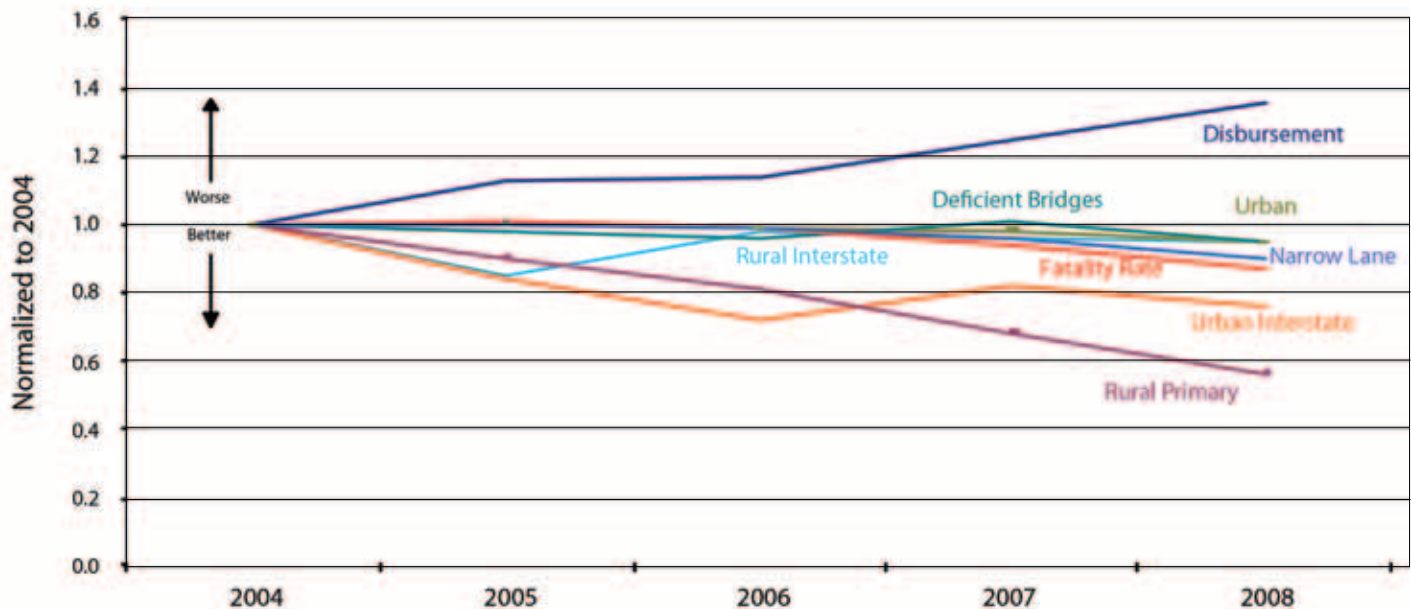
As in prior years, the best-performing states tend to be smaller, rural states with limited congestion (Figure 3). But several larger, more urban states (Missouri – 8th, Georgia – 9th) also rate in the top 10, and Texas ranks 13th. But look at Alaska, which is rated 49th in our survey but has the highest disbursements per capita, per VMT, per vehicle, and the highest donor-donee ratio. Yet in spite of these advantages Alaska's system is clearly in poor shape by our basic indicators. Rhode Island, New Jersey, Vermont, New Hampshire and Pennsylvania tell similar stories. Although it is tempting to ascribe these ratings to circumstances, a more careful review suggests that numerous factors—terrain, climate and geography, urban congestion, system age, budget priorities, unit cost differences, state budget circumstances and management philosophies, just to name a few—are all affecting overall performance.

Several states improved their ratings sharply from 2008:

- Missouri improved 16 spots, from 24th to 8th, converting the higher expenditures in earlier years into improved system condition. Missouri lowered expenses relative to other states, but also improved system conditions on all seven key measures.
- Oregon moved up 13 spots, from 23rd to 10th, by lowering costs, particularly maintenance expenses. But the condition of the urban interstate worsened substantially, which may bode poorly for future ratings.
- Mississippi improved 12 spots, from 28th to 16th, by reducing costs in three categories and improving condition in six measures.
- New Hampshire improved 12 spots,

¹David T. Hartgen, Adrian Moore, Ravi K. Karanam and M. Gregory Fields, 19th Annual Highway Report The Performance of State Highway Systems (1984-2008), Reason Foundation, September, 2010, <http://reason.org/studies/show/19th-annual-highway-report>.

Figure 1: Trends in U.S. Highway Performance



from 39th to 27th, by repairing rural and urban interstate and rural primary pavements, reducing congestion and improving bridges while holding cost increases to modest levels.

Unfortunately, several other states saw appreciable drops in performance in 2008:

- Ohio fell 11 spots, 13th to 24th, as it increased disbursements substantially but saw minimal gains in performance.
- Minnesota fell 10 spots, from 15th to 25th, as overall budgets increased but rural interstate and bridge conditions worsened.
- Wisconsin dropped 7 spots, from 21st to 28th, as disbursements increased but system improvements were modest.

This all adds up to indicate that there is a widening gap between states that are doing a good job at improving performance, and those that are not.

Drivers in California, Minnesota, Maryland, Michigan and Connecticut are stuck in the worst traffic. Over 65 percent of all urban Interstates are congested in each of those five states. But nationally, the percentage of urban Interstates that are congested fell below 50 percent for the first time since 2000, when congestion standards were

revised.

Motorists in California and Hawaii have to look out for the most potholes on urban Interstates. In those two states, 25 percent of urban interstate pavement is in poor condition. Alaska and Rhode Island have the bumpiest rural pavement, each with about 10 percent in poor condition. However, nationally, pavement conditions on urban Interstates are the best they've been since 1993, and rural primary roads are the smoothest they've been since 1993 also.

Rhode Island has the most troubled bridges in the country, with over 53 percent of bridges deficient. For comparison, just 10 percent of top-ranked Nevada's bridges are rated deficient. Across the country, over 141,000 (23.7 percent) of America's bridges were structurally deficient or functionally obsolete in 2008, the lowest percentage since 1984.

With the recession reducing driving, and engineering improving road design and car safety features, traffic fatalities have steadily fallen to the lowest levels since the 1960s. Massachusetts has the safest roads with just 0.67 fatalities per 100 million miles driven. Montana and Louisiana have the highest fatality rates, at 2.12 and 2.02 fatalities per million miles driven.

Over the last two years New Jersey has

moved up from last to 45th in the overall rankings, but still spends dramatically more than every other state. New Jersey spends \$1.1 million per mile on state roads. The second biggest spender, Florida, spends \$671,000 per mile and California spends \$545,000 per mile. South Carolina had the lowest expenses, spending just \$34,000 per mile.

California also squanders a massive amount of transportation money that never makes it onto roads, spending \$93,464 in administrative costs for every mile of state road. New York (\$89,194 per mile), Massachusetts (\$71,982), and New Jersey (\$62,748) also compare poorly to states like Texas (\$6,529) and Virginia (\$6,370) that spend dramatically less on administrative costs.

Comparing Your State and Changing Policies

State legislators can use this information in a number of ways. First, they can see how their state has performed over time and if specific metrics are improving or declining. Second, they can see how their state compares to others. Some states are clearly doing a much better job than others on each performance measure, and a

number of them are clearly far more cost effective at achieving good performance. Every state that is not in the top 10 has a lot to learn from those that are.

To illustrate this, we took the years 2003-2007, when the economy was doing well, and broke down state's performance on road and bridge conditions and fatalities to see who was getting more improvement with fewer resources, and who was spending a lot to get very little performance

improvement. In other words, which state appear to have found efficient ways to improve their highway systems.

During those years 20 states improved conditions while spending less than average. Interestingly, eight of those states were in the bottom half of the rankings. Three states (Montana, Nebraska and North Carolina) improved in all seven performance categories while spending less than average. North Carolina had the greatest overall

improvement, but it still only moved up to 34th on system performance. Montana and Nebraska also saw major gains and had performance rankings in the top 20. Kansas, South Dakota and Missouri improved on six of seven indicators while spending less than the national average.

Meanwhile, 10 states improved in overall highway performance, but spent more than the U.S. average to achieve these gains. On one hand, Ohio spent barely above the national average and saw over twice the average improvement (1.20 percent, due largely to improvements in congestion). At the same time, though, New Jersey spent 14 times the national average per mile, and only improved performance by 0.5 percent, mostly on the strength of improvements in fatalities, while most road conditions actually got worse! Massachusetts was almost as bad, spending seven times the national average and only improving performance 0.49 percent. Michigan enjoyed the biggest improvement (5.37 percent), but spent about 60 percent more than the U.S. average. Rhode Island saw the smallest gain (0.01 points), but spent about three times the national average.

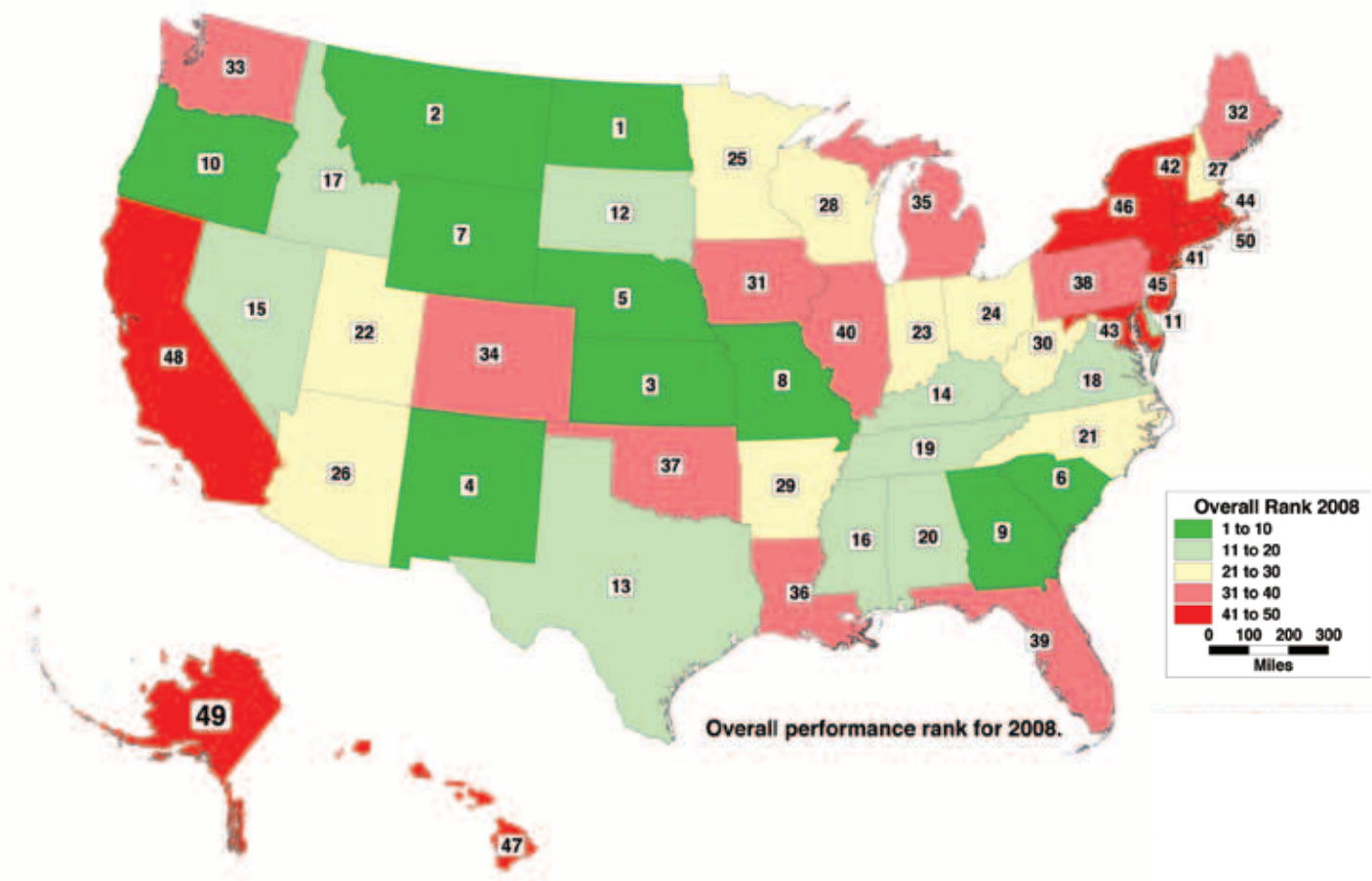
Of course, some states spent less than average and saw their performance decline. Alabama saw the biggest decline at 2.49 percent, closely followed by Alaska and Kentucky. North Dakota spent about 40 percent of the national average and declined just 0.23 percent, and still had the fourth best performing system for 2007.

The most worrisome category is the ten states that spent more than average but still saw performance decline. California spent over three times the national average and yet saw its system performance decline by 3.52 percent. Moreover, California ranks in the bottom five for 2007 system performance, as do New York and Hawaii, which also spent about three times the national average and saw no improvements in their systems. Georgia actually experienced the largest decline in system performance (3.79 percent, caused primarily by a significant worsening of urban interstate congestion), but spent only a bit more than average, and its system ranked 6th in performance in 2007. Other states in this group also have generally good-condition systems in 2007 (Nevada (3), Arizona (5),

Figure 2: Overall Highway Performance Ratings, 2007-08

	2007	2008	Change		2007	2008	Change
ND	1	1	0	AZ	25	26	-1
MT	5	2	3	NH	39	27	12
KS	3	3	0	WI	21	28	-7
NM	2	4	-2	AR	32	29	3
NE	7	5	2	WV	27	30	-3
SC	4	6	-2	IA	30	31	-1
WY	6	7	-1	ME	29	32	-3
MO	24	8	16	WA	35	33	2
GA	9	9	0	CO	33	34	-1
OR	23	10	13	MI	31	35	-4
DE	11	11	0	LA	43	36	7
SD	8	12	-4	OK	34	37	-3
TX	17	13	4	PA	38	38	0
KY	10	14	-4	FL	40	39	1
NV	18	15	3	IL	36	40	-4
MS	28	16	12	CT	37	41	-4
ID	14	17	-3	VT	42	42	0
VA	12	18	-6	MD	41	43	-2
TN	19	19	0	MA	44	44	0
AL	25	20	5	NJ	47	45	2
NC	20	21	-1	NY	45	46	-1
UT	16	22	-6	HI	46	47	-1
IN	22	23	-1	CA	48	48	0
OH	13	24	-11	AK	50	49	1
MN	15	25	-10	RI	49	50	-1

Figure 3: Overall Performance Ratings, 2008



and Indiana (7)) but saw declines in performance from 2002.


State legislators should use this information to drive performance improvements in their state highway systems. Specifically:

- States in the top 10, and those that improved performance while spending less than average—ask your state Department of Transportation (DOT) to analyze what actions and policies have made your system relatively high performing and efficient. Use that to craft long-term policies to ensure those practices and outcomes are sustained over time. And consider how to continue to improve—you can never be too efficient.
- States in the middle 30, and those that spent more than average to improve performance, or that spent below average and saw performance decline—figure out which performance categories you are doing relatively well in and

ensure those successes do not erode. More important, pick a few states with top rankings for each of the performance categories where you rank low, and require the state DOT to work with counterparts in those states to identify practices and policies behind their success that your state can adopt. Also, focus on cost controls.

- States in the bottom 10, and especially those that spent more than average but saw performance decline—your core problem is out of control costs. You can't improve performance if resources are being used poorly. An independent analysis of costs is a good place to start, especially if you compare with the most efficient states. Beyond that, you should identify some top states in each performance category and require that your state DOT to work with counterparts in those states to identify practices and policies behind their success

that your state can adopt. Set clear goals for performance improvements tied to funding renewal.

A state's highway system is one of the most important services it provides to taxpayers, and it is crucial to the function and growth of the state's economy and job creation. A poorly performing road system will simply make a state less competitive. State legislators should demand that their state be in the top 10 in highway performance, and be willing to work with the DOT to make that possible. These rankings and analysis can help them to identify if there is a resources problem, or if it is an efficiency and management problem. 

Dr. Adrian Moore is the Vice President of Policy at the Reason Foundation and advisor to ALEC's Commerce, Insurance, and Economic Development Task Force.

When American Companies Face Foreign Government-Subsidized Competitors

BY Sen. William (Bill) H. Payne (NM)

America is currently engaged in battle on multiple fronts. We are fighting to grow our economy and provide jobs for our people while striving to be good world citizens and attractive trading partners. Fortunately, these goals are synergistic where success in any one of them brings us that much closer to realizing the others. For the principles that underpin genuine free markets and limited government have the power to propel economic prosperity worldwide.

As early as June 2011, the Department of Defense will decide between two competing aircraft to conduct light attack and armed reconnaissance (LAAR) and light air support (LAS) missions – the Hawker Beechcraft AT-6 and the Embraer Super Tucano. From the perspective of the American Legislative Exchange Council (ALEC) the decision is clear. Both aircraft are mission appropriate and cost roughly the same. However the acquisition of Hawker Beechcraft's AT-6 has the added benefit of upholding ALEC's free market principles and creating significantly more American jobs – 1,400 spread across 18 states.

Cognizant that increasing international trade is the surest path to economic recovery, a key element of the Administration's strategy involves forging ties with current and emerging powers in an effort to nurture successful trade relationships. The President's priorities were on full display during his March 2011 Latin American trip which included obvious courting of government officials in Brazil. However, it cannot be overstated that economic competition between nations must take place on a level playing field, where companies have similar access to technology and innovation funding to support their efforts and where the marketplace determines the competitive outcome with minimal government interference and subsidization. Especially

with respect to procurement, the government has a duty to scrutinize bids to ensure that the competition between bidding entities is fair and that we are not inadvertently rewarding companies whose adherence to free market principles is tenuous. This is in keeping with ALEC's commitment to free markets and limited government. Unfair competition between private companies and government subsidized enterprises is dealt with specifically in our Public-Private Fair Competition Act.

In 2009, the United States Air Force (USAF) issued a request for a new type of aircraft that could successfully perform light attack and armed reconnaissance (LAAR) missions. After reviewing numerous proposals and conducting extensive research, the USAF determined that the two leading contenders are Hawker Beechcraft's AT-6 and Embraer's Super Tucano. Hawker Beechcraft is an American company headquartered in Wichita, Kansas, while Embraer is a Brazilian company.

Embraer is heavily subsidized by the Brazilian government and is being supported by their Financing Agency for Studies and Projects (FINEP), which is helping to fund the research and development of this fleet. In fact, the aircraft that Embraer used in a recent demonstration for the USAF is actually owned by the Brazilian Air Force and was fully supported by them during their test runs. In contrast, Hawker Beechcraft has invested its own resources into the development, assembly, and flight demonstrations for their AT-6 aircraft.

In addition, the Brazilian government continues to hold what is known as a "Golden Share" in Embraer, which allows them to maintain an aggressive and active role in the governance of the company. It grants them veto power over previously agreed-upon stipulations of their contracts, including interruption in the supply of maintenance and replacement parts for military aircraft sold abroad.

This scenario is reminiscent of the recent \$35 billion contract awarded to Boeing, which was locked in competition for years with European rival EADS to provide refueling tankers to the USAF. In Boeing's case, its contract proposal was accepted because it is a longstanding and trusted aircraft provider with a superior product and existing production capabilities here in America. The Boeing Company has earned the confidence of our modern military and has a vested interest in serving and protecting our country. Their contract win also supports American jobs—some 44,000 in more than 40 states with over 300 suppliers.

Hawker Beechcraft possesses a profile very similar to Boeing's. Hawker Beechcraft has a lengthy history of producing aircraft for both civilian and military use and has already successfully provided warplanes to the USAF and other branches of our military. It is a private, American enterprise that is participating in a joint venture with Lockheed Martin as it competes for this contract.

Hawker Beechcraft's T-6 trainer which served as the template for the new AT-6 being developed for LAAR missions has exceeded one million flight hours, with 500 units manufactured and delivered. The popular T-6 trainer aircraft is currently being flown by the USAF, United States Navy, Hellenic Air Force of Greece, NATO Flight Training in Canada, and the Israeli Air Force. This familiarity makes it a popular choice among those who would fly and maintain it, and it enjoys a broad support network with unimpeded access to parts whenever and wherever needed. Needless to say Hawker Beechcraft has a proven track record of success at home and with our allied forces.

Hawker Beechcraft will develop and produce the AT-6 in the United States, supporting over 1,400 jobs and employing suppliers in 18 states to work on this




program. In contrast, Embraer's EMB-314 Tucano will be developed and built primarily in Brazil, with a miserly 50 final assembly positions being filled in the U.S.

However, in this David vs. Goliath story it is clear Hawker Beechcraft is not competing with just another aircraft company but rather with a semi-privatized foreign entity – a situation that is inconsistent with ALEC's guiding principles and our Public-Private Fair Competition Act. I am hard pressed to understand why the U.S. Department of Defense is considering awarding a contract to a company that is heavily subsidized and supported by a foreign government. This is akin to entrusting America's security to a foreign government. If awarded the contract, the Golden Share that the Brazilian government holds in Embraer will enable it to disrupt service and replacement parts at will. Brazilian national security priorities, which are often not aligned with ours, could trigger such a disruption. Undue influence from

countries which are potential U.S. adversaries but strong Brazilian trading partners could also result in our not receiving the materiel for which we contracted raises national security questions as well.

Developing strong trading ties with other countries is an economic imperative. However we must ensure that the companies with which the U.S. government does business adhere to the same free market, limited government principles that characterize American enterprises. And while we can actively court new trading partners, we cannot allow the game to be fixed in their favor. Free markets are a highly positive force but competition between privately-held and government-subsidized entities is a distortion of the free market system and encourages the very government interventionism that ALEC opposes.

If we don't look out for our national interest, no one else will. The United States is in no position economically to provide jobs to foreign governments or to subsidize

their growth. Growing our own economy is enough of a challenge. This is why we must act to promote and enforce a fair interaction between private enterprise and government influenced foreign entities like Embraer. In other words, we want to make certain that when it comes to government procurement apples are competing against apples. 



**New Mexico State
Senator William**

(Bill) H. Payne is the Senate Minority Whip and represents Senate District 20. He is a

retired Rear Admiral (SEAL) in the United States Navy and his last flag assignment was as the Deputy Director for Strategy, Plans and Policy, U.S. Central Command. Senator Payne is also a member of ALEC's International Relations Task Force.



The Savings on the Sideline

Transportation public-private partnerships are an investment opportunity for states

BY Geoff Segal, Macquarie Capital
Advisors USA Inc and Patrick Rhode,
Cintra US.

The American Society of Civil Engineers (ASCE) recently rated the condition of our nation's infrastructure with a "D" grade and estimates our schools, road network, energy and water systems will require more than \$2.2 trillion in investment over the next five years – an astounding figure that cannot be met with public funds alone.

The U.S. Department of Transportation defines public-private partnerships (P3s) as "a contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional." Historically, P3s have ranged from being design-build, to being outlawed or restricted in 22 states,

to full-blown concession agreements. The need for public-private partnerships has never been stronger.

Governmental budget deficits, the continuing deterioration of our country's infrastructure, and the call for greater efficiencies in creating needed transportation have created an environment ripe for considering P3s. While virtually all state legislatures struggle with their budgets, pools of equity remain on the sidelines awaiting appropriate investment opportunities. P3s are the most efficient means to attract private investment and focus on projects that will provide the greatest economic return.

States such as Texas, who have been trailblazers in the development of P3s, have been able to leverage tax dollars by a factor of 8 to build needed roadways now. Many of the P3s being developed in Texas today are addressing critical transportation needs

that have been much discussed but unmet for decades.

While the ability to leverage private capital is a driving force behind the development of P3s in Texas and other forward thinking states, there are many other significant benefits.

P3s shift most of the financial risks associated with a public project to the private sector – including design, construction, financing, revenue, operations and long-term maintenance. A P3 approach to innovative infrastructure solutions protects taxpayers from unforeseen costs. Since private capital is "at risk", private partners will seek to manage risks often associated with large-scale projects, like the notorious "Big Dig" in Boston (recognized as the largest, most complex, and technologically challenging highway project in the history of the United States).

P3s can deliver highway projects faster and more efficiently than projects developed when public entities act alone. A 2004 report by the United States Federal Highway Administration (FHWA), as well as a 2007 study by the University of Melbourne, cited the success of P3s by noting that public-private partnership projects are completed on or ahead of schedule nearly 90 percent of the time. The remaining 10 percent were completed within three months of the scheduled delivery date. In the United States, the FHWA concluded that P3s produce time savings of between five months and three and one-half years. In addition, the availability of private capital alone can help make projects a reality that otherwise would remain on the shelves.

P3s are also an efficient form of procurement often driving down construction and operational costs. The Private partner brings global best practices in operations, maintenance and customer service delivery (including new technologies) based upon experience across portfolio of assets to keep costs down. There is also a financial incentive to provide consistent and high quality service to the public. P3s are also very competitive and this competition will drive firms to seek the most efficient financial and construction solution, which typically falls well below the original estimated cost.

We have to look no further than the recently completed Denver FasTracks Eagle P3 to demonstrate how powerful the many benefits of P3s are to infrastructure delivery.

In August 2010, Denver Regional Transportation District (RTD) completed the first mass transit transportation P3 project in the US. At a cost of \$2 billion Denver FasTracks Eagle P3 involves the design, construction and operation of three commuter rail lines in the Denver metropolitan area with anticipated construction completion in 2016.

The P3 proposal incorporated 17 “Alternative Technical Concepts” offering innovation, flexibility and savings in both construction time, and cost, as well as operations and maintenance savings through overall life-cycle cost analysis.

The Design Build contractor will design, construct, and supply all systems components and rolling stock as single turnkey contract, thus providing a single point of

responsibility for delivering a fully integrated rail network.

Charting a P3 Course

More than half of US states have some form of P3 legislation or authority. So why are so few states utilizing P3s? It might be because agencies have lacked the tools, resources or policy direction to effectively use the P3s.

States who embark on a course of P3s should follow the example of international pioneers in the P3 market – Canada, Australia, the UK and Puerto Rico – and look to centralize decision making and evaluation in a single office such as a Public Private Partnership Authority. By successfully integrating P3s into their traditional procurement system, those countries have taken the politics out of P3s and professionalized the decision making.

In each of those countries, governments have built a track record of success, and raised public awareness of what P3s are and how they are integral to the development of infrastructure. Centralized effort enables governments to look at infrastructure holistically rather than just focus on one project at a time. US state or local governments often use P3s for a single project and tie the project too closely to the traditional procurement system, which can spell disaster for a P3.

In addition to having legal authority to undertake P3s, the P3 Authority should be capable of:

- insulating itself from the political process during procurement;
- hiring world-class talent who can distill true P3 opportunities from politically-inspired wish lists;
- discerning which functions are inherently governmental and not suitable candidates for P3s;
- overseeing procurements to build new projects; and
- maintaining communication with the legislature while also serving as the central point of contact with the public.

The Government of Puerto Rico: A Case Study

The Government of Puerto Rico recently launched a P3 Authority which


has systemically integrated P3s into how the government provides and operates infrastructure. Rather than passing a statute that allows existing governmental entities to use P3s as a “tool in the tool box”, Puerto Rico’s P3 Authority oversees all such procurements on the Island. It is in the process of using P3s to monetize toll roads and airports, deliver new water infrastructure and reform billing practices, and build or rehabilitate 100 schools.

Establishing a clear legal authority is a must for any successful P3 effort. There are several key considerations for legal structure but perhaps the most important one is to establish authority ahead of any P3 effort. Several procurements have foundered when legislatures failed to pass enabling legislation months into the procurement process.

Another question that needs to be addressed when authorizing legislation is whether unsolicited proposals or alternative technical concepts, which can open the door to more innovation, will be allowed.

P3s are most successful when governments understand what they are trying to achieve while being realistic about those goals.

Conclusion


While P3s will never replace traditional procurement and infrastructure development they will play an even larger role in infrastructure development in the US in the coming years. This will be especially true as states learn and adopt practices from P3 pioneers and establish a central coordinated effort to integrate P3s into infrastructure development and management across sectors and not just transportation. 

Geoff Segal is a Senior Vice President at Macquarie Capital Advisors USA Inc and the private sector chair of the ALEC Transportation and Infrastructure subcommittee and **Patrick Rhode** is the Vice President of Corporate Affairs for Cintra US. Both Macquarie Capital Advisors USA Inc and Cintra US are members of ALEC’s Commerce, Insurance, and Economic Development Task Force.

BY Raegan Weber, ALEC Senior Director
for Public Affairs

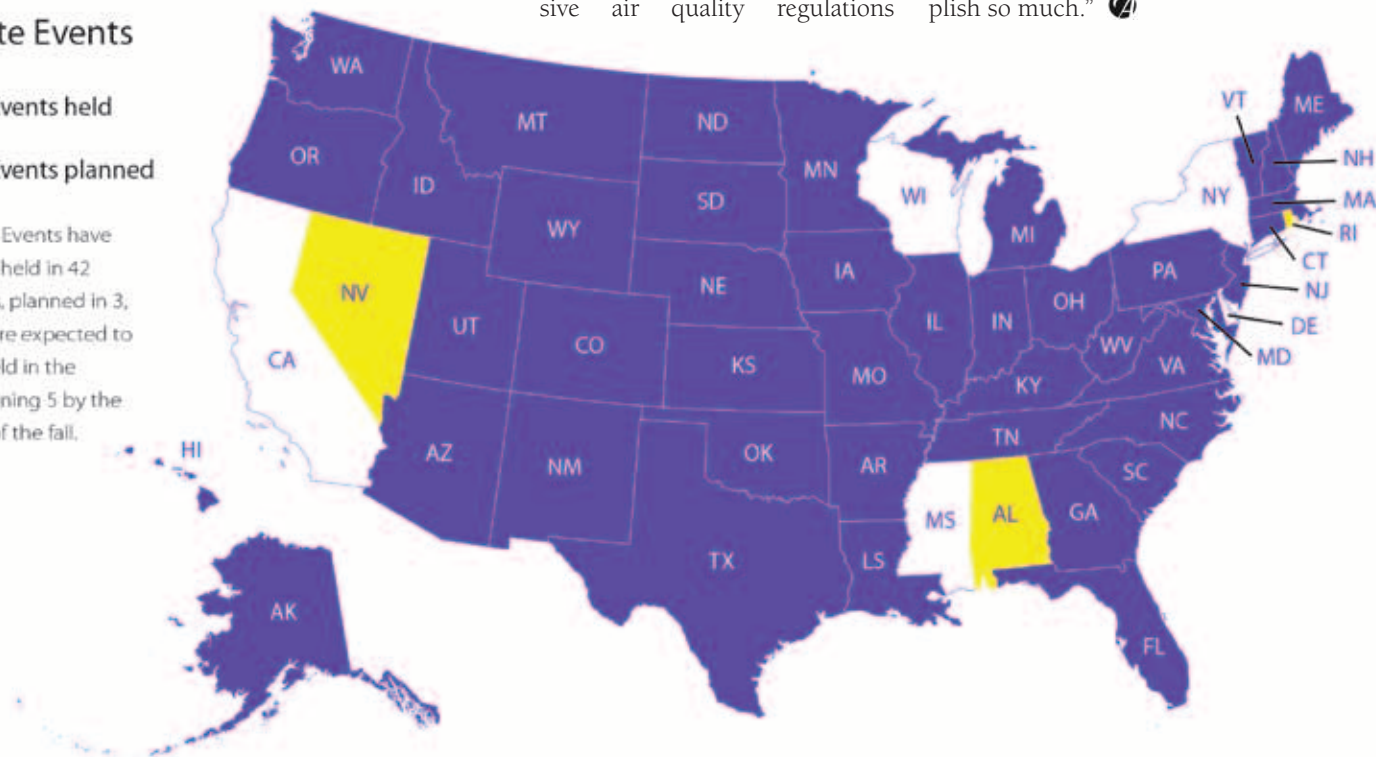
It is the continuous efforts of ALEC's in-state leadership, like Wyoming Public Sector State Chair Rep. Pete Illoway and Wyoming Private Sector State Chairs Jody Levin and Wendy Lowe that make each of these events possible. On February 17th, ALEC's Wyoming leadership held a membership reception in Cheyenne, Wyoming, hosting over forty ALEC members. Over two dozen private sector members sponsored the event, and nearly 50 percent of Wyoming's legislature was in attendance, with a strong

The day after the membership event offered continued success for Wyoming legislators. On the morning of February 18, Wyoming Gov. Matt Mead signed Senate Joint Resolution 6, requesting the United States Congress to limit the excessive air quality regulations

"The Wyoming ALEC leadership really knows how to rally state-level support for their members," says Director for Corporate and Non-Profit Relations Rob Shrump. "It's our members that enable us to accomplish so much." 

■ Events held
■ Events planned

Note: Events have been held in 42 states, planned in 3, and are expected to be held in the remaining 5 by the end of the fall.



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