

INSIDE *ALEC*

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

IS THE COUNTRY ON EMPTY?

A LOOK AT THE ENERGY SUPPLY AND THE FEDERAL DEBT



SPECIAL ISSUE
**2011 ALEC
ANNUAL MEETING**

**"I want to give work to people, not take it away.
I need something that's affordable. Electricity
from coal does that for me."**



Olivia Albright owns AOA Products, a small company in Toledo, Ohio. Olivia's business may not be big by some people's standards. The business has grown from something that she started in her garage, and today employs seven people ... who Olivia refers to as family. But the story doesn't end there because Olivia has big dreams. She wants to grow her company, be able to employ more people, and even be in the position to offer health care coverage to her employees.

Low-cost electricity from coal is a part of Olivia's story, and she knows that. Every machine at AOA runs on electricity. And Olivia knows that to keep those machines running and her business profitable ... she depends upon affordable electricity. She's lucky in a sense because in Ohio, where she works, coal, America's most abundant and affordable resource, provides 85% of its electricity. Using coal to generate electricity not only keeps energy costs low for businesses like Olivia's, but it also helps create jobs for American workers.

Learn more about Olivia's story at
www.americaspower.org.

Olivia Albright
Owner
AOA Products - Toledo, Ohio

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ALEC 2011 Legislative Success in the States and Louisiana

BY ALEC NATIONAL CHAIRMAN NOBLE ELLINGTON

Louisiana is proud to host the American Legislation Exchange Council's (ALEC) 2011 Annual Meeting, providing our members with the unique opportunity to network and share our successes in the hopes of helping our fellow colleagues in the states. It is because of ALEC's legislative members that the principles of free markets, federalism and limited government are advanced. It is ALEC's legislative members that give life to this organization, help it advance and keep it modern.

ALEC's 2011 Annual Meeting hosted educational workshops to learn about sound solutions on significant issues affecting our states and country, including energy alternatives such as natural gas, digital learning, solutions for real budget and pension reform, and the Medicaid crisis in the states. With a keen focus on economic growth and stability, ALEC announced many new initiatives this year including Publicopoly (ALEC's public-private partnership initiative), EPA's Regulatory Train Wreck (designed to help protect the states from unwanted and unaffordable federal government regulations), Tort Reform, Cutting Crime and Budgets, Restore the Balance (promoting the proper balance between the states and federal government), and Critical State Fiscal Reform. In addition, ALEC is proud to be the only state legislative organization to submit an amicus brief on behalf of state legislators in the landmark Constitutional challenge to Obamacare.

Most of all, I'd like to acknowledge the success of ALEC's legislators in the states. Many of you have taken on new policies and initiatives with great success. Thirty-four states have taken measures to demonstrate their disapproval with the onslaught of regulations and restrictions from the Environmental Protection Agency (EPA). Health care reform remains a focus of the states with ALEC's *Freedom of Choice in Health Care Act*, which was introduced in 35 states. Many states have enacted statutory measures against the damaging effects of ObamaCare and three more states have proposed constitutional amendments for a vote on 2012 ballots. Tort reform legislation has been extremely successful with 37 tort reform bills passed in 14 states around the country. States have also taken on several budget reform initiatives including pension reform, the federal debt amendment, and priority-based budgeting. States are looking at new ways of dealing with corrections, rehabilitation and reducing crime.

Right here in Louisiana, we have taken on some of these same issues and others with great success. Rep. Joe Lopinto has led the bipartisan effort in Louisiana on restructuring our corrections, rehabilitation and re-entry policies for Louisiana's criminal justice system, and I am proud to be a leading supporter on this issue.

Violent and career criminals need to be locked up, and for a long time. But, as the Pew Center on the States reported in 2008,

we now have 1 in 100 adults in America behind bars. In LA, it is one out of every 55 adults; the highest imprisonment rate among the 50 states. State prison population has more than doubled in the last 20 years. As of December 2010, the prison population was 39,391. With far less notice, the number of people on probation or parole has also skyrocketed; more than double what it was 25 years ago. Nationwide, 1 in 31 adults is under correctional control. One out of every 26 adults in Louisiana is under some correctional control.

The cost of this incarceration has been consuming state budgets. At more than \$52 billion per year, corrections spending by states have been the second fastest growing budget category, behind only Medicaid. The cost to Louisiana taxpayers has tripled. Twenty years ago, the state spent \$213 million on corrections. Today, corrections costs are \$670 million.

In order to fix these costly issues, Louisiana formed the bipartisan, inter-branch Louisiana Sentencing Commission (LSC) which is comprised of stakeholders across the criminal justice system – prosecutors, judges, the public defender, crime victim representative, DPS&C, sheriffs and other law enforcement officials. Tasked with conducting a rigorous review of the criminal justice statutes, the LSC made data-driven, research-based recommendations to the legislature for improvement. Recommendations were unanimously approved by the Commission and were reflected in five bills this legislative session. The legislation would:

- Ensure available prison space for violent and high-risk offenders
- Increase offender accountability and slow the revolving prison door
- Improve transparency of the system for victims of crime
- Improve Louisiana's taxpayers' return on its Corrections investment, saving \$292 million over the next 10 years

ALEC believes the criminal justice system should be held accountable and supports policies that give taxpayers a better public safety return on every dollar spent. The LSC bills being considered by the legislature are consistent with the ALEC model bills; *Recidivism Reduction*, *Swift and Certain Sanctions*, and *Earned Compliance Credit Acts*, and ALEC supports their passage.

Focusing resources on higher-risk offenders will strengthen probation and parole departments and allow officers to focus on those most likely to reoffend or to be a danger to the community. Reinvesting prison savings in evidence-based programs that are proven to be effective can help to cut crime. In addition, allowing probation/parole departments to impose swift and certain sanctions for technical violators will increase accountability and reduce recidivism.

Louisiana made history this 2011 Legislative Session being one of the first states to call for a Constitutional Convention to ratify an amendment to the U.S. Constitution. This legislative session,


as ALEC's National Chairman, I was proud to be the lead sponsor of Louisiana House Concurrent Resolution 87 (utilizing ALEC's national debt ceiling amendment), which called for a Constitutional Convention to create an amendment forcing the federal government to receive approval from a majority of states to raise the national debt ceiling. As a nation, we must address the national

debt ceiling issue and the states should be the voice of the people when the federal government is making such drastic changes to how the people's money is spent and how much debt is incurred.

An issue extremely important to Louisiana and our nation is finding reliable, sustainable energy alternatives. Because of the country's dependence on oil, we are at the mercy of drastically escalating prices that occur due to uncontrollable factors. The U.S. Energy Information Administration (EIA) had forecast that the annual average regular-grade gasoline retail price will increase from \$2.78 per gallon in 2010 to \$3.60 per gallon in 2011 and to \$3.67 per gallon in 2012. The sizable jump in retail prices this year reflects not only the higher average cost of crude oil, but also an increase in U.S. refinery margins on gasoline.¹ I think it's safe to say that in many states the price of gasoline has gone well above the EIA projection for 2011.

We must look for additional abundant resources. At this year's annual meeting, ALEC hosted a workshop for legislators to learn a new way to fuel America through natural gas. Natural gas supplies are more abundant than previously reported. According to the Louisiana Department of Natural Resources Secretary Scott Angell, "In 2008 with improved technology in horizontal drilling, shale plays came to the forefront of national discussion with the Barnett Shale in Texas, the Haynesville Shale in Louisiana and the Marcellus Shale in Pennsylvania. We now know that those shale plays represent a 100 year supply of natural gas right here in America."

Natural gas is environmentally responsible. Natural Gas has a smaller carbon footprint than oil. By utilizing our natural gas resources, we can create jobs and grow the economy through competition in the energy marketplace. The key to competition is diversity. Natural gas is a readily available resource that will diversify our energy portfolio and can get to market much quicker than renewable energy resources. If you didn't have a chance to participate in the ALEC workshop on natural gas, you can find plenty of information on this alternative fuel on the Louisiana Department of Natural Resources website (<http://dnr.louisiana.gov/>).

Louisiana was proud to host ALEC's 2011 Annual Meeting and it is a pleasure serving you as ALEC's National Chairman. Congratulations to all ALEC members on their legislative successes in 2011. Keep up the good work in advancing ALEC's Jeffersonian principles of limited government, free markets and federalism. 



Rep. Noble Ellington is ALEC's 2011 National Chairman. Ellington has been a member of the Louisiana House of Representatives since 1995.



¹ <http://www.eia.gov/emeu/steo/pub/contents.html>

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
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CONGRATULATIONS, LEGISLATORS OF THE YEAR!

AN ALEC TRADITION



LIMITED GOVERNMENT,
FREE MARKETS,
FEDERALISM

Senator Joel Anderson, California
Senator Nancy Barto, Arizona
Representative Richard Carlson, Kansas
Representative Jim Ellington, Mississippi
Representative Jerry Madden, Texas
Speaker Thom Tillis, North Carolina
Representative Gene Whisnant, Oregon
Representative David Wolkins, Indiana

Our Backyard Yields Path to Energy Independence

BY U.S. Rep. Rodney Alexander
[R-LA-05]

This summer, Americans from coast to coast celebrated our nation's sovereignty. And while we are fortunate to live free from oppression, I cannot help but feel that on some fronts this battle for autonomy is still ongoing, specifically the fight for our energy independence. Although we have the resources and capabilities in our own backyard, we remain chained to unstable countries to meet our energy needs.

As a consequence of the administration's drilling "permitorium" in our waters, the United States becomes increasingly dependent on foreign sources of oil. Moreover, this ban prohibits much-needed job creation and revenue production at home, while also hurting Americans at the pump. Perhaps the most frustrating part is that the increased amount of money we pay for gasoline is sent to other countries, instead of staying within our borders where we need it most.

The president once said "Rising oil prices affect everyone." This could not be a more valid point as the financial pain is not confined to the gas pumps. Higher transportation costs cripple small businesses and signify elevated expenses for families for everything from groceries to summer vacations.

Recently, President Obama made a short-sighted decision to release 30 million barrels of oil from the Strategic Petroleum Reserve (SPR). Although it shows the president recognizes how critical it is for the American economy to have reduced and stabilized oil prices, it is both a temporary fix and manipulates the market.

The given reason for the release of the SPR is the limited supply caused by the ongoing unrest in Libya. While the conflict

in Libya was unanticipated, I do not feel it genuinely warrants an "emergency" release of our reserves—which is the intended use of the SPR.

Some economists believe this move will reduce prices by four percent in the near future, but I would like to ask what will happen when the SPR valve is turned off again. Little more than political convenience for the administration, this action will not have a lasting effect on the economy nor the price of gas at the pump.

If anything, Libya's civil war should have provided a wake-up call for those in Washington who remain intent on pushing policies that close off our vast sources of domestic energy. The situation in Libya has plainly exposed our energy dependence on foreign sources as gas prices dramatically swung once again. Quite frankly, political unrest in the Middle East should not translate into instability in Americans' pocketbooks.

Meanwhile, President Obama claims to want our nation to take control of our energy future. Yet he continues to keep off limits nearly all offshore areas that we previously opened for energy production and exploration, not to mention, drag his feet on issuing drilling permits in the Gulf region instead of at the normal rate.


As a representative of the people of the Bayou State, I can astutely say that this de facto moratorium on deepwater drilling has been even more damaging to Louisiana's vitality than the oil spill itself.

When the drilling ban was initially instituted, the Department of the Interior justified it as a necessary step to develop new regulations. While it may have been reasonable at the time to ensure production was conducted in a safe and reliable manner, a year later, it seems to be a deliberate freeze. We should not be punishing

responsible companies and workers by allowing incessant bureaucratic barriers stifle energy development.

This ongoing blockade is cause for concern not just for those living in Louisiana and neighboring states, but also poses nationwide financial obstacles. As our economy still suffers from anemic growth and countless individuals remain unemployed, this ban prohibits critical opportunities for those who depend on the energy sector to survive.

Despite the significant obstructions of the administration, House Republicans have taken the lead to correct Washington's blunders. In the 112th Congress, we have already passed legislation to streamline the drilling permitting process and rein in overzealous regulatory policies so that we can produce a steady supply of American-made energy in a safe, transparent and timely manner. We hope the president ends his severely misguided policies by working with us to turn meaningful energy policy into law.

Our backyard yields the path to energy independence. Found here are the resources needed to maintain an ample and affordable energy supply and break our firm reliance on unstable nations to meet our needs. We can strengthen America's energy security by utilizing domestic energy sources that are readily available, and by doing so, will spur much-needed economic growth at home. 



U.S. Rep. Rodney Alexander, R-Quitman, represents Louisiana's 5th Congressional District and serves on the House Appropriations Committee.

A Smarter Approach to Improving Our Environment

BY MICHAEL G. MORRIS, CHAIRMAN AND
CHIEF EXECUTIVE OFFICER AMERICAN
ELECTRIC POWER CO.

In March of 1980, President Jimmy Carter's Commission on Coal recommended that the United States increase the use of coal to displace 2 million barrels of oil a day. The commission determined that using more coal would add little to the nation's pollution levels while reducing our dependence on a foreign source of energy.

Thirty years later, coal remains our most abundant and affordable source of

economic recovery.

First, Some Background

With nearly one-third of the world's reserves, our country has been called the Saudi Arabia of coal. According to the U.S. Energy Information Administration (EIA), the United States has more than a 200-year supply of coal, or twice current estimates of our total natural gas supply. Coal is a domestic source of energy that will never be subject to foreign intervention or control. Its use creates thousands of jobs and supports hundreds of communities throughout the

Our challenge as a nation is to produce more power using all sources of energy cleanly and efficiently. I think we are up to the task, based on the progress that the industry has made so far. We can make further improvements. The primary question is how fast and at what cost do we want to get there.

The United States has already made tremendous progress cutting emissions from power generation. U.S. emissions of sulfur dioxide (SO₂) decreased from 11.4 million tons in 2000 to 5.7 million tons in 2009 – a reduction of 50 percent. The progress on nitrogen oxide (NO_x) is even more dramatic, as emissions decreased from 5.3 million tons to 2 million tons during the same time (SOURCE: EIA). Power plants now contribute just 8 percent of ozone-creating emissions in the eastern U.S. (SOURCE:

AlpineGeophysics/ENVIRON "Air Quality Trends Analysis 1999-2009"; Prepared for the Midwest Ozone Group and available on the Alpine Geophysics website at <ftp://ftp.alpinegeophysics.com/pub/Trends/>).

At AEP, we've cut our SO₂ emissions by 80 percent from 1990 and NO_x emissions are down 73 percent from 21 years ago.

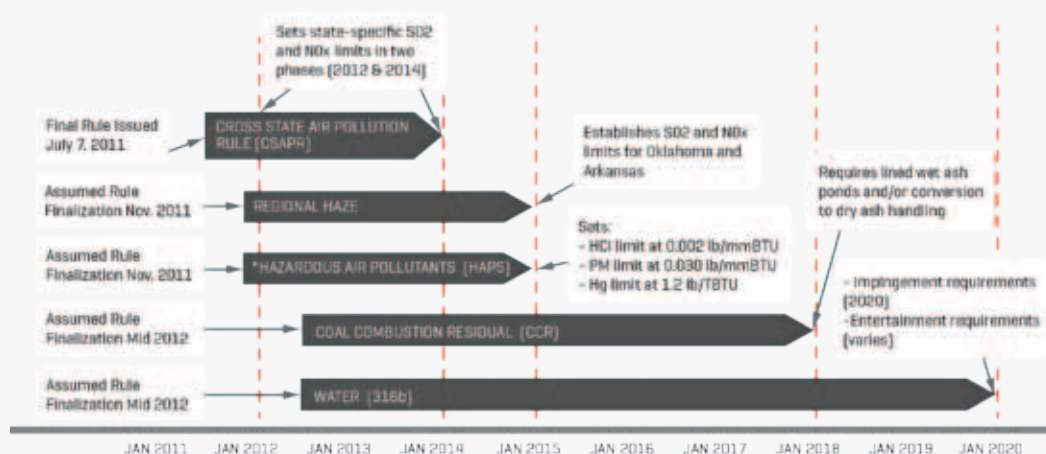
Most of the recent air quality improvements can be attributed to the Clean Air Interstate Rule (CAIR), enacted in 2005. Though overturned by the U.S. Circuit Court of Appeals for the District of Columbia in 2008, it's on the books until replaced and continues to have a positive impact on air emissions.

The EIA projected in April 2011 (EIA *Annual Energy Outlook 2011*, April 26, 2011) that CAIR alone will be responsible for SO₂ emissions declining to about 3.8 million tons nationwide by 2015 – another 33 percent decline.

We can reduce emissions even more. But how we go about doing it will determine the ultimate cost and impact for the U.S. economy. We are concerned that the EPA has not fully considered the impact on generation capacity and availability, the time required to install new equipment, or the cost to customers and the nation.

We can mitigate some of the economic impact and achieve the same long-term

Environmental Regulations and Compliance Deadlines



*Units that will be retrofit are eligible for a one year compliance extension for the EPA

energy, but the U.S. Environmental Protection Agency (EPA) has proposed a series of rules with aggressive compliance timelines that will make coal more expensive and difficult to use to help fuel the U.S. economy. We agree with the ultimate environmental goals of the proposed rules. We simply believe there is a better way to achieve those goals, one that reaches the same reduction targets just a few years later but lessens the negative impact on an economy still struggling to rebound from recession. A smarter approach would be a legislative solution that balances our nation's environmental goals and the need to support continued

country. In 2009, there were about 88,000 coal mining jobs in the United States, with many of them in regions where other good-paying jobs can be scarce. (SOURCE: EIA)

Coal traditionally has been the nation's largest single source of fuel to generate electricity, accounting for 45 percent of generation in 2010 (SOURCE: EIA). Going forward, natural gas likely will play a larger role nationwide because of its lower emissions profile. But given coal's abundance and cost, and the access to coal we have in this country, it would be foolish if the United States excluded this fuel from its future energy plans.

air quality improvements if the industry is given more time to make the transition. We support regulations that achieve long-term environmental benefits while protecting customers, the economy and the reliability of the electric grid. But if we don't consider the full impact of new regulations, we may do more near-term harm than good.

Coal (and Affordable Energy) Faces an Uncertain Future

There is one final rule and three regulations proposed by the EPA that are most problematic for coal's future: Cross-State Air Pollution Rule (CSAPR), the Coal Combustion Residuals Rule (CCR), the Hazardous Air Pollutants (HAPs) Rule and the Regional Haze Federal Implementation Plan. Another regulation, the 316(b) provision of the Clean Water Act, affects water intake systems at power plants.

The CSAPR will further reduce emissions of sulfur dioxide and nitrogen oxides and includes significant emission reductions in many states in less than 6 months from now. The CCR will tighten regulations on the handling and disposal of coal ash. The HAPs rule addresses mercury, acid gases, trace metals, and organic HAP emissions. The Regional Haze Rule is designed to reduce hazy conditions in the country's national parks caused by particulate matter.

The Impact of EPA's Rules on the Existing Coal Fleet is Being Vastly Underestimated

A significant problem with the EPA rule-making process is that the EPA issues the rules individually and considers each in isolation. Utilities don't have that luxury. AEP and all other coal-based power generators must consider the rules cumulatively when determining the most cost-effective way to comply.

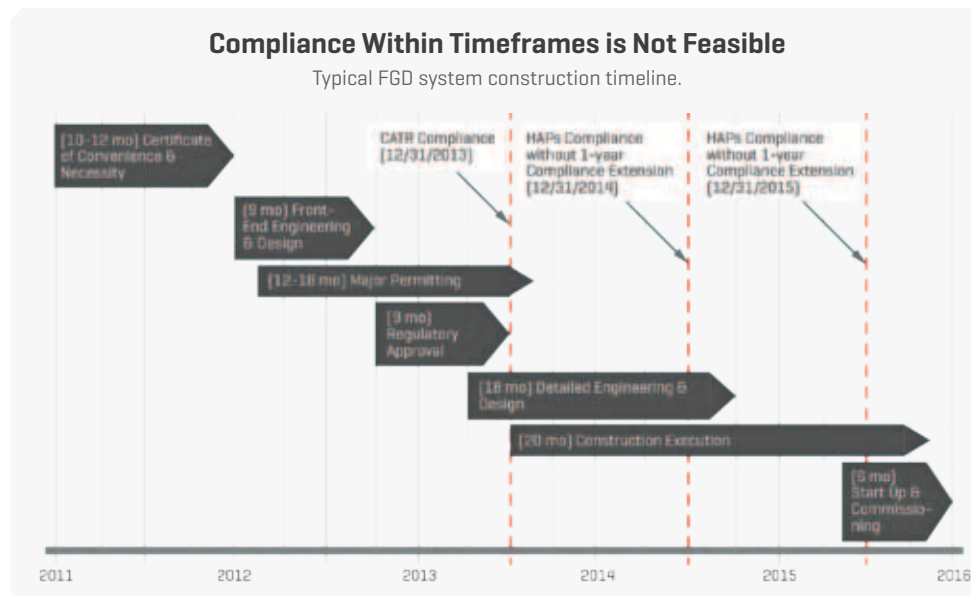
EPA's single-rule focus significantly underestimates the impact of the rules on the nation's power plants. For example, the EPA predicts that the HAPs rule would require the retirement of only about 10,000 megawatts (MW) of capacity nationwide. AEP alone will need to retire almost 6,000 MW—more than half of the EPA's nationwide estimate—in order to comply with all the rules. And, AEP owns only about 8 percent of the nation's coal-fueled generation.

So it's not difficult to see that the agency's numbers are off the mark when it comes to the rules' cumulative effect on power production in the United States.

In contrast to the EPA's projected loss of 10,000 MW of capacity, the industry predicts that 50,000 to 60,000 MW of coal-fired capacity will be shut down. That's up to 19 percent of existing U.S. coal capacity (SOURCE: EIA, Electric Power Annual, April 2011).

new levels of efficiency and will be one of the lowest emitting units ever constructed.

The MACT standards EPA proposes for new coal-fired power plants are technology, not health based, requirements that are supposed to reflect the capabilities of emission control technologies in use now by the "best performing" coal unit. EPA's hodgepodge of proposed new source emission standards for mercury and other hazardous air pollutants overstates the capa-



New Coal-fired Power Plants Can't Meet EPA Proposals

States that produce, transport or use coal to generate electricity shouldn't count on new plants because EPA's Maximum Achievable Control Technology (MACT) standards for new coal-fired power plants are so stringent that power plant owners are not likely to be able to comply with them in 2014 after the regulations become final.

We know something about new technologies in power plants that use coal. Historically, AEP has led the industry in the development and implementation of advanced coal-based electric generation technologies and emission control systems. We've posted a list of them on our web site. In recent years, we have worked to develop integrated gasification combined cycle units at commercial scale that will convert solid coal into a gas for more cost-effective emissions controls. In fact, we are currently leading the industry again by actively building an advanced ultra-supercritical coal generation unit, which will achieve

bilities of existing technologies and cannot be met by any of the state-of-the-art coal plants now being built around the country. Moreover, EPA data show that no coal plant currently in operation could meet all of its proposed new source standards for hazardous air emissions.

Since 2001, 40 coal-based electric generation units have been commissioned or, at present, are undergoing active construction. These units represent the most efficient and lowest emitting coal-based units ever to have been built, and are subject to the most stringent air permit limits ever established by state agencies.

AEP reviewed the air permits for the units and found that state agencies considered vendor information, fuel data, variable operating conditions, as well as the performance and air permit limits of other operating units. This in-depth evaluation by state agencies has enabled practical, achievable air permits to be established that protect public health and that accommodate the range of operating scenarios expected

over the life of the unit.

Although these 40 units comprise approximately 4 percent of the existing coal fleet in the United States, they establish an expected baseline of performance that can be achieved in practice for future units. If these 40 units equipped with the most advance emission controls cannot meet the proposed MACT limits, then any new coal unit, equipped with similar control technologies, will likely not be able to meet them. In fact, the scope and stringency of the proposed rule would result in a technology, operation, financial, and regulatory risk profile for new coal generation projects that will be too significant to jus-

of \$184 billion in present value terms. Average U.S. retail electricity prices would increase 12 percent by 2016, while 23 of the most affected states would see increases of 12 percent to 24 percent. (SOURCE: Economic Impacts of EPA's Proposed Transport Rule and Utility MACT Rule, June 2011)

Within AEP, we expect our electricity prices to increase from 10 percent to as much as 35 percent, depending on the state, as we recover the costs of compliance. Those increases would be in addition to other expenses we may need to pass along, such as fuel purchases and investments in the transmission and distribution

employees they maintain or plan to hire. For many industries, the price of electricity impacts their ability to compete in an increasingly worldwide market. We don't need to give our overseas competitors another tool to use against American businesses.

More Jobs Will Be Lost than Gained

Proponents of the EPA rules point to the jobs that will be created as a result of the proposed regulations. It is true that construction jobs will be created and component fabricators may hire more workers, but it will be a classic boom-and-bust cycle. These jobs won't last long, and many people who enter the industry may never enjoy the full benefit of the boom cycle before their jobs disappear.

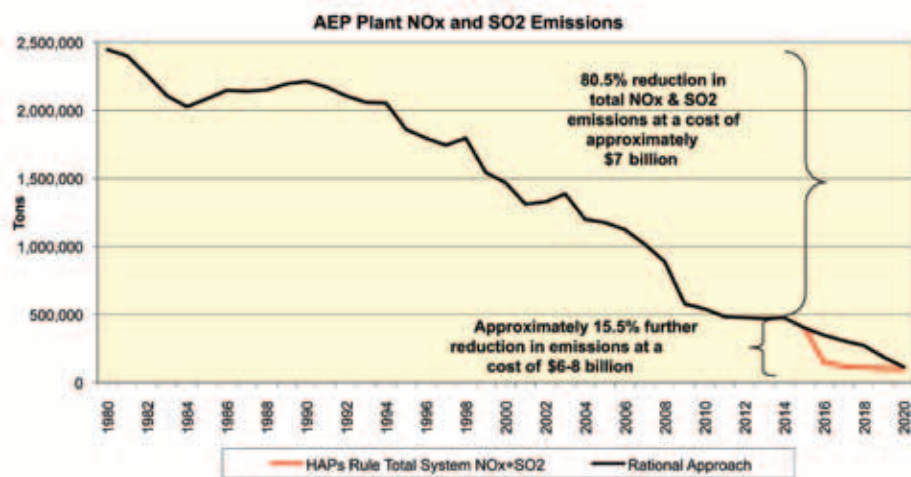
In terms of employment at our power plants, AEP expects to have a net loss of about 600 good-paying jobs as older units are closed and we replace some of that capacity with natural gas. Nationwide, thousands of jobs could be lost according to NERA. A gas plant requires about one-fourth the staff of a comparable coal unit in AEP's experience.

To be fair, some of these jobs would go away eventually as plants reach the end of their operational life and are replaced, most likely, with gas-fired units. But they would not go away within the three years that compliance with the new rules would require. The accelerated time frame will cause hardships for many communities as they abruptly lose income and property taxes and the wages of the displaced workers. There also will be ancillary job losses at companies that provide services to the plants. This affects community services such as police and fire, schools, libraries and a host of other civic functions.

The national consequence of the EPA regulations on employment is much larger. The NERA analysis estimates that 1.4 million jobs would be lost from 2013 to 2020 because of the HAPs and Clean Air Transport rules. NERA found that for every one job created, such as those temporary jobs in the construction industry, four jobs would be lost.

These job losses occur predominantly because higher electricity and natural gas prices will lead to reduced discretionary goods consumption by families and

A Phased-in Approach Will Arrive at the Same Destination



tify the investment. EPA needs to set new source MACT standards that reflect practical, common-sense limits that are technically and commercially achievable in practice with the technologies now being deployed to maintain our nation's leading edge in emissions control technology, while ensuring that all varieties of American coal can play a role in providing a source of low-cost electricity.

Costs and Electricity Rates Will Increase Significantly

Perhaps the most profound effect of the proposed EPA rules will be on utility customers, particularly those living in states largely powered by coal-fueled energy.

Nationwide, a study conducted by National Economic Research Associates (NERA) estimates that electricity sector costs would increase \$17.8 billion a year through 2030, or an equivalent increase

equipment needed to deliver electricity to customers.

NERA further estimates that natural gas prices would increase because of the fuel's increased use in power plants. NERA found that residential, commercial and industrial users could spend \$8.5 billion more a year because of higher natural gas prices resulting from increased demand.

Policymakers need to understand the consequences of these increases. As residential customers spend more on utilities, they have less discretionary income for other costs, such as food, medicine and other household expenses.

Then there are the commercial and industrial customers—the businesses that employ the bulk of Americans. When the price of electricity goes up, the consequences can be far-reaching, such as corporations shutting their facilities and moving overseas, or reducing the number of

businesses, lower factory output due to the reduced consumption (and higher energy costs for businesses) and numerous businesses shifting more production overseas. In addition, a sizeable amount of capital, on the order of \$200 billion in the electric power industry, will be invested to comply with the EPA regulations according to NERA. This large capital investment “crowds out” other more productive capital investments that would lower costs and increase output and jobs.

Electricity Reliability Could Be at Risk

The accelerated compliance timeline will create reliability issues, as well. AEP estimated that some plants would have to retire as early as 2014 to comply with the proposed Clean Air Transport Rule, however the recently finalized rule, renamed the Cross-State Air Pollution Rule, could require retirements as early as 2012 due to more stringent SO₂ and NO_x reductions. We have listed potential retirements on our web site. Other plant owners also have announced retirements totaling thousands of megawatts if the rules are not changed. Most of these are smaller generating units, but they are important because of where they are located and what they do—they supply critical support to the power transmission grid. That support comes in the form of providing power for other plants to restart after an outage, voltage support and reactive power (which is like water pressure in a pipe), which enhance grid stability. Once those units close, the grid support functions supplied by those units will no longer be available.

To counter that, some short-term transmission mitigation will be necessary. In essence, transmission stations will need to be built to provide the support that the plants provided. Once new generation comes on line, those stations won't be needed and will end up as stranded investments that add to the cost of compliance.

The three-year deadline for compliance with HAPs causes several problems. The most glaring is that the equipment that will need to be added to plants to comply takes longer than just a few years to permit, design, construct and commission.

AEP has spent about \$7.2 billion since 1990, largely building scrubbers and selective catalytic reduction systems (SCRs), to

cut emissions from our coal-fueled power plants. That experience tells us these systems require almost five years from the time we ask for the permit to the time the systems can be on line. You can't compress a five-year project into three and expect the outcome to be good. Safety and quality will suffer. To expect that these projects can be completed in three years is just not realistic, especially for rules that will impact more than 1,000 coal-fueled generating units across the country.

AEP won't be the only power company building emissions reduction equipment and new natural gas power plants. That means that all companies that operate coal-fired plants will be competing for a limited supply of skilled labor and capacity to build the equipment. What happens when demand outstrips supply? The price goes up, and electricity customers could be forced to pay significant premiums for the labor and components needed to complete projects on time, or they will be forced to cover the cost of premature retirement and the replacement cost of power for plants that can't be retrofit.

There's a Better Way

With our nation still struggling to recover from the biggest economic downturn since the Great Depression, now is not the time to put the nation through an accelerated environmental compliance program. We believe there's a better way to achieve the same environmental benefits at less cost to our nation's workers, communities and electricity customers.

First, Congress should ask EPA to delay the implementation of the Cross-State Air Pollution Rule (CSAPR) because prior existing regulations already have and will continue to yield the air quality benefits EPA says CSAPR will provide. The accompanying article, *USEPA's Emission Reduction Rules Ignore Scientific Reality*, shows how this is true.

Second, Congress needs to pass legislation that provides a more comprehensive, integrated approach to implementing the Clean Air Act. By giving the industry more time and flexibility, we can reduce the negative economic impacts and achieve the same level of emission reductions. More time would allow companies to better coordinate plant closings and upgrades,

thus avoiding many electric-grid reliability concerns. More time also would allow the communities that would ultimately be affected by plant closings to better prepare for the loss of revenues and jobs.

A longer compliance schedule also would support more long-term jobs in the construction and control fabrication industries. Spreading out the construction period likely would result in lower costs for building and retrofitting plants, higher quality work, safer job sites and a more stable work force.

Finally, our customers would not face such abrupt or significant rate increases. By spreading out the compliance timetable, we believe the total costs of achieving the same emission cuts will be significantly less. And, even though electricity prices will increase, they will do so over a longer period of time, which makes it easier for businesses and consumers to adjust or take action to reduce their usage.

Most important, emissions will continue to decrease throughout an extended compliance period as projects are completed and older plants are phased out.

We believe we can accomplish the goals of the Clean Air Act and continue to provide affordable energy. But to get there, we need more time than the act provides. It's time for Congress to look at environmental regulation in a comprehensive manner and devise a legislative solution. Legislation that considers the impact of compliance on customers as part of the equation, requires the EPA to better coordinate its rules, takes international competitiveness into account and provides enough time for companies to comply is the best way to achieve additional environmental improvement.

We can have cleaner air without tearing apart our communities, displacing our workers and damaging our ability to compete in the worldwide market. We just need a common sense approach and the political will to make it happen. 

Michael G. Morris is
Chairman and Chief
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American Electric
Power Co.



How Better Modeling Can Help with Clean Air Compliance

BY DAVID M. FLANNERY, LEGAL COUNSEL,
MIDWEST OZONE GROUP

As the technology to reduce air emissions has improved, so has the science that helps set that the requirements of the Clean Air Act. Unfortunately, the EPA's science, including its selection of input data for its air quality model, stops short of capturing all the improvements that have occurred during the last few years.

Modeling by the Midwest Ozone Group (MOG) using recent air quality data shows significant improvements in virtually all of the areas that the EPA has indicated would not meet clean air standards when it recently issued its Cross-State Air Pollution Rule (CSAPR). This is in great part because CSAPR (and other of EPA's rule-making initiatives) are based on older air quality and source emission data. EPA failed to capture improvements in air quality and emission reductions that have occurred since 2005.

The improvements came about from existing control programs including the Clean Air Interstate Rule (CAIR), introduced by the EPA in 2005 to reduce SO₂ and NO_x emissions to address the interstate transport of air pollutants and their impacts on downwind non-attainment areas. CAIR was vacated by the U.S. Court of Appeals for the District of Columbia in 2008, and EPA was ordered to devise a new rule, which has now become CSAPR.

So that compliance programs started after CAIR was introduced would proceed, the court agreed to keep CAIR on the books until a replacement rule was enacted. It was under the auspices of CAIR that many companies began construction program to add scrubbers and SCRs. Compliance with CAIR has been partly responsible for a significant decrease in emissions from electricity generating units, which in 2009 had drop to only 8 percent of all volatile organic compound emissions and only 15 percent of all nitrogen oxide (NO_x) emissions in the Eastern United States.

In fact, CAIR has been so successful that virtually all of the communities that the EPA found to be out of compliance with the first Transport Rule -- two more rules are expected -- are now in compliance (SOURCE: AlpineGeophysics/ENVIRON "Attainment Modeling and Design Value Analyses for 8-hr Ozone and PM 2.5 Attainment Demonstrations in the Midwestern and Northeastern United States"; Prepared for the Midwest Ozone Group and available at

- The 24-hr PM objectives of the proposed Transport Rule can be achieved within the modeling area no later than 2014 with no additional controls beyond those already required under CAIR and other on-the-books regulations, with the possible exception of local controls at sites in Allegheny County, Penn., and Brooke County, WVa.;

What this boils down to is that the air is cleaner than the EPA is giving us credit for. CSAPR's targets already have been largely achieved. Even though the court determined that CAIR did not comply with certain requirements of the Clean Air Act, CAIR has produced substantial emissions reductions and air quality improvements nonetheless and illustrated the level of emission reductions needed in a rule regulating the interstate transport of air pollutants to vir-

TABLE 1
Midwestern NO_x and VOC Emissions, 1999 and 2009
(thousand tons/year)

Region	Total egu nox		Coal egu nox		Onroad vehicle nox		All other nox		Total nox		Total vocs	
	1999	2009	1999	2009	1999	2009	1999	2009	1999	2009	1999	2009
Northeast	527	220	400	161	1,478	681	1,034	903	3,038	1,803	3,059	2,645
Midwest	1,369	441	1,334	414	1,392	798	1,281	1,140	4,042	2,379	3,073	2,361
Southeast	1,964	516	1,719	436	2,092	1,226	1,878	1,529	5,934	3,271	4,848	3,989
Central	1,185	606	841	470	1,671	927	2,549	2,595	5,405	4,127	3,793	3,109
Total	5,044	1,782	4,294	1,480	6,633	3,631	6,742	6,167	18,419	11,581	14,773	12,105


Source: Alpine Geophysics/ENVIRON

<http://midwestozonegroup.com/files/MOGCommentsOnProposedTransportRule.pdf>).

Among MOG's findings are:

- The ozone objectives of the proposed Transport Rule can be achieved within the Eastern United States no later than 2014 with no additional controls beyond those already required by CAIR and other on-the-books regulations;
- The annual particulate matter (PM) objectives of the proposed Transport Rule can be achieved within the modeling area no later than 2014 with no additional controls beyond those already required by CAIR and other on-the-books regulations, with the possible exception of local controls being necessary at one site in Allegheny County, Penn.;

tually eliminate residual non-attainment in the East. These improvements and others that are still occurring effectively eliminate the need for more stringent emission reductions addressing the interstate transport of air pollutants. Equally significant is the fact that EPA has erroneously stated the adverse health effects that are associated with current air quality and in doing so has over-stated the benefits that should be associated with its emission reduction rules.

EPA's failure to acknowledge reality has resulted in a new set of emission reductions that are significantly more stringent than are needed to address the nation's air quality goals. 

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California Dreamin' — of Jobs in Texas

BY JOHN FUND

Austin, Texas

It wasn't your usual legislative hearing. A group of largely Republican California lawmakers and Democratic Lt. Gov. Gavin Newsom traveled here last week to hear from businesses that have left their state to set up shop in Texas.

"We came to learn why they would pick up their roots and move in order to grow their businesses," says GOP Assemblyman Dan Logue, who organized the trip. "Why does Chief Executive magazine rate California the worst state for job and business growth and Texas the best state?"

The contrast is undeniable. Texas has added 165,000 jobs during the last three years while California has lost 1.2 million. California's jobless rate is 12% compared to 8% in Texas.

"I don't see this as a partisan issue," Mr. Newsom told reporters before the group met with Texas Republican Gov. Rick Perry. The former San Francisco mayor has many philosophical disagreements with Mr. Perry, but he admitted he was "sick and tired" of hearing about the governor's success luring businesses to Texas.

Hours after the legislators met with Mr. Perry, another business, Fujitsu Frontech, announced that it is abandoning California. "It's the 70th business to leave this year," says California business relocation expert Joe Vranich. "That's an average of 4.7 per week, up from 3.9 a week last year." The Lone Star State was the top destination, with 14 of the 70 moving there.

Andy Puzder, the CEO of Hardee's Restaurants, was one of many witnesses to bemoan California's hostile regulatory climate. He said it takes six months to two years to secure permits to build a new Carl's Jr. restaurant in the Golden State, versus the six weeks it takes in Texas. California is also one of only three states that

demands overtime pay after an eight-hour day, rather than after a 40-hour week. Such rules wreak havoc on flexible work schedules based on actual need. If there's a line out the door at a Carl's Jr. while employees are seen resting, it's because they aren't allowed to help: Break time is mandatory.

"You can't build in California, you can't manage in California and you have to pay a big tax," Mr. Puzder told the legislators. "In Texas, it's the opposite—which is why we're building 300 new stores there this year."

Other states are even snatching away parts of California's entertainment industry. The Milken Institute, based in Santa Monica, Calif., reports that 36,000 entertainment jobs have left the state since 1997. The new film "Battle: Los Angeles," which is set in California, was filmed in Louisiana.

"The red tape is ridiculous," says Mark Tolley, the managing partner of B. Knightly Homes, which relocated to Austin from Long Beach in 2005. "Regulators see developers as wearing a black hat and the environmental laws have run amok."

"I'm a pro-jobs Democrat," Mr. Newsom told me. "My party needs to get back into the business of jobs." Mr. Newsom says he's developing an economic development plan to present to Gov. Jerry Brown, who he says "gets it" on the need for business-friendly policies. Mr. Newsom told me that what impressed him most about Mr. Perry and the Texas legislators was their singular focus on job creation.

California, by contrast, seems to constantly lose focus. Several Democrats who agreed to go on the Texas trip were pressured by public-employee unions to drop out—and many did. And just as Texas business leaders were testifying about how the state's tort reforms had improved job creation, word came of California's latest priority: On April 14, the state senate passed a bill mandating that all public school children learn the history of disabled and gay


Americans.

One speaker from California shook his head in wonder: "You can have the most liberated lifestyle on the planet, but if you can't afford to put gas in your car or a roof over your head it's somewhat limited."

The most dramatic reform California could make would be to change its boom-and-bust tax system so it doesn't depend on a small number of wealthy residents who can flee the state. The idea would be to broaden the income tax base and lower the state's high rates. It works today in seven states ranging from Colorado to Massachusetts. Of course, the Lone Star State has no state income or capital gains tax at all.

"Texas' economy is far less volatile due to its having neither a progressive income tax system nor a large tax burden," concludes "Rich States, Poor States," a study by the American Legislative Exchange Council. Less volatility also allows Texas to keep expenditures in check. While it shares with California the challenge of a huge budget deficit this year, it's expected to close it without raising taxes. Texas's overall spending burden remains below what it was in 1987—a remarkable feat.

When Jerry Brown ran for president in 1992, he understood the distorting nature of the tax code and proposed a flat tax with deductions only for rent, mortgage interest and charitable contributions. He called it "a silver bullet" for the economy. Mr. Brown has since abandoned that idea, grousing recently to a state legislator that "the flat tax cost me the New York Democratic primary."

But if California continues its economic decline, something Texas-sized in its ambitions may be called for—whether it's a moratorium on new business regulations or a restructuring of the state's dysfunctional unemployment compensation or litigation. Nothing less is likely to stem the outflow of businesses and jobs from the Golden State. 

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Prohibiting Abuse of Eminent Domain

BY DAREN BAKST

The federal constitutional limitation on government taking private property only for “public use” has long been dead. The Fifth Amendment of the United States Constitution states “... nor shall private property be taken for public use, without just compensation.”¹

For decades though, the United States Supreme Court has effectively deleted “public use” and replaced it with “public purpose” and “public benefit.” These changes significantly broaden the ability of the government to take property. Instead of a seizure being for the limited and specific reason of a public use, such as for a road or school, the government can seize private property for general reasons that allegedly have some benefit to the public.

Kelo v. City of New London

In 2005, the United States Supreme Court issued its infamous opinion in *Kelo v. City of New London*.² The Court held that the government could seize private property from one citizen and transfer it to another citizen for the public purpose of economic development.

Economic development can constitute higher tax revenues, more jobs, or even improving the aesthetic appearance of a community. If the government believes it would be economically beneficial to seize your house and give it to a developer to turn into a shopping mall, then that would be allowed.

Almost any property can be seized if a “higher use” of the property can be identified. For properties like homes and churches, which are not exactly job creators, they are at significant risk.

While the standards for seizing properties had already been drastically weakened through the use of “public purpose” and “public benefit,” the Court had never gone as far as holding that the government could seize private property for economic development.

As bad as the *Kelo* case is, it did wake up the public about the extensive abuse of eminent domain that has existed for years. The Supreme Court did gut the property rights of Americans, but this does not mean that all is lost. The Fifth Amendment acts as a floor. States can exceed the protections provided by the Fifth Amendment, but cannot go below the rights it affords. Therefore, hope still exists for protection against eminent domain abuse: state legislators.

The Response of States to *Kelo*

Almost every state has addressed *Kelo* and other eminent domain abuses either through statutory or constitutional changes. Many of these changes, though, are not particularly strong. Government, at all levels, identifies numerous ways to get around prohibitions on these economic development takings, so one of the biggest challenges for state legislators is to draft carefully considered language

to block the end-runs government can make to seize private property for economic development.

There have been eight states that have passed constitutional amendments since *Kelo*. The amendments take very different approaches to addressing eminent domain abuse and some are far better than others. As seen in the graphic, the voters in each state overwhelmingly approved the proposed amendments. There is little doubt that eminent domain reform is a popular and generally bipartisan issue.

Developing Effective Eminent Domain Reform

The Need for a Constitutional Amendment

States should adopt a constitutional amendment to protect its citizens from economic development takings. Statutory language can be changed at the whim of legislators. A constitutional amendment, once passed, makes it far more difficult for future legislatures to undo the necessary protections.

Critics of any eminent domain reform, usually municipal officials in the state, often will make a generic argument that an amendment is something that should be avoided because once passed it will be hard to fix any problems. An amendment is necessary because it is difficult to change.

Further, if the United States Supreme Court gutted freedom of speech rights in the First Amendment, it would be laughable to think that anyone would suggest that state statutes are enough to protect free speech rights. The same argument applies to property rights. The Court gutted eminent domain protections and state statutes are wholly inadequate to provide the necessary protections.

Government Does Not Come Out and Admit That Takings are for Economic Development

The city of New London does deserve some credit. At least it came out and admitted that it was seizing private property for economic development reasons. It is rare that government, at any level, will come out and make this admission.

This point is critical to understanding how eminent domain abuse occurs. To provide two major examples, the government often will seize property under the guise of “blight” or it will identify a secondary non-economic development reason for seizing property (i.e. a pretext for taking property for economic development).

The Blight Excuse

The use of blight or urban redevelopment laws to take property for economic development has been a problem since the middle of the 20th Century.³ There are two ways that these blight laws create serious problems:

¹U.S. Constitution, Amendment 5

²*Kelo v. City of New London*, 545 U.S. 469 (2005)

³See e.g. *Berman v. Parker*, 348 U.S. 26 (1954)

1) Definition of Blight

State statutes often will define “blight” to mean almost anything so that it gives government the power to seize property. In many instances, “blight” has nothing to do with the physical structure of the property.

Blight definitions often only require meeting broad standards such as a property hurting the sound economic growth of a community based on the age of the property.⁴ There is no difference in seizing property because it allegedly hurts economic growth and seizing property because the government wants to promote economic growth—in both instances, the government thinks it can make a better use of the property for economic development.

2) Blighted Areas

Even if property is in pristine condition, it can still be seized under most blight laws. These laws often do not focus on the properties themselves, but instead focus on areas that are then classified as “blighted.”

For example, if a statute states that property can be seized if 50 percent of the property in the area is blighted, all of the property in that area can be seized. This is true even if the non-blighted property is in pristine condition and can be easily separated from the blighted properties. Local governments are adept at drawing maps to capture the properties they want to seize.

The Pretext

If the government can identify some non-economic development reason for seizing private property, this generally will satisfy courts that defer to the government when identifying the reasons for seizing property.

One of the most common pretexts deals with something called “transit-oriented development.” A transit authority will seize private property that will be used for economic development projects. This would seem on its face to be an economic development taking.

However, the transit authority will claim the property is being used for “transit-oriented development” where the economic development will help to increase density levels around a proposed rail site to promote demand for rail. As a result, the property is allegedly not really being taken for economic development but instead to help public transportation.

These are the types of games that are played. Even though the only certain use of the property is for economic development, this speculative secondary use likely would satisfy the courts.

How Can Economic Development Takings Be Prohibited?

Certainly, the first requirement is to have a strong constitutional amendment. State legislatures, be it in a constitutional amendment or in statute, should address blight abuse. There needs to be a strong definition of blight that only allows the seizure of private

property if there is a concrete physical flaw in a building that poses a direct threat to the health and safety of the public. The blight law also should only allow properties to be seized if those properties themselves are blighted.

One of the biggest challenges is how to address situations when the government may have a pretext for seizing private property. If a constitutional amendment prohibited takings “for economic development,” this may sound like it would be effective.


However, the government would simply identify a non-economic development reason for taking the property arguing, as with the rail example earlier, that a taking is not for economic development. When the term “for” is used, the intent of the taking has to be examined.

Ideally, to address economic development takings, the term “public use” would be explicitly defined; making it clear that nothing other than what has been listed would be allowed. This approach though often is difficult to get enacted because of fear of being too limiting.

Another approach is to prohibit, in a blanket manner, the taking of property from one private citizen and transferring it to another private citizen. There is no need for these private transfers except in clear limited circumstances, such as for a public utility in performing its role as a public utility.

Sometimes though, prohibitions on economic development still include language that prohibits takings for economic development. At a minimum, when such language is used, it is important to include burden of proof language—a requirement that the government prove by clear and convincing evidence that a taking is really for a public use. Therefore when a taking is proposed, the government must establish that the taking really is for non-economic development reasons.

Conclusion

The devil is in the details when it comes to providing protection against economic development takings. It requires that a significant amount of attention being paid to the precise language used to protect against eminent domain abuse. If there is going to be proper protection, legislators must consider all the ways that end-runs can be made around any prohibition. 



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⁴See Daren Bakst, “A Threat to Private Property: N.C.’s Broad and Subjective Urban Redevelopment Law,” Spotlight No. 279, John Locke Foundation, February 6, 2006; See also Ilya Somin, Is Post-Kelo Reform Bad for the Poor?, 101 Nw. U. L. Rev. Colloquy 195 (2007), <http://www.law.northwestern.edu/lawreview/colloquy/15/>

Eco-Fads: How the Rise of Trendy Environmentalism is Harming the Environment

BY TODD MYERS

"Green is a trend and people go with trends. I don't think people know the real facts."

—Green consumer quoted in the *New York Times*, November 14, 2010

As environmentalism becomes trendy, is the social pressure to conform to eco-fads displacing true environmental science and economics as we make decisions about green policies? Take for instance the photo of a technology magazine that takes more than a full page and is stark, acre upon acre of decaying tree stumps where a mighty forest once stood. The caption underneath the photo reads "Clear-cut land in Washington." Published in 2002 by the technology magazine *Business 2.0*, it is the kind of arresting photo intended to demonstrate the real environmental damage humans are causing to the planet without having to scientifically support the claim.

But there was a problem. The photo wasn't of a clear cut at all.

The image actually showed the bottom of Kechelus Lake, a mountain reservoir. The photo, taken during low water in summer, depicted stumps left over from decades before. The photo was neither a clear cut nor representative of logging anywhere in Washington.

At the time, I worked at the Washington State Department of Natural Resources, and told the magazine's editors that the photo was not a clear cut. They issued a correction, but added disingenuously, "There are examples of land in Washington that has been similarly devastated by clear-cutting." They simply could not bring themselves to admit they were incorrect, even when presented with photographic evidence.

The attitude of the editors at *Business 2.0* is not isolated. As environmentalism becomes trendy, being "green" becomes less about helping the environment than public posturing. Instead the benefits of

ostentatious environmentalism are personal and social.

Saving the Planet in Public

Research shows that psychological benefits are a powerful motive, leading people to defend counterproductive environmental policies.

Last year, Nina Mazar and Chen-Bo Zhong of the University of Toronto ran a series of experiments with students to determine how buying "green" products affected an individual's sense of self-worth. "Consumer choices," they argued, "reflect not only price and quality preferences but also social and moral values, as

corners elsewhere, I am still doing good for the planet." Buying green had become a selfish act.

Imagine the reaction if you told participants the "green" products they purchased weren't actually good for the planet. They would likely respond as the *Business 2.0* editors did—reacting emotionally to protect their "green" image, putting themselves ahead of actual results.

Doubling Down to Protect a "Green" Image

It is a reaction we see repeatedly in environmental politics. When environmental policies fail, the answer is to double down on

"Politicians, consumers, reporters and even scientists wear their environmental consciousness on their sleeves, reaping financial and psychological benefits. Those psychological benefits now play a larger role in setting environmental policy than science and sound economics. The results are not only costly, but do real damage to the environment."

witnessed in the remarkable growth of the global market for organic and environmentally friendly products." The products we buy yield personal rewards by making us feel good about ourselves.

Mazar and Zhong created two groups. One group was given \$25 to purchase from a store that had mostly non-green products. The other group shopped at a store selling primarily "green" products. The researchers found those in the study were "more likely to cheat and steal after purchasing green products than after purchasing conventional products." Having committed an act they considered altruistic—helping the planet—participants felt they had moral license to cheat a bit elsewhere. They seemed to reason, "Buying green products proves I am a good person, so if I cut

bad policies—protecting a "green" image at the expense of the environment.

In Washington state, where elected officials pride themselves on "environmental leadership," demonstrating positive results is increasingly incidental.

In 2005, legislators voted to require new school buildings meet "green" building standards, promising the new requirements would reduce energy use, thus saving money and the environment. Despite an additional cost, advocates promised the buildings would cut energy costs by at least 20 percent. To prove the point, legislators asked for an audit of the results in 2011. When that audit was released, however, the results showed that none of the "green" schools were achieving the promised savings. Most of the "green" schools

studied were actually less efficient than the average school in the same districts, paying more to meet the requirements and more for energy. The schools were actually harming the environment.

What was the reaction from “environmental” legislators? They attacked the government auditors, calling them “biased” and “slanted.” The legislators have actually called for making the “green” building mandate more strict—increasing costs while yielding fewer incremental environmental benefits.

Waste of money is waste of resources and pouring money into costly and ineffective policies can only be called anti-environmental. It is a growing trend across the country, unfortunately, because the real benefit of these policies is to the image of politicians, individuals and businesses. Environmental benefit, if any, is secondary.

When Fad Trumps Science

Even scientists can fall prey to environmental fads, using their reputation as scientists to inject unscientific personal opinions into the debate. The Climategate e-mails are a dramatic example, but they are not unique.

In 2008, former Washington state climatologist Dr. Phil Mote testified before the legislature on a recent massive rainstorm that led to severe landslides and flooding. He argued the amount of rainfall had not been unusual, saying it was unlikely that rain caused the landslides. He did, however, offer a theory about what did: timber harvests. Mote showed a slide indicating that a study in Oregon found timber harvesting caused increased landslides. Mote was not a forester and had not consulted the College of Forestry at his own university, the University of Washington, where

he worked. He simply found the graph on the internet and presented it with a scientific veneer.

The study, however, did not apply because forest roads that can lead to landslides are allowed to be left in Oregon but are removed in Washington after timber harvests. Mote knew nothing about forestry science or the law, so he didn't see the obvious error. That did not stop him from implying he knew the science in front of a legislative committee.

Most scientists prefer to remain rigorous about following the science where it leads and avoiding politics. They stay out of political debates, leaving the field to those who have less compunction. Fifty years ago, the great scientist and philosopher Thomas Kuhn wrote in “The Structure of Scientific Revolutions” that, “One of the strongest, if still unwritten rules of scientific life is the prohibition of appeals to heads of state or to the populace at large in matters scientific.” There is little left of that prohibition as politicized scientists aggressively inject themselves into the public debate, intentionally conflating their personal opinions with their scientific credentials.

The challenge for policymakers is not whether to follow the science, but how to sort the science from personal opinions cloaked as “science” that end up promoting eco-fads.

Moving Beyond Eco-Fads to Help the Environment

There are many reasons eco-fads have become so dominant.


Consumers are seduced to be “green” by the desire to feel they are doing good for the planet and by wanting peers to recognize it. Green politicians choose trendy, popular

and dramatic policies to burnish an environmental image. Businesses see opportunities to profit by partnering with government to secure taxpayer subsidies and rig the rules of the game in their favor—all in the name of protecting the environment, of course.

The counterintuitive truth is that as “green” becomes trendy, the facts regarding the impacts or benefits to the environment become ancillary. While some people believe over exuberance in the defense of the environment is no vice, the rise of trendy environmentalism is causing real damage to ecosystems, energy efficiency and the environment.

This doesn't have to be the reality. Despite the claims of many on the left, those who believe in free markets care deeply about the environment. Every electoral map shows the closer we get to nature, to farms and forests, the more people vote for candidates who support free markets. To believe that an “environmentalist” must be someone who lives in a concrete building and drives a 40-year old VW bus is pretty odd.

By adopting trendy environmentalism, the left has lost its claim to the moral high ground. A free-market approach, based on spending resources wisely and focusing on results rather than image, is one that those on the right apply regularly in education, job creation and health care. That same approach works for the environment.

There is a growing recognition that the left has lost its way on the environment and that an alternative is necessary. Highlighting the failure of eco-fads is not only good politics; it is good policy that respects individual choice and prosperity while promoting real environmental sustainability. 



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To purchase an advance copy of *Eco-Fads*, visit www.eco-fads.org.



Warming Up To Climate Change

BY ROBERT FERGUSON

The primary conception of carbon dioxide among government officials and the general public has undergone a curious transformation from biological necessity to dangerous pollutant. This journey culminated with the endangerment finding by EPA and subsequent proposed regulation under the Clean Air Act, rendering the substance a legally certified hazard.

Largely due to its association with fossil fuels – the dense and lucrative sources of energy at which the green movement levies its most direct antagonism – the gas that middle school science teachers know as the elixir of life now finds itself in a strange place: as an object of demonization whose elimination is the basis for transformational public policy. However, the foundational scientific role that it plays delivers many real benefits due to its increasing concentration, regardless of the extent to which humans are responsible.

This perspective is lost in this new understanding of the substance as a pollutant, and it merits serious attention at least as a supplement to the orthodox climate change debate, which focuses only on temperature increase and presumed catastrophic consequences. A world without fossil fuels and their positive impact on global standard of living is an odd mandate to impose; if elimination of carbon dioxide emissions is the justification, it requires a comprehensive examination of the scientific basis. A new book by scientist and author Dr. Craig Idso aims to rectify this imbalance.

Atmospheric Carbon Dioxide Enrichment

Nearly all attempts by world governments, non-governmental organizations, international agencies, societal think tanks, and even respectable scientific organizations to understand the phenomenon of increasing carbon dioxide levels have failed by not evaluating, or even acknowledging, the manifold real and measurable benefits of the ongoing rise in the air's carbon dioxide

content.

The Many Benefits of Atmospheric CO₂ Enrichment by Dr. Idso outlines 55 ways in which the modern rise in atmospheric carbon dioxide is benefiting earth's biosphere, as reported in the peer-reviewed scientific literature. The numerous rewards reaped in a CO₂-enriched world of the future range from those directly impacting humanity to those impacting nature in a manner that will greatly improve quality of life, and in some cases address worldwide problems. These effects include cardiovascular and respiratory health improvements, as well as better plant growth and higher crop yields to address food shortages.


A renewed notion that carbon dioxide is not an unnatural threat but a crucial component of life could have profound implications for public policy, challenging the green agenda's offensive attack to radically decrease greenhouse gas emissions.

Ocean Acidification

There is an additional facet of the climate change debate that merits further attention for climate skeptics seeking to answer the claims of environmental alarmists. Some focus in the debate over rising atmospheric CO₂ concentrations has been shifting away from the indirect effects on climate toward the direct effects on altering the pH of the world's oceans, a phenomenon known as ocean acidification. To date, many studies have been published examining the concept of ocean acidification and its effects on

marine organisms. The experiments have been conducted under a wide range of conditions and circumstances. Not surprisingly, there is a wide range of results: studies that show a positive response, studies that show a negative response, and studies that show little to no change.

A review of the literature allows for a quantitative evaluation on the effects of ocean acidification on the calcification, metabolism, growth, fertility and survival of marine organisms. When such an analysis is conducted, ocean acidification is largely seen to be a non-problem for the range of pH decline projected over the next century and beyond.

The ALEC 2011 Annual Meeting features a workshop on these two topics, including a presentation by Dr. Idso, Chairman of the Center for the Study of Carbon Dioxide and Global Change. Additionally, the workshop will feature Mr. Roger Helmer, Member of the European Parliament and renowned climate skeptic, who will share his insights on the failure of the green agenda in Europe. The workshop will be Thursday, August 4 at 9:30am. 

Robert Ferguson is the President of the Science and Public Policy Institute. He has considerable policy experience in climate change science, mercury science, energy and mining, forests and resources, clean air and the environment.



ALEC ANNUAL MEETING WORKSHOP
Warming up to Climate Change: The Many
Benefits of Increased Atmospheric CO₂

Thursday
August 4
9:30 am

Gas Boom Counteracts Recession in Pennsylvania

BY KATRINA CURRIE AND ELIZABETH STELLE

In 2009, milk prices plunged. Many dairy farmers survived by taking on additional debt. However, Jim VanBlarcom, like many dairy farmers in rural Pennsylvania, is prospering thanks to natural gas drilling. VanBlarcom has been able to double his dairy herd size with the royalty money earned from leasing his farmland.

The natural gas under VanBlarcom's farm is contained within a geologic formation called Marcellus Shale, the largest unconventional shale formation in the world. The formation, which extends across New York, Pennsylvania, Ohio and West Virginia roughly a mile or more underground, was once thought unreachable. But an innovative combination of two previously existing technologies, horizontal drilling and hydraulic fracturing, changed everything. Now an estimated 489 trillion cubic feet of natural gas—enough to supply all of America's natural gas needs for 20 years—is recoverable.

Marcellus Shale gas exploration is jump-starting rural economies in a state better known for its sluggish growth, heavy tax burdens and wealth of regulations. Pennsylvania's unfriendly business climate—with the second highest corporate income tax rate and 10th highest tax burden in the nation, according to the Tax Foundation, as well as restrictive labor laws—created a population exodus over the past couple of decades. From 2003-2008, Pennsylvania lost a net 38,000 taxpayers and \$2.1 billion in income. Today the economic outlook is much brighter.

Penn State economists estimate Marcellus development has already spurred more than 88,000 new jobs in Pennsylvania, and the pace of hiring continues to accelerate. The unemployment rate in the counties with drilling is below state average.

Bradford County, the epicenter of Pennsylvania's natural gas development boom, has the second lowest unemployment rate in the state at 5.2 percent, and is the highest in job creation.

A wealth of local businesses and contractors are benefitting from the boom as well, with an estimated 32 percent increase¹ in ancillary job openings, from trucking to manufacturing. Common are stories of welding supply companies, hotels, restaurants, and trucking companies expanding their businesses. New spin-off industries are emerging, such as wastewater transportation and treatment, and experts expect more industries to develop specialized niches.

Aside from new jobs, natural gas drilling is bringing increased infrastructure investment. Pennsylvania spends more on transportation than almost any other state, yet consistently has among the worst roads in the country. Last year, natural gas companies put \$200 million into improving local roads, funding far above what drilling communities receive from the state. In fact, Jim VanBlarcom says, "All of them have been rebuilt better than ever, and all it took was a phone call to the gas company..The next day they had trucks in there resurfacing the entire roadway."


While the benefits are staggering, some are wary about the short- and long-term costs of natural gas extraction—especially in a state where environmental scars from the first oil boom and coal mining are still felt.

Fortunately, Pennsylvania has learned from its past, enacting laws that ensure drilling companies, not taxpayers, are held responsible for environmental and infrastructural damages. For example, when EOG Resources had an accident in Clearfield County, the company paid eight times in fines the cost of the investigation and cleanup.

The Department of Environment Protection continues to adapt regulations to address the industry. In the past two years, regulations on well construction, water disposal, and pollution liability have been updated, and permit fees have been raised to ensure that funding for drilling oversight matches the fast pace of development. Drillers paid \$11 million in permitting fees in 2009-10, entirely covering the cost of inspections.

With an unfriendly business climate, Pennsylvania's lack of a severance tax is the one competitive edge it offers over other shale plays.

Even without the tax, local and state government revenue has grown. According to the Pennsylvania Department of Revenue, oil and gas producers paid more than \$1.1 billion² in state taxes since 2006. This includes \$234 million paid this fiscal year. The industry has also paid out an estimated \$7 billion in lease and royalty payments to landowners since 2006. The state is expected to receive \$60 million in royalties from drilling on state-owned lands next year, funds used for state parks and forests. Local governments are receiving increased revenues from hotel taxes and processing fees. For example, in 2010, Bradford County received an estimated \$1 million from the drilling industry through minor revenue streams like recording and copying fees.

Pennsylvania is positioned to become the nation's leader in natural gas production thanks to its large and rich Marcellus Shale deposits. But recent proposals to use the industry as a cash cow to fix the state's budget shortfalls will only result in slowing the economic recovery so desperately needed in Pennsylvania and neighboring rust-belt states. 



Katrina Currie and Elizabeth Stelle are policy analysts for the Commonwealth Foundation, an independent, nonprofit public policy research and educational institute based in Harrisburg at www.commonwealthfoundation.org.

¹http://www.paworkstats.state.pa.us/admin/gsipub/htmlarea/uploads/Marcellus_Shale_Fast_Facts_Viewing.pdf

²http://www.revenue.state.pa.us/portal/server.pt/community/news___reports/11221

Proposed EPA Regulation of the Power Sector: High Costs to Consumers with Little Real Benefit

BY SCOTT SEGAL

Consumers across the United States need access to reliable, affordable, and cleaner power. However, recent history has often shown a preference on EPA's part to develop overreaching rules without credible analysis of the economic impact on, not only the power companies, but the hundreds of millions of Americans who rely on them everyday. On May 3, 2011, EPA published in the *Federal Register* a proposed Maximum Achievable Control Technology (MACT) standard for the electric utility industry, known as the Utility MACT. EPA plans to finalize the MACT rule by November 16, 2011, under a consent decree. In the proposal, arguably the most costly in EPA history, the agency seeks to regulate mercury and non-mercury Hazardous Air Pollutants (HAP) at great expense for no real incremental benefit.

Utility MACT and What the Power Sector Faces

Aside from Utility MACT, EPA has or will promulgate numerous new rules in 2010-12 with compliance deadlines on, before, or near 2015—including rules on interstate transport, ash, cooling towers, interstate transport and other topics. Taken together, these regulations will impact roughly 400,000 megawatts of oil- and coal-fired generation, which is about 40 percent of the current available capacity in the United States, and makes up nearly 50 percent of U.S. total electricity generation.

The industry is concerned about the ability to retrofit environmental controls or build replacement capacity in the three years to comply with the Utility MACT rule (and then other rules). A 2010 report issued by the North American Electric Reliability Corporation found significant threats to electric reliability, particularly in certain regions. All together, estimated ICF International using models like those employed by EPA itself, over 150 gigawatts, half of the U.S. coal-fired fleet, are at risk of being unavailable in 2015 for the needed energy and required reliability due to insufficient time to install controls or replacement generation. These circumstances could lead to shortages and a rapid run-up in prices, creating a reliability and affordability crisis.

High Costs and Unemployment

In a recovering economy, we can hardly afford this real threat to jobs in the United States. Recently, the prestigious National Economic Research Associates (NERA) firm was asked by American

Coalition for Clean Coal Energy to model the combined economic impact of Utility MACT and the interstate air rule. While MACT is responsible for the majority of the impact, the two rules taken together give a more accurate picture. NERA made like assumptions about compliance strategies and found:

- Nationwide net employment losses totaling 1.44 million job-years by 2020.
- \$17.8 billion in annualized compliance costs and a total cost of \$184 billion (present value) for the period 2011-2030.
- 12.1 to 23.5 percent increase in average retail electricity prices in 2016 in regions covering all or portions of 24 states. Regions covering all or portions of 21 states continue to experience double digit electricity price increases through 2025.
- 13 percent reduction in coal-fueled electricity generation and a 10 percent decline in electric sector coal demand in 2016.
- 48,000 MW of additional coal-fueled generating capacity retire prematurely by 2016. These retirements are in addition to the 5,000 MW already projected by EIA to retire.

The tremendous cost of these rules will land squarely on consumers, small businesses, and manufacturers, and vulnerable sectors like health care and educational institutions. Of course, those consumers living at or near the poverty level or on fixed incomes pay a much higher percentage of their annual income on energy, making the impact of the rules very regressive.

Minimal Benefits

Unfortunately, these costs come with virtually no identifiable incremental benefits. In the Utility MACT proposal, EPA found very limited benefits to mercury reductions and has not supplemented the record specifically regarding non-mercury HAPs. While mercury is a neurotoxin, the power sector has achieved substantial reductions in mercury emissions already and is interested in working with EPA on a reasonable proposal. However, this rule achieves little additional mercury advantages. Gradient Corporation examined EPA's own database and found that the proposal would have a "negligible impact on mercury exposures" in most of the U.S. because mercury exposures are dominated by non-U.S. sources. Even EPA admits the rule is one of the most expensive ever—at least \$11 billion—of which the American public can expect as little as a one-time benefit of \$500,000, for a return as small as one dollar of



mercury benefit for every \$22,000 invested.


And rather than identifying any incremental benefit from very costly actual reductions in non-mercury HAPs, the Agency uses reductions in particulate matter or PM as a stand-in for relevant data. The trouble with this approach is that the control of PM has already been addressed by Congress and EPA in specific programs called National Ambient Air Quality Standards designed to focus on PM directly. EPA, as a matter of law, has determined that PM ambient standards already protect human health and the environment with an adequate margin of safety to address susceptible sub-populations. So, the PM exposure the Agency claims to address in support of this rule has already been addressed in other rules on the books and being implemented. This is the same kind of double accounting that corporations are forbidden to do in their own affairs.

Simply put, avoiding PM exposure is the way the Agency can make the extraordinary claim that this very expensive rule is cost-effective. Once those benefits are adjusted to take into account the effect of rules already adopted, the Utility MACT proposal becomes all cost and no benefit.

What to Do?

President Obama embraced the need to closely scrutinize the cost and economic impact of new agency regulations. His January 18 Executive Order laid out the new review process for regulations, instructing the agency to impose the “least burden” while taking into account “the costs of cumulative regulations.”

Considering the multiple and overlapping rules facing the power sector, the President’s Executive Order coupled with legislative and oversight activity in Congress should occasion the EPA to construct a Utility MACT that imposes the “least burden” on society. Where EPA has the capacity for flexibility—such as in the control of non-mercury HAPs, sub-categorization, determination of the MACT floor, and other areas—EPA should do so. Unfortunately, the agency has a long distance to travel from the options suggested by the current proposal.

If the Agency refuses to address the many problems with the current proposal, then Congress should act to ensure sufficient time for compliance with a more reasonable and rationale rule. But in any event, final adoption of the proposed Utility MACT by the end of the year would result in substantial increases in unemployment and electricity costs for our most vulnerable citizens and institutions without achieving appreciable benefits. 

Mr. Scott Segal directs the Electric Reliability Coordinating Council, a group of energy companies that has worked on commonsense environmental policy for over a decade. He also heads the Policy Resolution Group at Bracewell & Giuliani LLP, a national law firm. He can be reached at scott.segal@bglp.com or [202] 828-5845.

Healthy States: A Cautionary Tale

The legislative success of chemical bans provides a much-needed lesson on the need for sound science and tight scrutiny.

BY KENNETH W. CHILTON, PH.D.

Introduction

An axiom in representative government is that the government authority closest to the voters is likely to be most responsive to their needs. This may be true in many instances, but it is also true that there are “economies of scale” and differing roles for the three primary levels of government in the United States—federal, state and local.

For instance, we expect the federal government “to provide for the common defense” and for local government to provide local law enforcement. State government provides an intermediate protective role through the National Guard and state law enforcement agencies, such as the state highway patrol.

Examining a report called “Healthy States: Protecting Families from Toxic Chemicals While Congress Lags Behind” offers a cautionary tale about the dangers of state legislators succumbing to a cleverly crafted campaign to usurp federal authority over toxic chemicals.¹ The rationale and the methods of the “Healthy States” initiative may seem enticing at first glance, but capitulating to the campaign’s logic and plan of action would harm one of the most important forces for a healthier America—a vibrant economy.

Overview of “Healthy States”

The report’s author and its objective

“Healthy States” is a report published in November 2010 by two related coalitions—the Safer Chemicals, Healthy Families coalition and the State Alliance for Federal Reform (SAFER) of Chemical Policy, aka SAFER States. The report’s author, Mike Belliveau, is the senior advisor to the Safer Chemicals, Healthy Families coalition and Co-Founder of SAFER States. He is also the Executive Director of the Environmental Health Strategy Center.

The executive summary of “Healthy States” says that it is the “first-ever analysis of votes on state laws aimed at protecting the public from toxic chemicals.” It finds that 18 states have passed 71 chemical safety laws in the past eight years “by an overwhelming, bipartisan margin.” Mr. Belliveau vows, “States will continue

to adopt their own chemical laws until Congress enacts a meaningful overhaul of the *Toxic Substances Control Act of 1976* (TSCA).²

Thus, the objective of this campaign is clear—to force amendments to TSCA that will tighten restrictions on chemicals used in U.S. commerce. The method to do so is to convince state legislators to pass laws that will create a patchwork of rules. Congress will then be forced to bring some order out of chaos by making the Federal Act more stringent. The report is unabashed in its support for H.R. 5820, the *Toxic Chemicals Safety Act of 2010*. State legislators are primarily pawns in producing the outcome sought by the Healthy States initiative.

Claims and Tried-and-True Messages in the Executive Summary

The report asserts that state-level action on toxic chemicals is the response from legislators and governors “to growing scientific evidence of harm, strong public outcry, and the failure of Congress to fix the broken federal law that allows dangerous and untested chemicals to be used in everyday products and materials.”³ There is little or no “scientific evidence of harm” offered, however. And, of course, “strong public outcry” may more rightly be called “media outcry.” Nor is there any documented support for the assertion that TSCA “allows dangerous and untested chemicals to be used in everyday products and materials.”

The report is quick to evoke the mantra of protecting “children’s health” and to decry “chemical industry lobbyists.” In the two-page executive summary, “children’s health” is mentioned four times and “chemical industry lobbyists” are called out twice.

Moreover, state legislators are portrayed as heartless if they dare to vote against legislation to ban specific chemicals or to pass state-level TSCA bills. In a speech on the floor of the Washington State House, one representative supported passage of the “Children’s Safe Products Act” stating, “Voting against this bill is like voting against brakes on a school bus.”

Substance

Ostensibly, the meat of the report is its analysis of state laws pertaining to toxic chemical legislation over the past eight years. Indeed, it does provide some insights on the quickening pace of these laws in the last four years (56 passed), as compared to the 2003-2006 period (15). And it identifies the level of activity by

¹Belliveau, Mike. Healthy States: Protecting Families from Toxic Chemicals While Congress Lags Behind. Rep. Safer Chemicals, Healthy Families/SAFER States, 2010. Web. <<http://www.saferchemicals.org/PDF/reports/HealthyStates.pdf>>.

²Belliveau, 6

³Belliveau, 6

each of the 18 states that have passed toxic chemical laws in the past eight years. California is the leader of the pack with 12 laws, including a comprehensive chemical policy law. Only Maine, Minnesota and Washington have joined California in passing comprehensive laws.

Most revealing, perhaps, is the report's underlying message that this type of legislation is strongly bipartisan. The text summarizes information contained in tables, stating: *Tough state laws on toxic chemicals received broad bipartisan support. Of the votes cast, about 99 percent of Democrats and 73 percent of Republicans voted for stronger protection of children's health and the environment from dangerous chemicals.*⁴

Of course, these data only cover roll call votes of legislation that passed.

Anatomy of a Chemo-phobia Campaign

What is the “strategy” used by the Environmental Health Strategy Center (or Safer Chemicals, Healthy Families Coalition and SAFER States Coalition, if you prefer)? The first element is fear. There is an appeal to “growing scientific evidence of harm” especially to “children.” This alleged “new” information is usually old news repackaged by interest groups—environmental groups and sometimes even medical “associations.” It is rarely new and rarely based on actual medical research.

Media outlets are only too happy to promote the scare campaign. Bad news still sells. Few established media sources actually take time to look for alternative credible sources to comment on the “breaking” news. Hence, even scares that have been largely refuted, such as dangers from phthalates in children's products, enjoy a steady drumbeat in the mainstream media and the pseudo-media that populate the Internet.

The major wrinkle in the particular strategy used by the Safer Chemicals, Healthy Families and SAFER States joint coalition is the emphasis on state legislators. Their pitch to legislators is twofold: 1) your constituents are demanding protection from chemicals and 2) the federal government is not doing its duty.

The coalition even commissioned a survey by The Mellman Group that found (among other things) that voters view environmental groups much more favorably than they do chemical companies. The target of the survey was 825 voters in 75 swing congressional districts. The survey purports to find that tougher chemical regulations enjoy overwhelming bipartisan support. In short, state legislators help their chances of election if they get on the “right side” of this issue.

As evidence that Congress must amend TSCA, the “Healthy States” report says that the Act grandfathered in 62,000 chemicals in commerce in 1976. Only 200, or so, chemicals have since been tested. None of these have been removed from the marketplace. Only five chemicals have had a few of their uses restricted. Does

this prove that TSCA is failing? On the contrary, the fact that costly extensive testing of 200 chemicals most likely to produce harmful health effects found only one in forty needing additional control suggests that fear of most chemicals is unwarranted.


“Healthy States” is transparent in the most cynical element of its chemo-phobia campaign. The joint coalition acknowledges that it is pressuring state legislators to pass a patchwork of laws to stymie interstate commerce for products containing “toxic” chemicals. Ultimately, the objective is to have the chemical companies themselves call on Congress to amend TSCA to meet the activists' demands.

What is the Message of this Cautionary Tale?

Why should state legislators resist this attempt to be manipulated by environmental activists?

First of all, should state legislators be unconcerned about interfering with interstate commerce? The Interstate Commerce Clause (Article 1, Section 8) of the U.S. Constitution reserves the right of the federal government “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Clearly, products containing the chemicals being restricted by the 18 states highlighted in “Healthy States” are currently in interstate commerce, and the federal government has not seen fit to apply these controls.

Ultimately, consumers are the ones disadvantaged by this interference with interstate commerce. Voters can be taken-in by fear mongering, but should responsible state legislators be party to such cynical manipulation of their constituents?

Instead of appreciating the different roles of federal, state and local governments in serving Americans, environmental organizations like the Environmental Health Strategy Center believe that their cause is so just that state officials should usurp the role of the federal government. Interstate commerce has not been delegated to the states because all the people of the nation benefit from the most unrestricted flow of products and services possible. The moral of this cautionary tale is that integrity comes far ahead of expediency, regardless of the enticements of those who believe that the ends justify the means. 



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⁴Belliveau, 6



Bring the Federal Debt Debate to the States

BY SEN. CURTIS OLAFSON [ND] AND NICK DRANIAS

As the national debt rockets to \$15 trillion—more than \$46,000 for every citizen—the American people know the current course is unsustainable. Regardless of party, age, race, or region, they are demanding that Congress cut up its credit card. According to a MacArthur Foundation poll, 72 percent of people who voted in the mid-term election said it was “very important” that the new Congress take steps to reduce the national debt. And a more recent Reuters/Ipsos poll shows that 71 percent of Americans oppose increasing the federal debt limit.

Simply put, on this issue Americans are united. They want the federal government to reduce the national debt *now*.

But the effort to hold the line on the national debt has been trusted to the wrong people. Keeping the debate over the excessive national debt in Washington, D.C., is like having an Alcoholics Anonymous meeting at the local bar during happy hour. To really rein in the federal debt binge, the debate needs to be shifted out of Washington and closer to the American people. Only the *National Debt Relief Amendment*, which is already ALEC model legislation,

offers that possibility.

The *National Debt Relief Amendment* is a simple yet powerful 18-word amendment, written in plain language that anyone can understand. It reads: “An increase in the federal debt requires approval from a majority of the legislatures of the separate States.” It would require Congress to get approval from the legislative bodies that are closest to the American people before it increases the national debt.

Unlike other fiscal reforms that would rely on the courts to enforce them, the *National Debt Relief Amendment* is uniquely powerful in that it would enforce itself. This is because the financial markets will reject or significantly discount the value of any new federal bonds issued without support from a majority of state legislatures. This would give the federal government a strong financial incentive to seek out prior state legislative approval of any new debt without anyone having to resort to a lawsuit.

Indeed, instead of holding the nation hostage to a financial crisis in August, those who might want to increase the national debt would have to start making their case to the American people in 50 state legislatures starting in January or sooner. This would encourage the federal government to prepare accurate and timely budgets that anticipate truly necessary debt increases well in advance.

Moreover, the amendment remains practical because it is flexible. It requires only simple-majority approval of new federal debt, ensuring that the issuance of new debt will be politically possible in times of legitimate need.

The *National Debt Relief Amendment* is a common-sense solution that would use state legislatures to check and balance the spend-thrifts in Congress while making the debate over the national debt more transparent. With deliberation throughout the country conducted more openly and closely to the American people, this proposed amendment would greatly increase the chances of Congress developing better fiscal policies with a wider consensus.

We can’t wait for the federal government to reform itself. The source of the problem is not any particular party or president. It is the centralization of power in Washington, D.C. That’s why reform must come from outside of Washington.

States can lead the charge to limit the federal debt. Article V of the Constitution authorizes state legislatures to compel Congress to call a convention for proposing amendments to the U.S. Constitution. This gives states essentially the same power as Congress to propose constitutional amendments. Thirty-four state legislatures trigger the convention call and can charge such an “amendments convention” with the specific purpose of proposing the *National Debt Relief Amendment* for ratification.

Opponents of the state-initiated Article V amendment process have raised questions about the process, saying the idea of allowing states to use their power is too unknown and too scary. They run the gamut from, “Who will select the delegates to an amendments convention?” to “What will the rules be at an amendments convention?” The Goldwater Institute’s research, authored by retired law professor Robert Natelson, has already answered these questions¹. At every “convention of the states” in America’s history—and there have been at least 12—state law determined how delegates were chosen, the convention followed parliamentary

“We can’t wait for the federal government to reform itself. The source of the problem is not any particular party or president. ***It is the centralization of power in Washington, D.C. That’s why reform must come from outside of Washington.***”

procedure (including majority rule), and majority rule was based on each state getting one vote.

But even if an amendments convention adopted the worst imaginable procedures and was filled with the worst imaginable politicians, people who fear a runaway convention need look no farther than Congress, the Presidency, and the federal judiciary for their bogeymen. Treaties, ordinary laws, executive orders, judicial lawmaking, and agency rulemaking all become law without ratification from 38 states. Politics-as-usual in Washington, D.C., has already subverted and will continue to subvert our Constitution *far more easily* than could any convention of the states under Article V. No one should prefer the political status quo to the Article V amendments convention process.


Those who would engage in fear-mongering about the Article V process cannot justify their scare tactics when one recognizes the ultimate protection that our Founding Fathers wisely crafted to prevent the adoption of an amendment that would be bad for our country. Unless and until 38 states ratify a proposed amendment, nothing changes and the Constitution is untouched. Just 13 states can block any bad amendment proposal. Those who profess fear over the process should be required to produce a list of 38 states they believe would adopt an extremist, radical, or dangerous amendment.

Using the power given to the states under Article V can only help to shift the balance of power back to a more equal footing. It gives the states and the people real leverage, not worthless promises. That leverage should be used before it is too late.

The inescapable fact is that the national debt is out of control. Each child in America today is born with a mounting federal mortgage they did not choose to assume and cannot afford. We have a moral obligation to address this looming crisis before it destroys our way of life and our children’s future. And that means bypassing Washington, D.C., with a real reform like the National Debt Relief Amendment.

Already, North Dakota and Louisiana HAVE passed such a resolution calling for an “Article V convention,” and the same

resolution has been introduced in eight other states. In the Internet age, the *National Debt Relief Amendment* could easily go viral among state legislatures with just a few more successes.

As more state legislatures support the *National Debt Relief Amendment*, Congress will no doubt feel mounting political pressure to jump in front of the parade and propose the amendment itself—just as it did during the early part of the 20th century when it proposed the 17th, 18th and 21st amendments in response to mounting pressure from state legislatures applying for Article V conventions. The *National Debt Relief Amendment* has a real chance of helping solve our debt crisis even if Congress initially refuses to lead. 



Sen. Curtis Olafson has served three sessions in the North Dakota Senate representing the 10th District and serves as vice chairman of the Senate Judiciary Committee and serves on the Political Subdivisions Committee.



Nick Dranias is Director of Constitutional Studies at the Goldwater Institute, an independent government watchdog in Phoenix, Ariz. To read more about Article V conventions to propose amendments, visit www.goldwaterinstitute.org.

¹Goldwater Institute research on Article V can be found at <http://goldwaterinstitute.org/articlev>.

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Magnifying Lens — Public Safety Success in the States

BY COURTNEY O'BRIEN, ALEC

Tools such as glasses and magnifying lenses help individuals see the details that the human eye alone would typically miss. When it comes to policy, it is relatively simple to discuss the pros and cons of a particular reform, but difficult to champion that reform without a clear picture of what the effects will be on the state and what it will take to have it realized.

The February issue of *Inside ALEC* featured an article outlining several policies adopted by the Public Safety and Elections Task Force that promise more public safety at less cost to the state and taxpayer. During the 2011 legislative sessions, both Arkansas and Kentucky enacted comprehensive legislation that included each of the five model provisions, and stand as examples for legislators of what that reform really looks like.

Like most states, both Arkansas and Kentucky realized they were receiving a poor return on their public safety investment. In Arkansas, for example, the prison population doubled over the last 20 years—driving the state's corrections costs up more than 800 percent. Yet recidivism and crime rates for the state remained high. If the state failed to act, the prison population was projected to grow by 43 percent and cost Arkansas taxpayers an additional \$1.1 billion over the next decade.¹ Similarly, Kentucky had one of the fastest growing prison populations in the nation over the decade ending in 2009, rising by 45 percent. While spending on corrections had risen more than 200 percent over the past two decades, recidivism rates remained stubbornly high.

With assistance from the Pew Center on the States, each state developed a bipartisan, inter-branch working group to determine what was driving the prison population and costs. Over the course of a year, these groups forged consensus on a package of recommendations, which turned

into legislation to protect public safety, hold offenders accountable and control corrections spending.

The resulting legislation passed their legislative bodies with overwhelming bipartisan support, before being signed into law in March 2011. In Arkansas, the Public Safety Improvement Act of 2011 is projected to save \$875 million in averted prison construction and operation costs through 2020. It will also invest more than \$9 million of savings in community-based supervision and services as well as other practices proven to reduce recidivism.²

In Kentucky, the *Public Safety and Offender Accountability Act* of 2011 is projected to bring savings of \$422 million over 10 years.³ ALEC member, Sen. Tom Jensen, co-chaired the Kentucky Task Force and was one of the sponsors of the legislation. “We realized we can’t expect to treat crime the same way we always have and think we will get different results. Being tough on crime doesn’t always mean more prison time,” said Jensen. “The policy options we identified are smart on crime and will reduce recidivism, hold offenders accountable and control correction costs, all the while saving our most important correction dollars for public safety.”

Both the Arkansas and Kentucky reforms contained principles of ALEC's policies on corrections and reentry:

Recidivism Reduction Act

Implements research-backed programs and procedures including utilization of a risk-needs assessment tool to set the conditions of supervision and to assign programming. Requires a percentage of state funds for offender programming be spent on programs that are evidence-based.

Swift and Certain Sanctions Act

Institutional and community-based sanctions that provide swift, certain and proportionate responses to violations of probation and parole and the authority to community

corrections agencies to assign—and reassign—offenders to those sanctions.

Earned Compliance Credit Act

Reduces the time low-risk, non-violent offenders are on active supervision for each month they are in full compliance with their conditions of supervision. Focuses staff, services and sanctions on higher risk offenders and help motivate offenders to successfully reenter society.


Community Corrections Performance Incentive Act

Realigns the state-local fiscal relationships in ways that reward performance by reinvesting a percentage of the imprisonment costs averted when localities reduce crime, recidivism, and revocations.

Community Corrections Performance Measurement Act

Systematic performance measurement for community corrections agencies which provides regular, objective and quantitative feedback on how well agencies are achieving their goals. Without measurement, policymakers cannot determine if programs are accomplishing their goals.

Arkansas and Kentucky are good examples because of their commitment to coalition-building. Not only did they take a data-driven approach to reform, but they also built bipartisan, inter-branch coalitions. The entire political spectrum worked together, and policymakers partnered with prosecutors, sheriffs, judges, state chambers of commerce, and parole and probation agencies to achieve results.

Any state looking to introduce similar reforms should first crunch the numbers to determine what their correction system costs, what the projected cost will be in coming years, and what return the state is getting on this investment. As Arkansas and Kentucky prove, policymakers can advance solutions that improve public safety while saving taxpayer dollars. 

Courtney O'Brien is the ALEC Director of the Commerce, Insurance, and Economic Development & the Public Safety and Elections Task Forces.

¹The Consensus Report of the Arkansas Working Group on Sentencing and Corrections, January 2011.

²Floor testimony of Senator Tom Jensen, February 28, 2011

³Ibid



BY MARK ELLIOT

The creation of the Internet is perhaps the most significant contribution to the global marketplace—it facilitates the transfer of ideas across boundaries and communities, provides a platform to promote free market principles, and allows for the free flow of information.

As the global economy has grown, the Internet has become the preeminent medium for the present and future of American companies. The Internet has also allowed businesses—small and large—to grow in ways that would have been unfathomable before. Two billion global citizens are connected to the Internet and that number is increasing exponentially each year. Companies of all shapes, sizes, and geographic locations have come to rely on the World Wide Web to increase sales, expand brand presence, reach new markets, and grow their businesses.

Recently, the McKinsey Global Institute released a report, *Internet Matters: The Net's Sweeping Impact on Growth, Jobs, and Prosperity*, which addresses the magnitude and impact of the Internet on the world economy.¹ The McKinsey report finds that, in mature countries, the Internet accounted for 10 percent of GDP growth over the past 15 years, and over the past five years, the Internet's contribution to GDP growth doubled to 21 percent.

Most interestingly, the report found that the lion's share of online economic growth derives from established, traditional industries—more than 75 percent of the value added created by the Internet is from businesses that don't define themselves as pure online players. These businesses span from coast to coast, corner to

Theft is Not a Free-Market Principle

corner, and mountains to plains, driving the future growth of the American economy. McKinsey's research surveyed more than 4,800 small and medium enterprises (SMEs) and concluded that those with a strong web presence grew more than twice as quickly as those with minimal or no presence across all sectors. Moreover, SMEs that took advantage of the cyber marketplace reported shares of total revenues earned from exports was more than twice as large as those reported by others. Most importantly, these firms also created more than twice the number of jobs as others.


As e-commerce flourishes, McKinsey notes that intellectual property (IP) protections must be addressed in the context of the Internet in order to build an appropriate legal framework that is attractive for businesses. Moreover, the report contends that positive promotion of IP rights in the digital marketplace would “unleash new markets and encourage greater creativity.”

The reality is that the Internet is essential to how business is conducted in the present and future. But just as technological progress has enabled businesses to expand, the flip side has been a growing market for counterfeit goods and stolen content that comes with enormous negative consequence to businesses and consumers. These wayward online locations—namely rogue websites—are operated in a lawless manner, skirting domestic and international laws, and infringing on the intellectual property rights of legitimate businesses.

Rogue websites, operating much like criminals on the black market, steal intellectual property and the American jobs that depend on it while hindering our ability to invent, innovate, and create new products. We cannot expect our companies to grow organically and outwardly when their competitors are functioning illicitly in the

online marketplace, reaping the profits from others' investments. The presence of rogue websites egregiously stealing IP provides a great hindrance to our economic futures. While many states are still digging out of troubling economic times, now more than ever we need to protect America's key assets for economic growth: innovation and creativity. In this regard, it is critical for state lawmakers to protect IP rights on the Internet and ensure the vitality of our state and national economies.

Fortunately, Congress has recognized this problem. This past May, Senator Patrick Leahy introduced legislation to combat rogue websites. The legislation, known as PROTECT IP Act, is co-sponsored by a bipartisan group of 24 other Senators and was unanimously approved by the Senate Judiciary Committee. The bill provides enhanced tools to cut off foreign rogue websites' access to the American marketplace. The bill has also received broad support from labor organizations and businesses across many sectors of our economy.

We may not know what America's next great company will be, but odds are this company will rely heavily on the Internet in some fashion for its successes. The Internet has transformed how Americans do business, how politicians engage with their constituents, and how advocacy campaigns gain notoriety. The ability for state legislators to foster an environment that encourages a safe, level playing field for companies doing business over the Internet is a necessity for America's future economic growth. 



Mark Elliot is the Executive Vice President of the U.S. Chamber of Commerce's Global Intellectual Property Center and a Member of

ALEC's International Relations Task Force.

¹McKinsey & Company, “Internet Matters: The Net's Sweeping Impact on Growth, Jobs, and Prosperity”, McKinsey Global Institute, May 2011. Available here: http://www.mckinsey.com/mgi/publications/internet_matters/pdfs/MGI_internet_matters_exec_summary.pdf

Going Down the Road to Job Recovery with Tort Reform at the Wheel

BY AMY KJOSE

"Since the recovery began, 38 percent of all the jobs created in America have been created in the state of Texas...the most important thing that has happened to us is tort reform."

Dallas Federal Reserve President and CEO Dennis Fischer got it right. His recent touting of Texas' success with tort reform made the important connection between legal reform and economic competitiveness that state legislators around the country have realized. In 2011, over 150 legal reform bills in line with ALEC policy have been introduced in 38 states. Thirty nine relevant legal reforms in 16 states have been signed into law, with more still to be signed by governors.

Wisconsin started the 2011 tort reform season with an omnibus bill that passed within a few weeks of Gov. Scott Walker calling a special session to focus on job creation. The tort reform bill was Special Session Senate Bill 1, a telling indication of tort reform's importance in creating a healthy environment for businesses.

Tennessee Governor Bill Haslam signed a comprehensive bill into law in June after legislators looking for Texas-sized tort reform benefits passed a law crafted to deal with Tennessee's most pressing legal issues. North Carolina and South Carolina legislators felt similar motivation, and both states passed significant lawsuit reforms in June.

Alabama passed a slew of lawsuit reform legislation to boost competitiveness and protect local businesses from the drain of excessive litigation.

And legislators in Oklahoma passed five different legal reform bills with policy shared by ALEC's Civil Justice Task Force, bringing Oklahoma in line with tort reform champion states like Texas and Ohio. Even Texas passed a third page of tort reform proposals to cement their competitiveness as the forefront state for sound civil justice laws.

Legislators in these states have tailored reforms to fit the needs and requirements

of their states' statutes and case law. Take a look at ALEC's *Tort Reform Boot Camp Guide* at www.ALEC.org/TortReformBootCamp for ideas for your state.

Some of the most popular legislation has been what you might call non-traditional tort reform—legislation aimed at tweaking and improving particular areas of the law rather than at merely capping recoverable damages. ALEC's *Private Attorney Retention Sunshine Act (PARSA)* was introduced in 13 states in 2011 alone. Ten states now have these laws on the books, which hold high approval ratings among constituents and have vast ability to improve a state's legal climate.

PARSA inserts transparency into the working relationships between state attorneys general and private attorneys hired on contingency fee to bring litigation on behalf of the state. This alternative tort reform protects businesses from victimization by zealous attorneys who will get paid only with victory regardless of whether justice is served. A recent Pacific Research Institute study that measured the success of individual tort reform policies in cutting insurance expenses and tort costs found that states enacting this type of reform saw an average 12 percent reduction in aggregate tort losses.


One of ALEC's newest legal reform bills—the *Trespasser Responsibility Act*—is having an impressive first season with seven introductions and five enactments. It's a common-sense reform preempting a threatening change in the law. The American Law Institute is promoting an upending of liability rules dealing with trespassers, encouraging property owner liability for injuries to trespassers while on their property. The absurdity of this change and the need to avoid its adoption has led state legislatures around the country to codify fair trespasser laws.

Legislatures have also been moderating judgment interest laws. Many states have set interest rates for accumulation on lawsuit awards that are significantly higher than the going interest rates. ALEC's

common-sense reform pegs the interest rate on damages to the Federal Reserve's interest rate, creating a long-term fix so that plaintiffs are neither over- nor under-compensated by out-of-touch rates. Though it may not seem like a silver-bullet reform, it is in fact a simple improvement that can make a big difference in reigning in excessive damage payments.

Arizona and Tennessee reformed their appeal bond laws, which set requirements about how much money must be posted for a defendant to appeal a verdict. They join many other states that have been successful at reforming antiquated rules to protect defendants from nearly—or actually—having to go bankrupt just to appeal a verdict.

Oklahoma abolished the legal doctrine of joint and several liability, which holds defendants that are only minimally negligent in a lawsuit responsible for up to the entire sum of the damages. ALEC policy creates rules that hold defendants responsible for paying only their fair share. Pennsylvania Gov. Tom Corbett recently signed a bill into law that goes a long way in the right direction toward creating fair liability apportionment laws.

From the Pacific Highway to Interstate 95, state legislators are embracing tort reforms as a means to economic stability. With stagnant state economies looking for economic boosts, now is particularly the time for tort reform. ALEC expects 2012 will be another year for reforming economically draining state legal systems. If you are interested in policies for your state, don't hesitate to reach out to ALEC's Civil Justice Task Force. 

Amy Kjose is director of ALEC's Civil Justice Task Force and educates lawmakers, drives model legislation, conducts research, builds coalition support, and heightens media awareness in support of state civil justice reform. Amy holds a B.S. in international studies from the Johns Hopkins University.

Rich States, Poor States — 4th Edition

How does your state rank?

BY JONATHAN WILLIAMS


Why is it that some states prosper while others struggle? Why do some suffer from chronic high unemployment and endless budget shortfalls while others see new jobs created each month and enjoy budget surpluses at the end of the year?

In our fourth edition of *Rich States, Poor States*, Dr. Arthur B. Laffer, Stephen Moore, and I investigate the 50 states to find what policies drive economic growth, create jobs, and improve living standards. Through our in-depth analysis, we shed light on the path states can take to move from fiscal crisis to economic prosperity.

Incorporating data from the 2010 census, the newest edition of *Rich States, Poor States* explains why some states saw dramatic increases in population and income per capita over the past decade, while others saw only nominal growth. Weaving together statistical and anecdotal evidence, we make a compelling case that economic policy is what makes the difference, as taxpayers, businesses, and jobs steadily migrate to states with lower taxes and more competitive business climates. Generally, states that spend less, especially on income-transfer programs, and states that tax less, particularly on productive activities, such as working or investing, have experienced higher growth rates than states with higher taxes and bloated spending.

More than just an engaging economic study, *Rich States, Poor States* offers legislators a roadmap to revitalizing their state economy based on free-market fiscal policy reform. Whether it's confronting dramatically underfunded state pension systems, tackling budget deficits without raising taxes, or making a state a magnet for new businesses and jobs, we explain how lawmakers can reform their budgets to avert disaster and set their fiscal house in order.

Further, the fourth edition of *Rich States, Poor States* contains the much-anticipated 2011 ALEC-Laffer State Economic Competitiveness Index. Using extensive data gathered from all 50 states, this index ranks each state in terms of both economic performance over the past decade and projected economic outlook going forward, based on over a dozen relevant policy variables. I encourage lawmakers to see how their states' economic policies compare to the rest of the nation.

Rich States, Poor States is an indispensable resource for legislators tasked with guiding their states through a turbulent economy. Armed with the reliable facts and detailed analysis we've put together, I hope lawmakers in all states are able to create an environment where taxpayers can flourish through real economic growth. 

"The data and analysis from ALEC on state economic conditions is a powerful resource for policymakers who care about reducing spending so they can begin reducing taxes. It's both a report card and a score card. Frankly, Ohio's not doing as well as it needs to do. The information that ALEC provides helps us understand our competitive position and helps spur us to do better."

-Ohio Governor John Kasich

"One major lesson from my years in corporate America is that where you do business really makes a difference. The best state governments realize that their citizens are making those calculations all the time. Rich States, Poor States is a great tool for those lawmakers intent upon increasing state economic competitiveness and prosperity."

-Florida Governor Rick Scott

"The Great Recession has taken a correspondingly great toll on state budgets. Yet, states that have put in place the strongest pro-growth economic policies have been able to weather the storm much better than states with the highest taxes, highest government spending, and most burdensome regulation. Year after year Rich States, Poor States puts forth compelling new anecdotes, data and theories to back up the commonsense economic policies Tennessee continues to count on for long-term economic growth."

-Tennessee Governor Bill Haslam

Economic Outlook Rankings: The Best and Worst of 2011

Source: *Rich States, Poor States*

Utah	1	Pennsylvania	41
South Dakota	2	Rhode Island	42
Virginia	3	Oregon	43
Wyoming	4	Illinois	44
Idaho	5	New Jersey	45
Colorado	6	Hawaii	46
North Dakota	7	California	47
Tennessee	8	Maine	48
Missouri	9	Vermont	49
Florida	10	New York	50



Jonathan Williams is the Tax and Fiscal Policy Task Force Director and also serves as the Director of the Center for Competitive State Fiscal Policy.

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For more information, contact **Jonathan Williams**,
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ALEC Announces Center for Competitive State Fiscal Reform

Center to offer budget and tax reform solutions for state lawmakers

BY RAEGAN WEBER, ALEC SENIOR
DIRECTOR FOR PUBLIC AFFAIRS

The American Legislative Exchange Council (ALEC) announced the launch of its Center for Competitive State Fiscal Policy. The Center will provide state lawmakers with the tools and research they need to improve their state's economic outlook and stimulate real job creation. It will offer state lawmakers and policy experts much needed, reliable fiscal research to navigate through these unstable economic times.

"The Center for Competitive State Fiscal Policy will help state lawmakers drive economic growth, create jobs, and improve the standard of living for their citizens through sound fiscal policy solutions," said Jonathan Williams, who will serve as director of the Center for Competitive State Fiscal Policy as well as continue his role as director of ALEC's Tax and Fiscal Policy Task Force. "Economic competitiveness is the key to revitalizing growth and prosperity in the states."

"While many states are facing overwhelming economic challenges due to poor fiscal management and a decade's worth of overspending, ALEC has been a national leader in providing critical budget reform solutions," said renowned economist Dr. Arthur Laffer. "The Center for Competitive


State Fiscal Policy is just the vital resource that advocates of free-market state fiscal policy need today."

States now find themselves at a crossroads as they confront difficult decisions that could fundamentally alter their economic competitiveness for years to come. Those tasked in the states with overhauling state budgets and fiscal policies need innovative budgeting strategies to address today's economic challenges—without resorting to economically-damaging tax increases.

As ALEC's *Rich States, Poor States* publication so aptly points out, tax increases come at a very high cost: the erosion of state economic competitiveness. Many policy makers and pundits continue the flawed argument that people and businesses do not change their behavior in response to government policy. The 2010 U.S. Census data tracks population trends among the 50 states and provides powerful confirmation of the negative impact that bad state economic policies have on the vitality of states. It confirms an unmistakable migration pattern over the past decade: the higher the taxes and the tighter the government chokehold on a state economy, the more likely people are to leave the state—or for those outside the state, to stay away. For the states that have continued to neglect competitiveness over this decade,

the 2010 census results show that it is time for them to institute new budget and fiscal reform strategies.

The principles outlined and discussed in ALEC's *Rich States, Poor States* and the *State Budget Reform Toolkit* are just the beginning of the resources that will be provided to state legislators through the Center for Competitive State Fiscal Policy. Additionally, the Center will function as a unique free-market voice with the capacity to address the complex needs of state legislators and provide valuable budget information from all 50 states.

To fulfill its goal of restoring economic competitiveness in the states, ALEC's Center for Competitive State Fiscal Policy will provide original research, expert testimony, and valued advice for our nation's lawmakers at the precise moment they need it. In this partnership, legislators will have the support they need to confidently address the fiscal challenges facing their states. 

Jonathan Williams is the Tax and Fiscal Policy Task Force Director and also serves as the Director of the Center for Competitive State Fiscal Policy.

Arthur B. Laffer is the founder and chairman of Laffer Associates, an economic research and consulting firm.

THE MISSION:

To provide America's state legislators with free-market tax and fiscal policy solutions that will protect taxpayers, promote fiscal responsibility, and create lasting economic growth.

Aerotropolis-Style Development: Good Intentions, Hijacked

BY CHRISTINE HARBIN AND AUDREY SPALDING

Many cities are pursuing aerotropolis-style development in the hope that global air trade hub can help a city can grow its economy. The concept strongly supports increasing international trade and is one of the best ways to improve economic welfare. With aerotropolis-style development, policymakers attempt to grow a city around its airport. They intend to drive growth in aviation and surrounding industries by making large investments in the airport.

Unfortunately, as with many large government programs, the aerotropolis idea is one that can be hijacked by the politically powerful in order to gain access to a great deal of taxpayer money, just as it happened during the 2011 Legislative Session in St. Louis. Although the idea of increasing international trade at the St. Louis airport had been in the works for years, a prominent developer's attorney, who was also involved in the talks with China, proposed subsidies during the last few weeks of session. St. Louis developers and politicians pushed hard for creating \$360 million in state credits under the guise of increasing international trade. Those tax incentives would have little to do with achieving the aerotropolis dream.

Of the \$360 million, \$300 million would go to subsidizing the construction of warehouses, while the remaining \$60 million would go to encouraging international freight forwarders to send flights to St. Louis.

While the \$60 million would at least go toward getting planes to St. Louis, the \$300 million in warehouse subsidies was troublesome. As warehouse subsidy proponents excitedly discussed the 27 million square feet of new warehouse space that could be constructed with the \$300 million, they neglected to mention that more than 18 million square feet in developed, vacant warehouse space near the airport was already available.

"If someone's looking for space, we have space available," said David Randolph, vice president of CBRE, an area real estate brokerage firm that managed the sale and lease of many of those vacant warehouses. Randolph said that the subsidies for new warehouses would be unfair to individuals who had already built warehouses in the area.

The Midwest China Hub Commission (MCHC), the same Missouri organization promoting the creation of an aerotropolis in St. Louis, noted in its internal review of the Missouri tax credit legislation that the state money slated for warehouse construction could end up going to activities unrelated to air transportation.


The MCHC worried that aerotropolis tax credit legislation defined "cargo activity" broadly. From the analysis: "The definition...specifically includes facilities related to truck, rail and water transportation; this may be appropriate, but may incentivize

facilities that have only a limited relationship to the Air Cargo facility..."

Furthermore, the MCHC noted that the areas most likely to be awarded the warehouse tax credits had already received nearly \$100 million in development tax incentives, and had the ability to draw upon nearly \$200 million more. Why was there a push for the \$300 million in tax credits, given the incredible amount of tax incentives already available to area developers? At some point, the state must stop subsidizing failure; otherwise, it would run out of money.

At no point had the Chinese government or Chinese cargo companies stated publicly that the hundreds of millions in subsidies were crucial to sending more flights to St. Louis. The proposal included no financial safeguards. If the plan failed, then taxpayers would be left on the hook.

Increased trade is important for any economy, and the United States should not wall itself off from other countries. Air cargo is certainly one way to expand trade throughout the world. But unfortunately, the best ideas can be negated in order to provide benefits for the politically powerful.

If aerotropolis-style development is the right move for a city, then private investment and development will blossom. The aerotropolis idea should not be used as a back door to push through large-scale subsidies for the select few. Hopefully other cities can avoid the political posturing and favor-trading that St. Louis recently mired in. 



Christine Harbin recently joined ALEC as the Research Manager at the Center for Competitive State Fiscal Policy. She promotes free-market solutions for state public policy.



Audrey Spalding is a Policy Analyst at the Show-Me Institute, a Missouri-based think tank. She focuses on corporate welfare and education policy.

Government Broadband Buildout Needs More Oversight

BY JOHN STEPHENSON

Federal and Local governments are spending billions of taxpayer dollars on government-owned broadband networks to provide Americans with greater Internet access. As they build these networks, is anyone asking whether taxpayers are getting their money's worth?

The 2009 American Recovery and Reinvestment Act – also known as The Federal Stimulus—provided a total \$7.2 billion for broadband and wireless Internet programs. However, a recently released study commissioned by the National Cable & Telecommunications Association found that some funds thought to be providing broadband in rural, unserved areas has actually been used to support duplicative broadband networks.

The study, which focused on three multimillion-dollar Broadband Initiatives Program (BIP) awards in Kansas, Minnesota, and Montana, showed that more than 85 percent of households were already served by existing broadband providers, and in one project area, more than 98 percent of households were already served by at least one provider. Thus, rather than providing broadband Internet access to unserved areas—the goal of the Obama Administration's National Broadband Plan—millions in tax dollars have been used to help the government compete against the private sector.

Building duplicative networks not only wastes taxpayer money, it also increases the overall costs for taxpayers substantially. According to the Federal Communications Commission, the cost of extending broadband to every unserved U.S. household is about \$23.5 billion, so long as duplicative service is not funded. But funding duplicative service—as has happened with the BIP awards—actually increases the cost of a nationwide broadband buildout by \$63.7 billion to \$87.2 billion, according to the NCTA study.

Unfortunately, the issues raised by this study have not been addressed yet and it does not appear as though taxpayers will see action anytime soon. Last month, the Rural Utilities Service (RUS) adopted interim final rules that will allow the agency to continue subsidizing duplicative broadband networks even in places where the majority of households currently have access to broadband service.

Sadly, wasting money on broadband is not an activity reserved exclusively to the federal government. Across the country, local governments are building or buying second and third tier broadband networks, many in direct competition with the private sector.

Residents of the towns of Davidson and Mooresville, N.C., have been complaining about the local government's purchase (through bankruptcy) of the Aldelphia cable system. Since the purchase, the towns have committed \$92 million in bonds and lost \$6.1 million on operations. Mac Herring, a Mooresville commissioner who voted for the purchase, told a local newspaper that he now regrets


his vote because “there were financial details that I did not know all the ins and outs of.”

Despite the costs illustrated by the experiences of these North Carolina towns and the BIP awards, municipalities across the country continue to build municipal broadband networks. But is it worth it? The fact that millions are being wasted to duplicate private sector efforts and directly compete against the private sector, in a time of tight budgets, suggests otherwise. Before we commit more money to municipal broadband networks, we need to have in place strong oversight, transparency, and rules for fair play.

Unlike the federal government, some state governments, including North Carolina, are finally attempting to address the issues raised by these municipal broadband systems. On May 21, a bill passed by the North Carolina General Assembly (H129) became law. The bill requires municipal broadband networks to follow the same rules and regulations as private sector networks, such as financial reporting, setting prices at or above costs, and sharing rights of way.

Contrary to hyperbole from the media and on the Internet, this bill does not impose an outright ban on municipalities from building or owning broadband networks. Instead, what the bill does is prevent municipalities from abusing their power to unfairly compete against the private sector in the provision of broadband Internet service.

Placing reasonable restrictions on municipal broadband is not new. In fact, 18 states besides North Carolina have various restrictions on municipal broadband already in place. These restrictions embody principles for oversight and fiscal management that the American Legislative Exchange Council has incorporated into model legislation.

The local and state government experience offers instructive lessons for the federal government as Congress and the Obama Administration develop their broadband policies. Rather than continue to spend billions more on duplicative broadband projects, we need better oversight of the money that is being spent. While promoting broadband access in unserved areas is a worthy goal, no goal is worth the expense without sound fiscal management and oversight. 

Note: This article originally appeared in Heartland Institute's *Info Tech and Telecom News*.



John Stephenson is Director of the Telecommunications and Information Technology Task Force at the American Legislative Exchange Council. Learn more at www.alec.org.



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