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0271 Committee on State and Local Issues: New Federalism

Report to the Colorado General Assembly:

**COMMITTEE ON STATE AND
LOCAL ISSUES:**

New Federalism



COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 271

December, 1982

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Between sessions, the interim legislative committees concentrate on specific study assignments approved by resolution of the General Assembly or directed by the council. Committee documents, data, and reports are prepared with the aid of the council's professional staff.

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COLORADO LEGISLATIVE COUNCIL
" RECOMMENDATIONS FOR 1983

(*Colorado. General Assembly. Legislative Council.*
" COMMITTEE ON STATE AND LOCAL ISSUES:
NEW FEDERALISM)

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 271
December, 1982

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To Members of the Fifty-fourth Colorado General Assembly:

Submitted herewith is the final report of the Committee on State and Local Issues, which was appointed by the Legislative Council pursuant to Senate Joint Resolution 19 to study issues related to the "New Federalism."

At its meeting of November 29, the Legislative Council reviewed the report of the Committee on State and Local Issues and approved a motion to forward the committee's recommendations to the Fifty-fourth General Assembly.

Respectfully submitted,

/s/ Representative John Hamlin
Chairman
Colorado Legislative Council

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COMMITTEE ON STATE AND LOCAL ISSUES:
NEW FEDERALISM

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SUMMARY OF RECOMMENDATIONS
COMMITTEE ON STATE AND LOCAL ISSUES:
NEW FEDERALISM

Senate Joint Resolution No. 19, 1982 session, directed the Legislative Council to appoint a committee to study:

- (a) The "new federalism" which would include, but not be limited to:
 - (I) The current functions assigned to state and local governments and which level of government is most suitable to administer such functions;
 - (II) The sources of revenue at the state level and the local level utilized to fund the administration of such functions; and
 - (III) The potential impact of "new federalism" proposals on the sources of revenue available to state and local governments.

Pursuant to the above directive, the Committee on State-Local Issues (New Federalism) undertook a study of recently enacted or proposed initiatives of the Reagan Administration and the perceived impacts of these initiatives on state and local governments. The committee devoted most of its attention to two of these initiatives -- block grants, and the so-called "New Federalism" proposal of 1982.

Recommended Legislation

As a result of its deliberations, the committee recommends two bills:

- 1) Bill 1 provides for the state reimbursement of costs borne by the counties for the administration of the old age pension fund. Reimbursements will be made from the old age pension fund, in lieu of the counties' reliance on their own revenue base (largely property taxes) for these costs.
- 2) Bill 2 provides for the legislative appropriation of certain federal funds, especially those allocated to the state under the block grant program established in the "Omnibus Budget Reconciliation Act of 1981." The bill also creates an interim financial overview committee whose duties will include: the review of executive agency applications for federal block grant funds; approval of executive agency allocations of federal funds between state and local government uses during the interim; approval of changes in program funding levels during the interim, subject to limitations in the long appropriations bill; and advising executive agencies on policy changes during the interim necessitated by changes in federal policy or funding level.

The bill contains several limitations on the committee's interim activity including: adherence to expressed legislative policy; a requirement that an immediate need exists when approving or changing a program funding level; limiting the effect of committee decisions to the fiscal year in which they are made; and providing for disapproval of committee decisions by the General Assembly. The committee will report to the General Assembly at the start of each legislative session on its activity during the previous interim.

Other Recommendations

Creation of joint committee to continue study. The committee recommends that the General Assembly establish by joint resolution a six-person joint committee to continue its review and monitoring of federal initiatives which have the potential for influencing state policy. It is the stated intent of the Reagan Administration to enhance the role of state government in the federal system, but not enough is yet known of the specific form these "federalism" initiatives will take, nor the appropriate means by which the state should respond. The block grant program is not yet fully implemented in the state, and it has been proposed that the existing block grants be expanded and that new block grants be created (though Congress has not yet acted on these proposals). As well, the New Federalism proposal has not been presented to Congress, but its consideration is expected in the coming year. For these reasons, the committee is of the opinion that the General Assembly needs to have in place a mechanism such as this joint committee to keep abreast of federal policy which is expected to change rapidly in the near future.

Criteria for program review by committees of reference. As federal programs are transferred to the state for administration, committees of reference in the General Assembly will likely be required to assume more responsibility for making programmatic decisions. To that end, the committee suggests criteria which will aid in this decision-making process. (These criteria appear on pages 28 to 29.)

State-mandated programs. In the course of its interim study, the committee considered the issue of state-mandated programs administered by local governments, which has often been the subject of debate in the General Assembly. It was observed that the federal funding for many local programs will likely decline, placing greater demands on local governments for the continued financing of many of these programs. Local governments contend that their fiscal decision-making is already constrained by the existence of numerous state mandates they must fund. Rather than make any specific recommendation concerning the issue of state mandates, the committee suggest that the General Assembly continue to review programs now mandated on local governments.

FEDERALISM PROPOSALS REVIEWED BY COMMITTEE

Over the course of the interim, the committee has reviewed several initiatives undertaken by the Reagan Administration designed to strengthen the role of state and local government in the federal process. Primarily, the committee devoted its attention to two of these proposals. One is the block grant legislation enacted by Congress in 1981 and now in effect in virtually all the states. Second is the "New Federalism" package proposed by President Reagan early in 1982.

Two facts became apparent to the committee as the interim progressed: the "New Federalism" proposal, which was the initial focus of committee discussion and was the object of intense Washington activity early in the interim, had reached impasse at the federal level and was being withdrawn from further consideration until 1983; and secondly, a number of issues regarding the implementation of the block grants became known to the committee, presenting a more timely and practical subject for consideration.

The following sections of the report on recent federalism proposals will discuss the "New Federalism" and the block grant initiatives, as well as others which appear to impact state-federal relationships.

"New Federalism" Initiative

The committee's directive in Senate Joint Resolution 19 specifically noted "New Federalism" as an issue for the committee to study over the interim. In response to this charge, the committee undertook a review of the details of the proposal and its perceived ramifications on the state. The committee was informed mid-point in the interim, however, that the Reagan Administration would not submit the proposal to Congress until some time in 1983. After having devoted a considerable amount of time to discussions of "New Federalism," the committee was of the opinion that further consideration of this issue would be unwarranted.

Therefore, the following is only a brief outline of the major provisions of the "New Federalism" initiative, and is presented for informational purposes only.

In his State of the Union address in January of 1982, President Reagan outlined a proposal that would constitute a major shift in program responsibility from federal to state governments. The proposal, which is outlined below, was actively considered in Washington during the early part of the interim, as the Reagan Administration negotiated the substance of their proposal with representatives of a variety of public interest groups -- National Conference of State Legislatures, National Governors' Association,

National League of Cities, National Association of Counties, and the United States Conference of Mayors.

In July, the administration released the contents of the revised proposal which resulted from the negotiations with the above-mentioned public interest groups. Shortly thereafter, most of these organizations adopted position statements which indicated waning enthusiasm for the proposal. According to a variety of newspaper accounts: the National Governors' Association moved from supportive to undecided; the National League of Cities shifted from leaning in favor to strongly opposed; and the United States Conference of Mayors became more strongly opposed to the proposal. The National Association of Counties was reported to be the only one of the negotiating organizations retaining a supportive posture to the proposal. At its annual conference in late July, NCSL approved a resolution which stated that it neither endorses nor rejects proposals presented to date.

Features of New Federalism Proposal

Three basic features characterize the President's proposal, and though all three were revised in the July draft, its basic thrust was unchanged. The three features are:

- a "swap," which would totally federalize the medicaid program in exchange for the states' assumption of responsibility for aid to families with dependent children (AFDC);
- a "turn-back" of 35 federal programs to the states; and
- a federalism trust fund to provide revenues to the states for funding of turn-back program activities.

Medicaid swap. Medicaid programs are currently administered by each of the individual states, with funding responsibilities shared between state and federal governments. The federalism initiative envisions federal assumption of \$18.3 billion in state medicaid financing for FY 1984, while the states would assume a projected \$8.1 billion federal responsibility for financing of AFDC programs. Therefore, the states would realize a net savings of \$10.2 billion by exchanging medicaid for AFDC costs, and would have these funds available for financing programs slated for turn-back to the states. The original proposal included the states' assumption of the food stamp program, but it was dropped from consideration during the aforementioned negotiations.

The federalized medicaid program would include two basic *components* -- a *routine care program* and *long-term care*. In routine care, seven basic mandatory services would be provided by the states to qualify for federal reimbursement. States currently provide medicaid services at varying levels and to different eligibility

groups as determined by their own statutes. The proposed federal program would essentially be an acute care program, with eligibility determined on a uniform national standard.

Long-term care provided to medicaid patients currently constitutes the largest single expenditure for any of the reimbursable services. In the proposal, long-term care would be administered as a block grant to the states which can be supplemented by the states.

Turn-back of programs to the states. The President initially proposed the state takeover of 43 federal education, transportation, community development, and social service programs. The overall program was described as a dollar-for-dollar exchange of programs, with turn-back program funding derived from state medicaid savings and the federalism trust fund.

The revised proposal reduced the number of turn-back programs to 35, with a projected total cost of \$30.6 billion for state administration of the programs.

Federalism trust fund. In order to fund turn-back program activities, a \$20.4 billion trust fund would be established to provide a revenue source for the states to draw from. A summary of the fiscal aspects of the New Federalism package are as follows:

Federalism Program -- FY '84 Level
(Billions of dollars)

<u>State/Local Programs and Costs Absorbed</u>	<u>Revenue Sources To Finance Them</u>
\$ 8.1 AFDC	\$18.3 Medicaid Saving
\$30.6 Turnback Programs	\$20.4 Federalism Trust Fund (\$11.6 Excise Taxes) (\$ 8.8 General Revenues)
\$38.7 TOTAL	\$38.7 TOTAL

An important feature of the trust fund is that federal excise taxes will be gradually phased out, one per year in the four-year period from 1988 to 1991, with the states given the opportunity to assume vacated federal taxes. The four federal excise taxes and the proposed phase-out schedule is:

- gasoline tax, two cents vacated in 1988;
- alcohol tax, repealed in 1989;
- telephone tax, repealed in 1990; and
- tobacco tax, repealed in 1991.

The portion of the trust fund that is derived from federal general revenues may continue to provide revenues to the states after 1991. It has been proposed that this prospect be studied by the Advisory Commission on Intergovernmental Relations, which would report back to Congress by 1986 with its recommendations.

Several features of the trust fund were revised in the July draft of the proposal. Most significant among these were: the elimination of the mandatory fifteen percent pass-through of all federal trust funds to local units of government in favor of a formula pass-through of funds for specific types of program services; and the elimination of the windfall profits tax on oil as a source of revenue for the federalism trust fund, based on the fact that it would not provide a uniform source of revenue among the states after being vacated by the federal government.

At its final meeting on November 17, the committee approved a motion to insert in its report the following statement concerning perceived impacts of the new federalism proposal:

The committee acknowledges the diverse observations of many of those on the committee and many of those who testified before the committee. Among the more salient observations:

- The New Federalism approach as presently structured will have a significant effect on the revenues available to the State of Colorado.
- The New Federalism approach as presently structured will require the states and local governments to be attentive to equity concerns, particularly as they relate to the distribution of available social service funds to low-income households.

The committee acknowledges the concerns expressed by many concerning problems associated with decentralization of welfare programs to each state and the threshold level of federal participation in the medicaid program. Finally, the committee wishes to express its concern with the present structure of the trust fund. Serious questions must be responded to regarding the level of program funds and extension of the trust fund.

Need for Continued Monitoring of New Federalism Initiative

During the interim, the committee discussed a number of issues relating to the initiative which could have been the basis of recommendations to the General Assembly. However, the committee chose to forego any recommendations on "New Federalism" when it became known that the administration's proposal would not be submitted to Congress in 1982 as expected.

Because of the significant nature of the impact the proposal holds in store for state and local governments, and because of the likelihood for renewed consideration of the proposal in the coming year, the committee became convinced that some capability needs to be created in the General Assembly to monitor future developments in the debate over New Federalism. The activities of this oversight group, whatever its makeup, could be charged with the dual assignment of monitoring developments in the implementation of block grant programs as well as the New Federalism.

Block Grants

Federal Legislation Authorizing Block Grants

In August of 1981, President Reagan signed into law the "Omnibus Budget Reconciliation Act of 1981" (PL 97-35). One of the key features of the act was the consolidation of a number of federal categorical (specific purpose) programs into nine block grants. Block grants are generally defined as federal funds distributed to state and local entities to accomplish a broad range of program goals, with a minimum of regulatory restrictions. In proposing the block grant concept shortly after his inauguration, the President stated that the intent of this initiative was to simplify and make more efficient the federal grant process, to increase state and local government's flexibility in the use of federal funds, and provide for increased accountability at the state and local levels.

The sentiment to change the structure of federal grants-in-aid has evolved from the growing disenchantment with the proliferation of categorical grants enacted by Congress. As cited in a recent report from the National Conference of State Legislatures, this disenchantment on the part of state legislative bodies has grown out of several factors:

- lack of flexibility to tailor programs to local needs;
- onerous bureaucratic requirements of program administration;
- federal government "luring" state and local government into starting programs by providing 100 percent federal funding in the early years, but then adding state match requirements later;
- increasingly, agency grantees were in the position of being held accountable to Washington, D.C., more than to state and local elected officials;
- state legislatures found themselves by-passed by state agencies;
and

-- local governments were applying directly to the federal government for aid. 1/

Given the President's philosophy of granting greater recognition to state and local governments in the federal process, and the receptiveness of state and local governments to the prospects for increased local control, the block grant initiative appeared to offer benefits to meet a variety of needs.

In his budget request for fiscal year 1981-82, the President recommended the consolidation of 85 categorical grant programs into seven block grants. The final block grant package that emerged from Congress, however, provided for nine block grants which consolidated fewer programs than the President had envisioned.* The nine block grants are:

1. Alcohol, Drug Abuse and Mental Health
2. Community Services
3. Community Development
4. Elementary and Secondary Education
5. Maternal and Child Health Services
6. Low Income Energy Assistance
7. Primary Care
8. Preventive Health and Health Services
9. Social Services

* There are numerous discrepancies in the number of categorical programs attributed to block grant consolidation. The Executive Office of the President cites 57 programs. The Advisory Commission on Intergovernmental Relations (ACIR) attributes 76 programs to the block grants, which they explained is based on data provided by the Office of Management and Budget (which is situated in the Executive Office of the President). The General Accounting Office uses the figure of 80 categorical programs in the block grants, though the background information provided on request only includes 76 programs, identical to the list cited by ACIR. (See Appendix A for a listing of the block grant programs cited by ACIR.)

1/ National Conference of State Legislatures, Block Grants: A New Chance For State Legislatures to Oversee Federal Funds, Legislative Finance Paper #15, Denver, February, 1982: pp. 3-4.

In the following sections, several issues concerning the block grants will be discussed, including:

- features of the nine block grants;
- method by which block grants have been implemented in the state;
- criticisms of the block grants; and
- consideration of the role of the General Assembly in the implementation of block grant programs in Colorado.

Common provisions in the block grants. Throughout the reconciliation act, various requirements appear which are common to many of the block grants, though not uniformly applicable to all of the nine block grants. (Table 1 on pages 10 and 11 displays the major features of the block grants.) Following are several of the more significant general features shared by the block grants:

- seven block grants require that states make application to assume responsibility for their administration;
- fund transfers are allowed among five of the block grants;
- state administrative expense limits exist in six of the block grants, ranging from zero to twenty percent of the federal funding allotment;
- non-federal matching funds are required for three of the block grants;
- a portion of the funds are earmarked for certain services in six of the block grants;
- provisions for mandatory state pass-through of funds to local governments or non-profit organizations appear in five of the block grants (some in the form of "earmarks"); and
- three block grants contain provisions concerning "maintenance of effort" (continuation of funding of certain services) or "nonsupplanting" (replacing state dollars with federal dollars).

Crosscutting provisions. Another feature of block grants which was brought out in interim testimony was that of "crosscutting" provisions. Generally, crosscutting provisions are administrative prerequisites or other procedural or policy mandates imposed broadly on federal grant programs. Typically, references to crosscutting provisions do not appear in the specific legislation which authorizes various federal grant programs, but rather are written in a manner that they "cut across" a number of programs.

Major Features of Block Grants Created or Altered by

	Community Development (small cities and rural areas)	Elementary and Secondary Education	Preventive Health and Health Services	Alcohol, Drug Abuse, and Mental Health
1. Number of programs superseded (identified in OMB's Catalog of Federal Domestic Assistance)	1 discretionary grant (Budget Reconciliation Act also expanded existing Community Development Block Grant by folding in 3 categoricals)	37 categoricals	1 existing block (Health Incentive Grant for Comprehensive Public Health Services) and 6 categoricals	10 categoricals
2. Funding level (in millions); superseded (old) programs (est FY 81 obligations) and new program (Reagan FY 82 appropriations request)	Old—\$796 New—\$952	Old—\$735 New—\$519	Old—\$160 New—\$84	Old—\$524 New—\$432
3. Nonfederal matching	10% by state if it elects to channel (see "pass-through" below)	None	None	None
4. Administrative costs—limits on federal funding	50% of costs, not to exceed 2% of federal allotment	Up to 20% of funds can be used for state operated programs and administration	10% of federal allotment	10% of federal allotment
5. Earmarking	No	No	Yes, for FYs 1982-84 specific amounts	Yes; specific amounts
6. Specific prohibitions on fundable activities or eligibles	No	No	States may not use funds for inpatient services, cash payments, purchase or improvement of property, or federal matching	States may not use funds for inpatient services, cash payments, purchase or improvement of property or federal matching
7. Transferability of funds	No	No	Up to 7% may be transferred for specified health purposes	Up to 7% may be transferred for specified health purposes
8. Maintenance of effort or non-supplant provision	No	Expenditures must be at least 90% of level for second prior FY. Federal funds must supplement	Federal funds will be used to supplement and not supplant nonfederal	Federal funds will be used to supplement and not supplant nonfederal
9. Pass-through provisions	State qualifies as distributor of block grant only if governor certifies that state will meet four specified conditions. Otherwise, HUD makes distribution	State must pass through at least 80% to local education agencies on basis of enrollment adjusted for number of higher cost children	No	"Earmarking" includes mandated funding in FYs 82, 83, 84 of community health centers federally funded in FY 80
10. General procedural requirements—Title XVII of Act: (1) Publication of proposed use report, (2) public hearing, (3) biennial financial and compliance audits	Not applicable	Not applicable	Yes	Yes
11. Other required state administrative procedures:	No	Yes, but for as long as 3 years and Secretary approves criteria used to distribute funds locally	Yes, annually	Yes, annually
a. Application for grant				
b. Assurances required in application or other statement, regarding:	Adequate information to citizens on funds available, proposed activities —Public hearings —Citizen participation in development of application	—Advisory committee to state education agency —Beginning in FY 84, annual evaluation of program effectiveness	—Criteria to evaluate performance —Cooperation with federal investigations —Identification of program need —Maintenance of records confidentiality	—Criteria to evaluate performance —Cooperation with federal investigations —Identification of program need —Maintenance of records confidentiality
c. "Secretary may not prescribe the manner in which the states will comply" with assurances	No such provision	No such provision	Yes	Yes
d. Publication of intended use report for public comment	Yes	Yes, for 20% of state share	Yes	Yes
e. Public hearings	No such provision	No such provision	By state legislature	By state legislature
f. Annual report and annual independent audit	Annual audit. Performance report required at times set by Secretary	State provides information. Secretary requires for fiscal audit and evaluation of effectiveness	Yes	Yes
g. "Secretary may not establish reporting requirements that are burdensome"	No such provision	No such provision	Yes	Yes
12. Transition provision	Effective 10/1/81	Effective 10/1/82	In FY 1982, federal agency administers existing categoricals until state is ready to assume block grant. Thereafter, states must administer or lose funds.	In FY 1982, federal agency administers existing categoricals until state is ready to assume block grant. Thereafter, states must administer or lose funds.

Source: Advisory Commission on Intergovernmental Relations, "The First Ten Months: Grant-in-Aid, Regulatory, and Other Changes", Intergovernmental Perspective (Winter, 1982): 8-11

TABLE 1

Omnibus Budget Reconciliation Act of 1981 (PL 97-35)

Maternal and Child Health Services	Primary Care	Social Services	Community Services	Low-Income Home Energy Assistance
9 categoricals	2 categoricals	1 existing block (Social Services for Low Income and Public Assistance Recipients) and 1 categorical	7 categoricals	1 categorical
Old—\$411 New—\$291	Old—\$321 New—\$215 (FY 83)	Old—\$3,008 New—\$1,974	Old—\$484 New—\$225	Old—\$1,714 New—\$1,400
\$3 state for each \$4 federal	FY 83—20%, FY 84—33 1/3%	None	None	None
None	State use of block grant for administrative costs prohibited	None	5% of federal allotment	Up to 10%
Yes, but no specific amounts	Yes, health centers funded in FY 82 must get same amount in FY 83.	Yes, specific minimums	Yes, at least 90% must go to localities, nonprofits, seasonal farm worker groups.	No
Similar to Preventive Health and Health Services block grant	Only 5% of funds may go to certain community health centers	Similar to Preventive Health and Health Services block grant	May not be used to purchase or improve land or buildings, except for certain energy-related home repairs	Similar to Community Services, with 15% limit on repair
No	No	May transfer up to 10% for specified health and income security purposes	May transfer up to 5% for specified social service & income security purposes	May transfer up to 10% for specified social and health services
No	No	No	No	No
No	See "Earmarking." Also, any state not submitting application for FY 83, 84 or not qualifying for its allotment has its allotment distributed directly by HHS	No	See "Earmarking"	No
(Applicability under review 11/81)	Yes	Not applicable	Yes	Not applicable
Yes	Yes, annually, and federal approval required	No	Yes, annually	Yes, annually
—Fair method for allotting funds, guiding health care assessment and services, assuring quality —Assurance that service charges follow public schedule, are not imposed on poor, and are on sliding scale —State agency coordination with Medicaid's early screening and related programs	—Establishment of criteria to evaluate fiscal, managerial, clinical performance —State agency's capability of managing, determining needs, evaluating performance of CHCs	None	—Makeup of governing board of CAA or nonprofit private agency —Prohibition of political activities and transportation to polls —Coordination with emergency energy intervention programs	—Conduct of outreach activities —Coordination with similar and related federal, state activities —Cooperation with federal investigations —Provision of fair administrative hearing for —aggrieved claimants
No such provision	No such provision	No such provision	Yes	Yes
Yes	Yes	Yes	Yes, Governor required to provide plan of how state proposes to carry out assurances on application	Yes, Governor required to provide plan of how state proposes to carry out assurances on application
No such provision	By state legislature	No such provision	By state legislature	By state legislature
Annual report, two year audit	Yes	Yes, at least every two years	Annual report to public but not to federal agency; annual independent audit	Annual report to public but not to federal agency; biennial independent audit
No such provision	Yes	No such provision	No such provision	No such provision
In FY 1982, federal agency administers existing categoricals until state is ready to assume block grant. Thereafter, state must administer or lose funds	Effective 10/1/82	Effective 10/1/81	In FY 1982, HHS administers existing categoricals until state is ready to assume block grant. Thereafter, states must administer or lose funds	Effective 10/1/81

On several occasions during the interim, crosscutting requirements were referred to in the context of their applicability to block grants. It was found that a distinction was necessary between two different types of crosscutting provisions referred to from time-to-time -- those that appear in the reconciliation act itself; and those general provisions of federal law or regulation which by their implication apply to the block grants. Following is a brief discussion of each of the crosscutting provisions.

"Crosscutting" provisions in reconciliation act. In the authorizing legislation (Title XVII of the act), Congress included several provisions which were designed to ease the transition of the block grant programs from federal to state control. It was the intent of these provisions to address the concern expressed by many states that, because of different legislative schedules and budget cycles, the states would not be prepared to assume responsibility for the programs as of the beginning of the federal fiscal year (October 1, 1981). Additionally, there was some concern in Congress that states would not provide sufficient public notice about their plans for block grant funds. Though there were provisions in most of the block grants concerning transition periods and public notice requirements, the so-called "crosscutting" requirements were initially included in the act to apply across-the-board to all block grants. The final crosscutting language in the bill, according to ACIR, only made these provisions applicable to four of the block grants -- preventive health; primary care; community services; and alcohol, drug abuse, and mental health. (See item 10 on Table 1.)

As included in Title XVII of the act, the crosscutting provisions require:

- an annual report on the goals and objectives, activities to be supported, method for distributing funds under the block grant, and (starting in 1983) a description of how previous year's goals have been met;
- that a public hearing be held on the report (waived in the first year), which public hearings are the responsibility of the state legislature as indicated in item 11 (e) of Table 1;
- federal agencies to continue to administer categorical programs until the state verifies that it is ready to assume all or part of a block grant; and
- financial and compliance audits to be performed every two years, with the states allowed to formulate their own audit procedures in lieu of federally mandated audit management practices.

Other "crosscutting" requirements. In a recent report on block grant implementation in the states from the U.S. General Accounting Office (GAO), "crosscutting" was discussed in its more general and commonly used context.

Crosscutting requirements are statutes or administrative requirements which apply by their terms to all or several federal assistance programs. Some of these requirements, such as nondiscrimination statutes, are specifically referred to in the block grant legislation, but the act and regulations are silent on applicability and state responsibilities for other crosscutting requirements. 2/

The GAO report cites a 1980 study by the Office of Management and Budget which identified at least 59 such crosscutting requirements which are imposed on federal assistance activities to attain certain national policies, such as civil rights and environmental protection. Some of these requirements are cited in the reconciliation act as being applicable to certain block grants, though not to others.

As opposed to making an explicit determination of the applicability of crosscutting requirements to the block grants federal agencies at this time are addressing the issue selectively.

Implementation of Block Grants in Colorado

The effective dates vary as to the time the states can assume responsibility for the administration of the various block grants. Two programs -- the Social Services Block Grant and Low-Income Home Energy Assistance Block Grant -- were automatically transferred to state governments on October 1, 1981, bypassing state program acceptance.

Early in the interim, testimony was heard by the committee concerning the state's activities in implementing block grants in the first year of the program. Shortly after the 1981 session convened, an ad hoc committee of the General Assembly was appointed to monitor the impact of federal budget changes in Colorado, including the prospects for change owing to the then-proposed block grant initiative. The information requested of the federal government to accurately assess this impact was not forthcoming at the time the ad hoc committee concluded its deliberations. In their report, submitted to the General Assembly in January, 1982, a recommendation was included that federal programs continue to be monitored and analyzed through the regular budget process. The recommendation was adopted and implemented by the Joint Budget Committee, and staff analysts have been directed to carry out this function on a continuing basis in their various areas of responsibility.

2/ United States General Accounting Office, Early Observations on Block Grant Implementation, GAO/GGD 82-79, Washington, D.C., August 24, 1982, p. 42.

Early block grant applications. Shortly after the authorization of the block grant program, the Joint Budget Committee (JBC) contemplated making application to the federal government for block grant responsibility when it became aware of the need for the state to apply. The budget committee soon learned, however, that applications had already been prepared and submitted by the governor's office. Because federal guidelines were initially vague as to the information states were to provide in the application process, the committee monitored the specific block grant proposals being made on behalf of the state by the executive branch.

The budget committee also sent letters to members of Colorado's congressional delegation and various federal officials stating the committee's hope that, in the context of the new relationship between state and federal governments envisioned in the President's block grant initiative, a new opportunity would be presented concerning the role of the state legislature in the appropriation of federal funds.

Memorandum of understanding on block grant appropriation. During the time the General Assembly was considering the state's 1982-83 budget, the Joint Budget Committee entered into a memorandum of understanding with the governor concerning the manner in which block grants would be handled in the 1982 long bill. Five block grants were assumed by the state in the first year of the programs -- two automatically transferred to the state by federal mandate (social services and low-income energy), and three assumed at the discretion of the state (maternal and child health; preventive health; and alcohol, drug abuse, and mental health).

The memorandum of understanding was intended to provide a mutually agreeable method for dealing specifically with federal funds allocated to the state under the block grants. The operative language in the agreement was that the block grant funds were to be "treated as if they were appropriated" by the General Assembly. Because of legislators' concern as to the meaning of that "treatment" phrase, language was amended into the headnote of the long bill which, in effect, provided that block grant funds were actually appropriated. Despite the governor's efforts to have it reinstated, the long bill was passed by the General Assembly without containing the "treated as if appropriated" language.

Long bill item veto. The governor subsequently exercised a line item veto over the language, and stated in his veto message:

This headnote may pose practical problems for those agencies receiving the federal funds, particularly in light of the current uncertainty in the federal budget. The limitation of expenditures on federal funds is clearly a violation of the Colorado Supreme Court's decision in McManus v. Love and Anderson v. Lamm which prohibit the appropriation of federal funds by the Legislature. While I will direct the departments that receive these funds to honor the intent of the funding in the Long Bill pursuant to

our agreement in the Memorandum of Understanding on Federal Funds signed on April 6, 1982, I believe the language contained in this headnote was included prior to the Memorandum, and I cannot let the unconstitutional language in this headnote stand. 3/

The General Assembly, in response to the partial veto, authorized the bringing of a court action to contest the action of the governor.

The remaining four block grants not implemented in the first year have subsequently been either assumed or applied for by the state. The education block grant became the responsibility of the Department of Education on July 1, 1982, and the primary care block grant became effective October 1, 1982, providing direct federal funding to community health centers in the state.

Planning efforts for the state's implementation of the community development and community services block grants were undertaken over the past year by the Department of Local Affairs, working with an advisory committee of local government officials. The efforts of this group were recently concluded, and applications submitted to the federal government for implementing these two programs in the state.

Criticisms of the Block Grant Program

Several features of the block grant legislation as it emerged from Congress have been the subject of criticism, largely due to the fact that the reconciliation act provided the states with less discretion in the use of block grant funds than did the Reagan Administration's original proposal.

The National Conference of State Legislatures points out a number of areas where state legislatures have encountered problems with block grants: 4/

- insufficient lead time for legislative review and appropriation of block grants;
- "strings" attached to block grants;
- reduced funding levels;
- uncertainty in federal funding levels; and
- redefining the federal-state relationship.

3/ Journal, Colorado House of Representatives, May 10, 1982; p. 1145.

4/ NCSL, Block Grants: pp. 27-31.

Insufficient lead time for legislative review and appropriation. Six block grants were made available for state administration on October 1, 1981, the beginning of the federal fiscal year. Most state legislatures were not in session at that time and, in fact, were well into the 1982 fiscal year. Forty-six states begin their fiscal year on July 1; seven state legislatures with biennial sessions do not convene again until 1983. Consequently, state legislative involvement in the first round of state administration of the new block grants tended to be limited or nonexistent. This means that the door was open for the governors to accept the block grants on behalf of the states and to take the lead in block grant implementation.

"Strings" attached to block grants. Block grants were sold to the states as a form of flexible federal aid with the understanding that states could distribute the funds according to program priorities set by the states. The final version of the act attached numerous strings to some of the blocks -- essentially maintaining their categorical nature.

As an example of such "strings" three block grants require a state match which has been a typical characteristic of categorical grants. The match requirements detract from the intent of block grants and create additional financial obligations for the states. The requirements are as follows:

- Maternal and Child Health: The state match requirement is three sevenths of the federal funding level.
- Primary Care: In FY '83, the state match is 20 percent of the federal funding level and in FY '84, the state match is 33 percent.
- Community Development: A state match of 10 percent is required. (This match can be made with in-kind contributions.)

Cuts in block grant funding levels. State government leaders offered to accept a 10 percent across-the-board cut in block grant funding in return for greatly increased state control over the allocation of federal funds. It was reasoned that a 10 percent cut could be absorbed because of savings arising from a reduction in the federal bureaucracy.

But states realized a 22.7 percent real reduction which meant cutting into the substance of the programs. Most states are currently dealing with budget reductions and revenue shortfalls and are in no position to subsidize programs that were originally initiated on the federal level and are now being shifted to the states.

Uncertainty in federal funding levels. The President and Congress are continuing to talk about further reductions in block grant funding. Uncertainty about the amount, timing and availability

of federal funds make it difficult for the states to prepare their own budgets. This uncertainty at the federal level creates serious planning problems for state fiscal officers and forces them to estimate what the final federal aid figures will be. For example, the cycle will begin again this year as most state legislatures complete their FY '83 budget work before Congress releases the federal FY '83 budget.

Redefining the federal-state relationship. President Reagan's original objective in his block grant proposal was to create a new national public policy initiative which would allow states to direct the allocation of federal aid to programs identified by the states as essential services. For the states to accomplish this, funding flexibility is a critical element. The block grant program that emerged from Congress failed to provide this new partnership role for state governments. The federal government insisted on earmarking a large percentage of the block funds which limited the discretionary powers that were to be transferred to the states.

General Assembly's Role in Block Grant Implementation

The process of initially accepting responsibility for the first round of block grants was undertaken by the governor's office. The block grant funds were subsequently appropriated by the General Assembly pursuant to the memorandum of understanding as discussed on page 13. An important focus of committee discussion during the interim is the fundamental question of whether the legislature may apply for, accept, and appropriate federal funds in block grant programs, and to otherwise provide financial and programmatic oversight to the process.

Historically, attempts by the General Assembly to gain control over appropriations of federal funds have been unsuccessful. In the 1971 long appropriations bill, a provision was included that any federal or cash funds received by an agency could not be expended without further legislative appropriation. The governor vetoed that provision, and the Colorado Supreme Court upheld the veto in the case of MacManus v. Love (discussed below).

The ruling in this case did not affect federal funds which require a state match, and as a result the General Assembly has relied on what is termed the "M" headnote language which appears in the long appropriations bill to control general funds used to match federally funded programs. The "M" headnote was designed to automatically reduce the state match should there be a decrease or increase in federal funds. 5/

5/ Colorado Office of the State Auditor. Approval and Control of Federal Funds in Colorado, Performance Audit, March, 1982: p. 13.

Federal legislation by-passes the issue of legislative versus executive control by referring to "the state," without defining its meaning. In attempting to place the issue of appropriating federal block grants in its appropriate context in Colorado, the committee heard testimony from Mr. Douglas Brown, Director of the Legislative Drafting Office:

Whether the appropriation power extends to these federal funds is, of course, a question of first importance. MacManus v. Love, 179 Colo 218, 499 P2d 609 (1972), held that, while the Colorado legislature could appropriate state moneys conditioned on receipt of federal funds, federal funds not requiring a state match were not subject to appropriation. This was because federal funds not connected with expenditure of state funds were "custodial" in nature and the only role the executive branch played with regard to "custodial" funds was to administer them. Since "administration" is an executive function, the appropriation of federal funds was the exercise of an executive function by the legislative branch. In Colorado, our approach to arguing this issue has been to limit the MacManus case to its particular facts. MacManus is a peculiarly short and obtuse opinion, relying on Colorado authority of questionable applicability. Second, MacManus has been roundly criticized in the periodical literature and in cases from other jurisdictions, primarily because the control of federal funds by the executive branch is much more than an "administrative" or "custodial" function, and has resulted in erosion of the power and meaning of the power to appropriate. Third, the argument can be made that MacManus, which was decided in 1972, is distinguishable on a historical basis. If the general purpose of the block grant legislation is to divest the federal government of responsibility and invest that responsibility in the state government, to use MacManus as the controlling precedent on the questions of the General Assembly's power to appropriate block grant funds would be to ignore the basic purpose of the block grant legislation.

The general consensus appears to be that the "rules of the game" may be changing. The new block grants appear to be offered in a manner which removes any question as to the funds being "custodial" in nature. Furthermore, testimony before the committee suggested that the federal government intended to be neutral on the issue of how a state handles the appropriation and disbursement of block grant funds.

The March 1982 auditor's report states:

The task for state and local governments administering the new block programs will not be easy because the state will now have fewer federal funds to handle increased responsibility. Although these block grants do not provide the amount of flexibility that either the President or the

states requested, they do represent a change in the Federal Government's attitude toward state legislative approval and control of federal funds. In the past, block grants... provided little room for legislative input except when the federal funds diminished and the State was required to pick-up the programs. The new block grants do not contain such language. Although the Federal Government has not provided specific direction to the states on which branch of state government should be responsible for the block grants, it has given the states the responsibility for either allocating the reduction in funding or else prioritizing funding requests to meet lower program levels. This responsibility is legitimately a legislative function. 6/

The auditor's report concluded:

The Legislature should assert its authority to appropriate all or selected federal funds such as block grants on the assumption that Congressional actions and other court rulings subsequent to MacManus v. Love have expanded legislative authority in this area. 7/

In 1982, the General Assembly again attempted to control federal funds by including provisions appropriating block grants. That provision was vetoed by the governor and the General Assembly has agreed to initiate a legal challenge thereon.

Activity in Other States Concerning Federal Funds

Actions of state legislatures concerning federal funds. In its recent report concerning block grants and state appropriation of federal funds, the National Conference of State Legislatures concluded:

A significant feature of block grants is that state legislatures have a new opportunity to appropriate all federal funds. Some state legislatures already had in place a mechanism appropriating federal funds and block grant implementation was easily accommodated into this process. Other states are using the opportunity presented by block grants to take the first step in developing oversight of federal funds.... 8/

6/ Ibid. p. B-6.

7/ Ibid. p. 18.

8/ NCSL. Block Grants, p.8.

An NCSL report provides evidence of the trend toward state legislatures seeking increased control over federal funds:

In 1980, ten state legislatures made specific sum (as opposed to open-ended or automatic) appropriations of federal funds in their appropriations bill(s) and had approval/disapproval authority over either federal grant applications or the interim receipt of federal funds; by July 1982, 15 state legislatures exercised such binding authority over all federal funds and five legislatures exercised binding authority over block grant funds... In 1980, 24 legislatures had little or no involvement in the oversight of federal funds; by May 1982, only eight could be said to have little or no involvement. 9/

In their November, 1981 survey of all 50 states, NCSL found that a number of mechanisms are in place to control the expenditure of block grant funds. They found that 23 states had instituted new or special legislative procedures to deal with block grants. Most commonly found was legislation requiring some method of legislative "sign-off" as a prerequisite to the expenditure of block grant funds. (Attached as Appendix B is a state-by-state summary of recent actions concerning legislative control of federal funds.)

Recent case law concerning control of federal funds. As was pointed out on several occasions during interim testimony, the federal block grant legislation (concerning responsibility for program implementation) referred only to "the state." Congress, therefore, deferred to the states to make a determination of the appropriate roles for each branch and allowing them to rely on their own law and practices to sort out the responsibilities of each. This "sorting out" process has resulted in a number of recent court cases concerning legislative versus executive prerogatives in the control of federal funds (Colorado among them).

These court cases have generally focused on three aspects of federal fund control in the states:

- legislative appropriation of federal funds generally;
- legislative appropriation of federal block grant funds specifically; and
- legislative budget control during the interim. 10/

Appendix C contains a discussion of these issues, based on a review of recent relevant court decisions around the country.

9/ National Conference of State Legislatures, Strengthening Legislative Oversight of Federal Funds: Problems, Issues and Approaches, Legislative Finance Paper #22, Denver, July, 1982; p. 9.

10/ Ibid. p. 32.

IMPLICATIONS OF NEW FEDERALISM FOR STATE-LOCAL RELATIONSHIP

While it is unclear what form "New Federalism" may take, it is likely that the state is going to play a radically different role in the future financing of government programs. Local governments -- counties, municipalities, school districts, and special districts -- may also play different programmatic roles. "New Federalism" offers an opportunity to clear up existing disorganized federal-state-local relationships and it offers the state an opportunity to build a new financial and structural relationship between the state and local entities on a wide range of issues. This would involve a redefinition of the roles and responsibilities of both the state and local governments.

Status of Counties

Traditionally, county government nationwide and in Colorado has been considered an arm of state government. This traditional legal view may be summarized as follows:

A county is created by the legislature without reference to the will of its inhabitants. It has no power of local government, or independent authority of any kind whatever. Its officers, although elected by its people, are virtually officers of the state, and are charged with the administration and execution of the laws of the state. It is merely a subdivision of the state for the purposes of state government. It is nothing more than an agency of the state in the general administration of the state policy... (Stermer v. La Plata County, 5 Colo. App. 379, 1895.)

Traditional and changing county functions. Traditional county government functions are generally administrative services that are mandated to counties by state legislation or constitutional provision. A 1975 survey conducted by the Joint Data Center of the National Association of Counties (NACo) and the International City Management Association (ICMA) examined county functions nationwide and found that a very high percentage of the counties surveyed provided essential, "traditional" services required statewide: property tax assessment and collection, judicial functions, road maintenance, detention facilities, elections, police patrol, and maintenance of land records. Counties in Colorado have been delegated powers and duties by the General Assembly which generally reflect the national situation, yet the traditional powers of county government are being expanded to include municipal services. Increases in population density and population migration to the suburbs have resulted in a variety of new service needs. The 1975 NACo survey showed that the greatest increase in urban-type services provided by the county are in the areas of solid waste collection and disposal, industrial development, subdivision control, and mass transit.

Status of Municipalities

Cities are created by law partly as the agents of the state but chiefly to administer to the local affairs of the incorporated territory. 11/ A city or town:

...is an agent of the state in its government; but its primary purpose is the administration of its own internal affairs. It is a community invested with peculiar functions for the benefit of its own citizens. It possess a local government of its own, with executive, legislative, and judicial branches. It can enact and enforce ordinances, having the force of laws, for the regulation of its domestic concerns and the preservation of its peace.... The character of a municipality, with its accompanying duties and burdens, is assumed voluntarily (Stermer v. La Plata County, 5 Colo. App. 379, 1895).

Generally speaking, Colorado has two types of municipalities -- statutory cities and towns, and home rule cities.

Statutory cities and towns are the creatures of statute; they can exercise only such powers as are expressly conferred upon them or exist by necessary implication (Kennedy v. The People, 9 Colo. App. 490). Home rule cities, however, are granted every power possessed by the General Assembly in purely local matters.

Municipal functions. Activated by the desire to exercise greater control over their own community affairs, and within the limitations of authority granted by the state constitution and legislature, municipalities are involved in the widest range of services and activities of any type of local government. Moreover, they are far and away the leaders in terms of the number of functions in which they have the greatest expenditure share. Nationally, municipalities in 1977 dominated local direct expenditure in police, fire protection, sewerage, other sanitation, parks and recreation, housing/urban renewal, air transport facilities, parking facilities and libraries. This dominance extended to nonmetropolitan areas except for the highway function where counties were the primary providers.

11/ John C. Banks, Colorado Law of Cities and Counties, 2nd Ed., 1971, page 14.

Nationally, municipal functional preeminence was not as emphatic in 1977 as it had been ten years earlier. The municipal share slipped in higher education, hospitals, health, police, fire protection, sewerage, other sanitation, parks and recreation, corrections, and libraries. The shift in the share of expenditures for these services was mainly toward the counties, but also impacted special districts. 12/

Effect of Federal Policies and Programs on Local Governments

Historically, there has been a strong sentiment for local self-government in Colorado. At the same time, it is often claimed that much of the functional and structural growth of local governments has resulted not from local or state initiatives but from federal programs. For example, David R. Beam noted:

Beginning in the mid-1960s, and more notably during the 1970s, the federal regulatory presence has spilled over from the traditional economic sphere to include the nation's states, cities, counties, school districts, colleges, and other public jurisdictions. What was quite unthinkable (and seemingly politically impossible) a few decades ago has both been thought of and come to pass.

Much, though not all, of the "new social regulation" falls into this intergovernmental category. Though certain programs remain wholly national responsibilities, the states and localities have been conscripted into the battles against pollution and for civil rights. In some areas, they have been charged with regulating the conduct of private business firms. In others, they have been obliged to remedy perceived shortcomings of their own. 13/

Examples of such federal programs include: the Highway Beautification Act; Environmental Policy Act; Occupational Safety and Health Act; Federal Water Pollution Control Act; Safe Drinking Water Act; Comprehensive Employment and Training Act; and others.

12/ Advisory Commission on Intergovernmental Relations, State and Local Roles in the Federal System, Commission Report A-88, Washington, D.C., April, 1982; p. 242

13/ David R. Beam, "Washington's Regulation of States and Localities: Origins and Issues", Intergovernmental Perspectives, Summer 1981, Vol. 7, No. 3, page 9.

As these programs were enacted, federal funding to the state, to the state as a direct pass-through to local governments, to local governments, and to local non-governmental entities increased substantially. In fiscal year 1960, federal grants constituted 14.7 percent of all state and local expenditures; in fiscal year 1979, they had risen to 25.6 percent. 14/

This trend may be reversing. As noted earlier in the discussion of federal program changes, a retrenchment is occurring in the domestic policies of the federal government. These changing federal policies need to be considered by the General Assembly.

The final report of the Colorado Commission on State and Local Government Finance states: 15/

Overall federal assistance to Colorado is declining, and much of the burden of that decline is falling to local governments and local service providers. Proposals to decategorize federal programs and create more state-local flexibility -- either in the form of block grants or "new federalism" -- will challenge state and local cooperation. As total financial resources are reduced and financial responsibilities are shifted back to state and local government, harder choices are on the horizon...

Federal funding to state and local governments in Colorado grew by about 4% between FY 1980 and FY 1981, increasing from \$1.0 billion to \$1.04 billion. But in FY 1982 both state and local governments experienced large cuts as federal funds decreased from \$1.04 billion to \$887 million. This \$152 million reduction represented an actual funding cut of 14.6%. When adjusted for inflation (by projecting the resources necessary to maintain level of service provided in FY 1981), the current service reduction in FY 1982 was \$226.3 million. The table below shows these changes in federal funds coming into Colorado between FY 1980 and FY 1982.

14/ Advisory Commission on Intergovernmental Relations, Federal Influence on State and Local Roles in the Federal System, Commission Report A-89, Nov. 1981, page 1.

15/ Colorado Commission on State and Local Government Finance. Final Report, Volume I, August 1982, p. 55.

FEDERAL FUNDING TO STATE AND LOCAL
GOVERNMENTS IN COLORADO
(\$ Thousands)

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Major Local Programs	\$334,240	\$308,226	\$200,205
Major State Programs	616,438	677,600	638,854
Other Programs	<u>49,094</u>	<u>52,276</u>	<u>47,528</u>
TOTAL	\$999,772	\$1,038,102	\$886,587

Effect of 1981 Federal Legislation on State-Local Government Relationship

The Omnibus Budget Reconciliation Act of 1981 consolidated seventy-six categorical programs and two earlier block grants into nine new or revised block grant programs. Funding levels for most of the programs were reduced. While many of the superseded categorical programs involved a direct federal-local relationship, all nine of the new block grant programs target the state as the primary grant recipient. Furthermore, the President's "New Federalism" proposals suggest a much stronger state role and a correspondingly greater reduction in the existing federal-local relationship.

...Whereas many of the superseded categoricals had involved a federal-local relationship, all nine of the new programs are directed to the states. The states have wide latitude in allocation decisions; only two of the block grants carry passthrough guarantees for the benefit of local governments, although three others require earmarkings that help protect local funding for at least a limited period. Decentralization under the New Federalism means that states have more discretion in spending the federal funds they receive and that they have greater program responsibility, but the budget cuts mean that there are fewer federal dollars available and greater uncertainty as to who will receive them and how they will be used. 16/

Not mentioned above, but of a definite concern, is the fact that federal program funds often by-pass both the state and its local governments. Such programs provide direct payments to local non-profit corporations and individuals. As in the case of local governments, however, this direct federal to non-profit relationship may change as a result of the 1981 block grants and future federal proposals. In effect the state may become the primary recipient of these funds. For example, federal funds for community mental health

16/ Jean Lawson and Carl W. Steinberg, "Rebalanced Federalism: The State's Role and Response", Intergovernmental Perspective, ACIR, Vol. 8, No. 1, Winter, 1982, p. 30.

centers have generally gone directly to these centers. Most of these grants have been merged into the alcohol, drug abuse and mental health services block grant.

Distribution of FY 1982 Federal Funds

Federal distributions in Colorado were analyzed by the Commission on State and Local Government Finance. The commission noted that of the total funds that were allocated to the state in fiscal 1982, \$366 million (41%) either flowed directly to a local government or to a non-governmental service provider. Fifty-eight percent of this money was sent directly from the federal government to the local level. Forty-two percent passed through the state. The following table shows six major distributional paths by which federal funds arrive at their eventual destination.

PATTERNS OF FEDERAL FUNDS DISTRIBUTION
FY 1982

<u>Federal Funds</u> <u>(\$ Thousands)</u>	<u>Percent</u> <u>Of Total</u> <u>Federal</u> <u>Funds *</u>	<u>Recipient</u>
\$299,661	34%	to State
110,226	12%	through State to Local government
42,632	5%	through State to non-governmental service provider
220,630	25%	through State to individual
177,677	20%	direct to Local government
35,761	4%	direct to non-governmental service provider
<hr/> \$886,587	<hr/> 100%	TOTAL Federal \$ to Colorado in FY 1982

* Does not include Medicaid or Social Security benefit payments... 17/

The incorporation of funds that traditionally have gone directly (or passed-through) to local governments and non-profit service providers into block grants may provide the state with a means to better handle some on-going problems. In discussing the long-standing problem of federal aid which provides "seed" money for program implementation, the Colorado state auditor's March 1982 performance audit on approval and control of federal funds contained the following:

17/ Commission State-Local Finances, Final Report, p. 57

Although the State Constitution gives the Legislature the power and authority to appropriate state funds (Distribution of Powers, Article III, Section II), the Federal Government set up 22 catchment areas (divisions) of the State and worked with local organizations in these areas to set up community mental health centers. The Federal Government provided project staffing and construction grants for these centers but failed to give the State veto power over any federal funds. Most of these federal grants were "seed" money or cost assumption grants which required that either the State or local governments assume the costs of the centers once the federal funds declined. According to personnel at the Division of Mental Health, the State Legislature was not told that it would be asked to replace federal dollars with general funds for all 22 mental health centers. However, once the Legislature had set precedent by funding six centers whose federal funds had declined, the other centers expected similar treatment. As a result, the State's commitment has grown from \$45,705 for Fiscal Year 1957-58 to \$22,850,170 in Fiscal Year 1981-82... 18/

The results of these changes in methods of distributing federal funds under block grants will compel the state to assume more of a role as a distributor of moneys. Additionally, as federal funds are reduced, the state will be asked to provide replacement funds. In discussing this changing role, one author raises the following question:

While it is far too early to tell how well states will perform, there is some concern that whatever flexibility is provided by the new block grants may never reach the local level. One of local officials' greatest fears is that states will administer the new block grants much like categorical. If so, localities will receive fewer state and federal dollars and those dollars may well be tied up with more state strings.

A second source of potential conflict between the states and their local governments stems from state-imposed constraints placed upon localities' ability to raise revenue. If localities are hampered by tax lids, expenditure limits, debt limitations, and or fixed boundaries that handicap the cities from expanding their territories in order to draw upon the more affluent suburban fiscal base, then it will be even more difficult for them to

18/ State Auditor, Approval and Control. p. 48.

deal with the current fiscal crunch or to meet block grant matching requirements imposed by the states. A related area of disagreement involves state mandates which require certain actions by local governments without providing funds to cover the cost of carrying them out... 19/

Committee Findings -- State and Local Roles

Criteria for role and program review. Because the legislative and budgeting implications of the "New Federalism" proposals are not yet known, and because of the changing nature of federal appropriations for the nine block grants, the committee did not develop a composite recommendation on how these funding changes should be handled. For similar reasons it did not believe it had enough information to begin to redefine or clarify future roles of the state and its local governments. The committee is of the opinion, however, that such a review should occur and it should begin during the 1983 legislative session. The committee recommends that each standing committee should be directed to closely examine the relevant block grants and the specific categorical programs. For such a review, the committee suggests the following two sets of criteria that might be followed. The criteria are designed to answer two basic questions: 1) should a program be continued, modified, or ended; and 2) what governmental level should be responsible for a program's administration, funding, or both?

Program Value Criteria

- 1) What is the program's purpose?
- 2) To whom is the program important -- the state as a whole, to local governments, to the public at-large, or to a particular interest group.
- 3) How important is the program?
 - A) Does it resolve an actual, immediate need or problem (an emergency), a long-term need, or a perceived need or problem?
 - B) Is it a "luxury"?
 - C) What alternatives exist?
 - D) What would happen if the program were to be terminated?
 - E) What would happen to low or moderate income households if the programs were or were not funded?

19/ Lawson and Steinberg, Rebalanced Federalism, p. 39.

- 4) What is the cost of the program?
 - A) Is it (and will it continue to be) fully federally funded?
 - B) Are state or local dollars necessary for its continuation?
 - C) Does it affect the state's and/or a local government's budget and priorities in a positive or negative manner?
 - D) Can it be effectively operated on less money?

Criteria for Placement of a Program

- 1) What is the program's purpose?
 - A) Does it meet a statewide need, a purely local need, needs of a particular group of people, or a combination of the above?
 - B) Does it add to, stimulate, or restrict government capability to provide services, functions or facilities?
 - C) Does it substitute for other functions or expenditures?
- 2) How much authority does the program provide?
 - A) Are enabling statutes both at the state and local level adequate?
 - B) Does the program usurp or enhance state or local laws or traditional roles?
 - C) How much authority does the administering entity have (or should have) to accept or reject the program?
 - D) If the program is locally administered or funded, what effect does it have on local priorities and needs -- how will it effect traditional local functions such as police, fire and sanitation services?
 - E) Is the program one which the state should preempt?
- 3) If the state assumes the full financial burden, what funding sources are to be used? What is to be done with relieved local government revenues?
- 4) If the program is to be locally administered (either solely or on a shared basis) how is the responsibility to be placed therein -- as a direct mandate, as a permissive function, or subject to certain conditions (e.g., a minimum local financial effort)?

Reevaluating existing roles. Perhaps a key fact that should be kept in mind as one considers what level of government should be made

responsible for administering a program is that local governments are instrumentalities of the state (albeit counties more so than municipalities). Perhaps "New Federalism" focuses on the issue of the relationship of localities to the state and each other.

At the committee's first meeting Martin E. Flahive, policy analyst for the City and County of Denver, suggested that the General Assembly re-think its relationship in broad terms. He said:

For example, you need to consider the extent to which a City (or a county) serves as an instrumentality of the State -- and to what extent a locality is or should be solely accountable to its own citizens. Confusion about this dual role has, in my view, been the cause of much tension in the past. Now is the time to diminish that tension, and build a new cooperative arrangement.

Taking this a step further, the legislature, with the assistance of the parties named above, should then systematically reevaluate each state-supported or state-mandated service to ascertain which level of government is best suited to take responsibility for a given service. This determination should not be based exclusively on what each level of government has done in the past, wishes to do, or can afford. It should be based, in the first instance, upon traditional notions of accountability, equity, and the like. When that philosophical stage is completed, the inquiry should be expanded to include other factors, and obstacles, in the realignment of services, including, but not limited to:

- past performance of various governments,
- availability of sufficient and appropriate revenues,
- the status of enabling legislation,
- intergovernmental obstacles to service delivery, and
- state-of-the-art and technical capacity.

State Mandates on Local Governments

In the course of its study, the committee again discussed state mandated local programs. The committee also reviewed the 1982 State Auditor's special report on State Distributions to Local Entities. This report lists a number of state (and federal) programs which are funded by the state but lack statutory authority.

1979 Findings on State-Mandated Programs. The 1979 interim Committee on Local Government recommended to the General Assembly a number of interim bills designed to minimize the effect of state mandates. (A summary of these bills is attached as Appendix D).

Because these bills were, for the most part, omitted from the governor's 1980 "call" they were not acted upon by the General Assembly. The committee recommends that the General Assembly consider the state mandate question during the 1983 session.

Other Issues Reviewed But Not Acted Upon

1982 Auditor's Report. The above-cited 1982 auditor's report listed the following non-statutorily authorized programs:

1. Medically Indigent reimbursement in the Department of Social Services -- \$12,967,000 expended in 1980/81.

(Note: This program transferred to CU Health Sciences Center in 1982 due to their statutory authority to provide medically indigent services.)
2. Contracts for cultural services in the Department of Local Affairs -- \$1,981,000 expended in 1980/81.
3. Juvenile Diversion program in the Department of Institutions -- \$1,834,000 expended in 1980/81.
4. Aid to local, non-governmental entities in the Office of Health Care in the Department of Health -- \$520,000 expended in 1980/81.
5. Engineering Pre-Design Grants in the Department of Local Affairs -- \$100,000 expended in 1980/81.
6. Emergency Water and Sewer Grants in the Department of Local Affairs -- \$270,000 expended in 1980/81.
7. County Equalization Library Distributions in the Department of Education -- \$112,000 expended in 1980/81.
8. Special Olympics in the Department of Institutions -- \$50,000 expended in 1980/81.
9. Region XI Contingency Fund in the Department of Education -- \$28,000 expended in 1980/81.

The dollar figures are the amounts actually distributed, not the appropriation amounts.

The above list includes only those programs that distribute money to local entities; however, there may be other programs in the Long Bill which also have no separate authorizing legislation. 20/

Other state programs identified in the report include:

A) Colorado Commission on the Arts and Humanities outreach services -- \$433,000 expended in 1980-81.

B) Employment and training contractual services -- contracts with local organizations for WIN and CETA employment programs -- state match on WIN program.

Also identified in the report are several federally funded programs for which there is no statutory authorization. The several programs listed below were selected for discussion based on one of two criteria: 1) program funds were identified in the report as having been appropriated by the General Assembly, despite the lack of statutory authorization; or 2) the program appears to be one for which the state will assume responsibility as part of a block grant or the proposed "turnback" of programs in the New Federalism initiative.

The federally funded programs are:

a) Supplemental food programs for specified target populations, administered by Family Health Services in the Department of Health. For fiscal year 1980-81, \$1.4 million were appropriated by the General Assembly, though the program is unauthorized.

b) Small urban and rural transit programs for promoting public transportation services in nonurbanized areas are administered by the Division of Transportation Planning in the Department of Highways. Program funds are not appropriated by the General Assembly, but it is possible that these are functions included in the "turn-back".

c) The functions of the Division of Highway Safety and the Division of Highways (urban systems), though not identified as being funded through the appropriations process, are currently included in the "turn-back" proposal.

d) Community mental health functions are shown as having no legislative authorization; 1980-81 general fund appropriations of \$247,000.

e) Employment and training programs (WIN and CETA) in the Department of Labor and Employment lack legislative authorization, and are proposed for "turn-back" to the state.

20/ Colorado Office of the State Auditor. State Distributions to Local Entities. Special Report, January, 1982; p. 18.

Commission on State and Local Government Finance. Attached hereto (as Appendix E) are the recommendations of the Colorado Commission on State and Local Government Finance, August, 1982. In brief, the Commission recommended that: the state assume all administrative and financial responsibility for mandated public assistance programs; that statutory authorization be provided to financially assist local governments in meeting clean water standards; that the state continue to review the local court financing problem in the context of local capital investments and review the issue of state standards and local and state responsibilities for jails.

BILL 1

A BILL FOR AN ACT

1 CONCERNING ADMINISTRATIVE COSTS OF THE OLD AGE PENSION FUND.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for the transfer of moneys from the old age pension fund to pay county costs of administering the fund.

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

3 SECTION 1. 26-1-122 (4), Colorado Revised Statutes 1973,
4 1982 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH
5 to read:

6 26-1-122. County appropriations and expenditures -
7 advancements - procedures. (4) (i) The state department
8 shall determine monthly the cost of administration for each
9 county of pension payments under the old age pension fund
10 pursuant to workload standards developed by the state
11 department. After such determination, the state department
12 shall certify by voucher to the controller the amounts to be

1 paid to each county. The amounts so certified shall be paid
2 from the old age pension fund in the state treasury and shall
3 be credited by the county treasurer to the county social
4 services fund.

5 SECTION 2. 26-2-115, Colorado Revised Statutes 1973,
6 1982 Repl. Vol., is amended to read:

7 26-2-115. State old age pension fund - priority. All
8 moneys deposited in the state old age pension fund shall be
9 first available for payment of basic minimum awards to
10 qualified old age pension recipients AND PAYMENTS FOR COSTS OF
11 ADMINISTRATION, and no part of said fund shall be transferred
12 to any other fund until such basic minimum awards AND PAYMENTS
13 shall have been paid.

14 SECTION 3. 26-2-116, Colorado Revised Statutes 1973,
15 1982 Repl. Vol., is amended to read:

16 26-2-116. Old age pension stabilization fund. Any
17 moneys remaining in the old age pension fund after full
18 payment of basic minimum awards to qualified old age pension
19 recipients AND AFTER PAYMENTS FOR COSTS OF ADMINISTRATION
20 shall be transferred to a fund to be known as the old age
21 pension stabilization fund, which fund shall be maintained at
22 the amount of five million dollars and restored to that amount
23 after any disbursements therefrom. The state board shall use
24 the moneys in such fund only to stabilize payments of old age
25 pension basic minimum awards.

26 SECTION 4. 26-2-117, Colorado Revised Statutes 1973,

1 1982 Repl. Vol., is amended to read:

2 26-2-117. Old age pension health and medical care fund.

3 Any moneys remaining in the state old age pension fund after
4 full payment of basic minimum awards to qualified old age
5 pension recipients, AFTER PAYMENTS FOR COSTS OF
6 ADMINISTRATION, and after establishment and maintenance of the
7 old age pension stabilization fund in the amount of five
8 million dollars shall be transferred to a fund to be known as
9 the old age pension health and medical care fund, which is
10 hereby created. The state department shall establish and
11 promulgate rules and regulations for administration of a
12 program to provide health and medical care to persons who
13 qualify to receive old age pensions and who are not patients
14 in an institution for tuberculosis or mental diseases. The
15 costs of such program, not to exceed ten million dollars in
16 any fiscal year, shall be defrayed from such health and
17 medical care fund, but all moneys available, accrued or
18 accruing, received or receivable, in said health and medical
19 care fund in excess of ten million dollars in any fiscal year
20 shall be transferred to the general fund of the state to be
21 used pursuant to law.

22 SECTION 5. Effective date - applicability. This act
23 shall take effect July 1, 1983, and shall apply to months
24 commencing on or after said date.

25 SECTION 6. Safety clause. The general assembly hereby
26 finds, determines, and declares that this act is necessary

1 for the immediate preservation of the public peace, health,
2 and safety.

BILL 2

A BILL FOR AN ACT

1 CONCERNING THE APPROPRIATION POWER.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for legislative appropriation of all federal funds except higher education research grants, highway funds, and categorical program grants. Requires executive agencies to submit block grant applications, federal fund allocations, and changes in programs and funding levels to an interim financial overview committee. Creates such committee. Provides for the committee to review block grant applications and approve federal fund allocations and funding changes during the interim. Requires the committee to report to the general assembly. Provides for the repeal of the statute creating this committee.

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

3 SECTION 1. Article 3 of title 2, Colorado Revised
4 Statutes 1973, 1980 Repl. Vol., as amended, is amended BY THE
5 ADDITION OF A NEW PART to read:

6 PART 12

7 INTERIM FINANCIAL OVERVIEW COMMITTEE

8 2-3-1201. Legislative declaration. The general assembly

1 hereby finds, determines, and declares: That the
2 appropriation of moneys is a legislative duty and function;
3 that block grant legislation delegates broad discretion to the
4 state in the allocation of moneys for state-operated programs
5 which should be exercised by the general assembly through the
6 appropriations process and other lawful means; and that
7 failure to provide direction in the allocation of moneys to
8 the executive branch during the legislative interim would
9 weaken the principle of the separation of powers of
10 government. The general assembly further declares that the
11 creation of an interim financial overview committee is the
12 best available means of insuring that the general assembly
13 effectively exercises its legislative responsibilities.

14 2-3-1202. Legislative appropriation of federal moneys.

15 (1) Except as provided in subsection (2) of this section, no
16 moneys in the state treasury received from any agency of the
17 federal government, including block grant fund moneys provided
18 pursuant to the federal "Omnibus Budget Reconciliation Act of
19 1981" and other block grants provided pursuant to federal law,
20 shall be expended for any purpose unless such moneys are
21 appropriated by the general assembly.

22 (2) The following federal moneys shall not be
23 appropriated:

24 (a) Moneys received from the federal government by the
25 state for the construction, improvement, or maintenance of
26 state highways;

1 (b) Moneys received from the federal government by the
2 state as grants for research at institutions of higher
3 education;

4 (c) Categorical grant moneys received from the federal
5 government by the state for specific, narrowly defined
6 activities subject to strict federal guidelines.

7 2-3-1203. Interim financial overview committee -
8 created. There is hereby created in the legislative
9 department the interim financial overview committee, referred
10 to in this part 12 as the "committee". The committee shall
11 consist of _____.

12 (2) The general assembly may provide by rule for the
13 appointment of members to the committee.

14 (3) The committee may meet as often as necessary, but it
15 shall meet not less than once a month during the legislative
16 interim.

17 2-3-1204. Executive agency notification. Executive
18 agencies shall submit to the committee proposed applications
19 for block grant funds, proposed allocations of federal funds
20 between state government uses and local government uses, and
21 proposed changes in programs and program funding levels
22 necessitated by changes in federal law or regulations or
23 funding levels.

24 2-3-1205. Powers and duties of the committee. (1) The
25 committee shall be empowered to:

26 (a) Review applications for block grant funds by

1 executive agencies during the legislative interim before
2 submission to the federal government;

3 (b) Approve any executive agency allocation of federal
4 funds between state government uses and local government uses
5 during the legislative interim;

6 (c) Approve changes in program funding levels
7 necessitated by changes in federal law or regulations or
8 funding levels during the legislative interim subject to
9 limits imposed by the general assembly in the general
10 appropriation bill;

11 (d) Advise executive agencies seeking to make program
12 policy adjustments necessitated by changes in federal law or
13 regulations or funding levels during the legislative interim;

14 (e) Report to the general assembly annually in January
15 on actions taken by the committee during the previous
16 legislative interim.

17 2-3-1206. Standards for and limits upon committee
18 action. (1) Notwithstanding any other provision of this part
19 12, the committee shall not act contrary to an expressed
20 legislative policy, nor shall it approve or undertake any
21 action during the legislative interim which was rejected at
22 the immediately preceding session of the general assembly.

23 (2) The committee shall not approve or undertake any
24 changes in program funding levels during the legislative
25 interim unless failure to act would result in the loss of
26 moneys by the state or hardship to the intended beneficiaries

1 of such programs.

2 (3) Action by the committee shall only be effective
3 until the end of the fiscal year in which such action is taken
4 or until the general assembly acts in a contrary manner,
5 whichever occurs first.

6 2-3-1207. Repeal. This part 12 is repealed, effective
7 December 31, 1984.

8 SECTION 2. Safety clause. The general assembly hereby
9 finds, determines, and declares that this act is necessary
10 for the immediate preservation of the public peace, health,
11 and safety.

APPENDIX A

CATEGORICAL GRANT PROGRAMS CONSOLIDATED INTO
BLOCK GRANTS BY OMNIBUS RECONCILIATION ACT OF 1981

- I. Alcohol, Drug Abuse and Mental Health Block Grant (10 categorical programs)
1. Drug Abuse Community Service Programs
 2. Alcoholism Treatment and Rehabilitation/Occupational Services
 3. Drug Abuse Demonstration Programs
 4. Alcohol Formula Grants
 5. Drug Abuse Prevention/Formula Grants
 6. Drug Abuse Prevention Programs
 7. Special Alcoholism Projects to Implement the Uniform Act
 8. Community Mental Health Centers -- Comprehensive Services Support
 9. Alcohol Demonstration/Evaluation
 10. Alcohol Abuse Prevention Demonstration/Evaluation
- II. Maternal and Child Health Block Grant (9 categorical programs)
1. Crippled Childrens Services
 2. Maternal and Child Health Research
 3. Maternal and Child Health Services
 4. Maternal and Child Health Training
 5. Childhood Lead Based Paint Poisoning Prevention
 6. Sudden Infant Death Syndrome Information and Counseling
 7. Comprehensive Hemophilia Diagnostic and Treatment Centers
 8. Genetic Disease Testing and Counseling Services
 9. Adolescent Pregnancy Prevention Services
- III. Primary Care Block Grant (2 categorical programs)
1. Community Health Centers
 2. Hospital Affiliated Care Centers
- IV. Preventive Health and Health Services Block Grants (1 existing block grant and 6 categorical programs)
- Includes existing block grant -- Health Incentive Grants for Comprehensive Public Health Services -- plus the following

categoryals:

1. Urban Rat Control
2. Emergency Medical Services
3. Hypertension Program
4. Home Health Services and Training
5. Preventive Health Service --
Fluoridation Grants
6. Grants for Health Education/Risk
Reduction

V. Elementary and Secondary Education Block Grant (37 categorical programs)

1. Civil Rights Technical Assistance and Training
2. Teacher Centers
3. Alcohol and Drug Abuse Education Program
4. Follow Through
5. Strengthening State Educational Agency Management
6. Teacher Corps -- Operations and Training
7. Emergency School Aid Act -- Basic Grants to Local Education Agencies
8. Emergency School Aid Act -- Grants to Non-Profit Organizations
9. Emergency School Aid Act -- Educational TV and Radio
10. Educational Television and Radio Programming
11. Use of Technology in Basic Skills -- Instruction
12. Ethnic Heritage Studies Program
13. National Diffusion Program
14. Career Education
15. Education for the Use of the Metric System of Measurement
16. Education for Gifted and Talented Children and Youth (State Administered and Discretionary Programs)
17. Community Education
18. Consumers' Education
19. Elementary and Secondary School Education in the Arts
20. Instructional Material and School Library Resources
21. Improvement in Local Educational Practice
22. International Understanding Program
23. Emergency School Aid Act -- Magnet

- Schools, University/Business Cooperation and Neutral Site Planning
24. Career Education State Allotment Program
 25. Basic Skills Improvement
 26. Emergency School Aid Act -- Planning Grants
 27. Emergency School Aid Act -- Pre-Implementation Assistance Grants
 28. Emergency School Aid Act -- Out-of-Cycle Grants
 29. Emergency School Aid Act -- Special Discretionary Assistance Grants
 30. Emergency School Aid Act -- State Agency Grants
 31. Emergency School Aid Act -- Grants for the Arts
 32. Biomedical Sciences for Talented Disadvantaged Secondary Students
 33. Pre-College Teacher Development in Science Programs
 34. Secretary's Discretionary Program
 35. Law-Related Education
 36. Cities in Schools
 37. PUSH for Excellence

VI. State Community Development Block Grant
(small cities and rural areas)

(expanded an existing discretionary grant)

1. Community Development Block Grants -- Small Cities

(Note: Budget Reconciliation Act also folded in the following categoricals to the existing Community Development Block Grant)

- Comprehensive Planning Assistance
- Secretary's Discretionary Fund/Territories Program
- Neighborhood Self-Help Development

VII. Social Services Block Grant

(1 existing block grant and 1 categorical program)

Includes existing block grant (Social Services for Low Income and Public Assistance Recipients) plus the following categorical:

1. Social Services Training Grants --

Title XX

- VIII. Community Services Block Grant (7 categorical programs)
1. Community Action
 2. Community Food and Nutrition
 3. Older Persons Opportunities and Services
 4. Community Economic Development
 5. State Economic Opportunity Offices
 6. National Youth Sports Program
 7. Housing and Community Development (Rural Housing)
- IX. Low Income Home Energy Assistance Block Grant (1 categorical program)
- Low Income Energy Assistance Program

Sources: Advisory Commission on Intergovernmental Relations, February, 1982; based on data provided in a memorandum from U.S. Office of Management and Budget, September 16, 1981.

APPENDIX B

DESCRIPTIONS OF INDIVIDUAL STATE LEGISLATIVE MECHANISMS TO CONTROL FEDERAL FUNDS

Alabama: A major part of the annual Alabama state budget is earmarked. Federal fund appropriations are open-ended, with little or no detail provided in the budget bill. During its 1981 session, the Alabama legislature passed two joint resolutions that dealt with block grants. SJR 19 created an interim legislative committee to study federal block grants and SJR 215 expanded the scope of one of the legislature's select joint committees, "to investigate and report on the impending impact of federal block grants to operate state health and welfare programs."

Alaska: The Alaska legislature maintains a high degree of control over federal funds through a strong session budget process and a strong legislative advisory role during the interim. Under this process, the governor must respond in writing to the Legislative Budget Committee if he authorizes federal fund expenditures over their objection. This process was developed after the defeat of a constitutional amendment allowing the legislature to delegate its appropriations authority to a committee.

Arizona: Based in part on a 1974 case, Navajo Tribe v. Arizona Department of Administration (528 P2d 623), the Arizona legislature cannot appropriate federal funds. In 1979, the legislature passed a bill requiring legislative grant application review, which was vetoed by the governor.

Arkansas: The Arkansas legislature exerts fairly high appropriation control over federal funds during their biennial session, appropriating most funds in specific sum to programs or agencies. The governor accepts and authorizes federal fund expenditures during the interim with the advice of the Legislative Council. The Office of Budget forwards agency requests for additional federal funds to the Legislative Council, which must comment on such requests before funds can be extended. The full legislature must ratify the governor's decisions during the next session, or the state no longer participates in the program.

California: In 1978, the legislature passed a bill creating a federal trust fund and accounting procedure which required appropriation of federal funds and improved system for accounting and tracking federal funds. By FY 1983-84, the California legislature will be able to appropriate federal funds comprehensively. During 1981, legislation was passed in California which established a joint legislative-executive advisory committee for the allocation of block grant funds, scheduled to go out of existence in July of 1984.

Colorado: Prior to 1982, the Colorado legislature exercised little oversight over federal funds, except to tightly control any required state match. In 1982, however, the legislature decided to appropriate the block grants in its major budget bill. The Governor subsequently vetoed the language in the bill

which appropriated the blocks, claiming that a 1972 Colorado Supreme Court case, Mac Manus V. Love, 179, Colo. 218, denied the legislature the authority to appropriate federal funds. The legislature is now suing the Governor over his veto because they do not believe that the 1972 case applies to block grant funds. The legislature is not involved in federal grant application review.

Connecticut: In 1979, the legislature enacted legislation creating an advisory role for itself in the grant application and award notification processes, and establishing legislative receipt of federal funds information through the federal A-95 and TC-1082 information systems. To assure its involvement in the allocation of block grant funds, Connecticut passed PA 81-449 in 1981, which stated that during FY '81-82:

- o State funds may not replace federal funds that have been cut without legislative approval
- o Legislative approval is required before the expenditure of block grant funds
- o Any modification of funding for programs necessitated by reduction in federal funds can occur only if there is legislation that allows this

Delaware: The Delaware legislature participates in the state A-95 clearinghouse activities. Two legislators plus the legislative Controller-General serve on the clearinghouse, which maintains year-round oversight of applications submitted by state and local governments for federal grants. All federal funds received by an agency are automatically appropriated.

Florida: The Florida legislature maintains a high degree of appropriation control over federal funds, appropriating specific sums at the subprogram level and using a statewide accounting system to track and systematize federal funds information. Interim control is informal and advisory; the Cabinet, which has the format control, consults with legislative appropriations committees prior to approving federal funds. During 1981, the Florida legislature formed a Select Committee on Federal Budget Cutbacks and developed a general policy statement and detailed guidelines which were used by the Senate Appropriations Committee in writing the 1982 Senate Appropriations Bill.

Georgia: The Georgia legislature exerts control over federal funds through a specific appropriation of all federal funds to the subprogram level, and through an advisory role in both the executive branch's interim handling of unanticipated federal receipts and the federal grant application process.

Hawaii: The executive branch, through the governor and department heads has primary responsibility for federal funds oversight. During its 1982 session, the legislature had no role in the acceptance or appropriation of the FY82-83 block grants.

Idaho: The Idaho legislature appropriates nearly all federal funds "cognizable" or known at the time of the annual legislative budget process. However, the legislature does not maintain control over federal funds during the interim. Recently, the legislature has considered several options for

increased control, including grant application review and review of new federal projects by a legislative advisory committee.

Illinois: Illinois legislative efforts to control federal funds have focused on the development of a comprehensive federal fund information and tracking system, based in large part upon agency surveys conducted by the Illinois Commission on Intergovernmental Cooperation. The legislature also maintains a moderate degree of appropriation control over federal funds during the session, appropriating these funds from trust funds to state agencies for certain line items.

Indiana: The governor is statutorily empowered to accept federal funds which are then automatically appropriated according to federal law. Legislative oversight over these funds is exerted, in part, through the legislative membership on the state Budget Committee, which advises the state budget agency on budgetary and fiscal matters raised by the agency.

Iowa: The 1981 session of the Iowa legislature made major changes in the Iowa statutes concerning federal funds. The governor must now include a statement detailing how much federal funds he anticipates the state will receive during the next biennium and indicating how the funds will be used and the programs to which they will be allocated. Block grants received must be deposited in a special account subject to appropriation by the legislature. The grant application process remains one of an advisory capacity by the legislature.

Kansas: The Kansas legislature exerts a fairly high degree of control over federal funds through the appropriations process and a strong legislative role in the interim appropriation of federal funds. The State Finance Council, the interim controlling body, is composed of the governor and eight legislators. This council has binding authority to approve receipt and expenditure of unappropriated federal funds, and to increase expenditure authority on appropriating federal funds.

Kentucky: The Kentucky legislature appropriates federal funds on a limited basis, by "lump sum." In 1982, the legislature passed HB 648 which provides for binding legislative review of federal block grant applications.

Louisiana: The Louisiana legislature has a long tradition of strong legislative control of federal funds, accomplished by specific federal fund appropriations to programs or agencies, and by binding legislative interim authority over unanticipated federal receipts. The 24-member Legislative Budget Committee composed of the Senate Finance Committee and the House Appropriations Committee, has the authority to accept or refuse such moneys. The constitutionality of this committee was upheld in a 1977 Louisiana case, State ex rel. The Guste v. Legislative Budget Committee et al (347 S. 2d 160). In its 1981 session, the Louisiana legislature instituted a requirement that federal funds received in the form of blocks be reviewed by the Joint Legislative Committee on the Budget, where federal funds are newly incorporated into the state budget. The Louisiana House Appropriations Committee also established a subcommittee to review block grants.

Maine: In 1981, Maine enacted the following law:

Any change from federal categorical grants to federal block grants should not be implemented on the state level without recommendations from the committee having jurisdiction over appropriations and financial affairs and approval by the legislative branch of state government.

Maryland: By constitution, the Maryland legislature can only reduce the executive budget. Within this constraint, however, the legislature does maintain a high level of federal fund appropriation activity, making specific appropriations to various programs or agencies. In 1982, a bill was passed (H.B. 1458) which requires the executive to consult with the Legislative Policy Committee prior to making any state determination on block grants.

Massachusetts: In 1981, the Massachusetts legislature greatly increased its oversight of federal funds. All federal funds received by the state must now be deposited in a special General Federal Grants Fund, subject to appropriation by the legislature. Additionally, the legislature must be notified of all federal grant applications at least 30 days prior to submission. Finally, the legislation specifies reports that state agencies must regularly submit to the legislature concerning federal funds.

Michigan: The Michigan legislature has one of the more comprehensive control processes over federal funds in the country because it exerts specific sum appropriations control throughout the year. In addition, it requires the executive branch to prepare an annual report itemizing all federal assistance to the state. It also receives timely reports on grant applications and awards. Three bills were passed in Michigan during 1981, dealing with legislative oversight of block grants. SCR 355 required that all state agencies inform the legislature of applications for, and the receipt of, federal block grants and directed the governor to set forth in detail in the budget the proposed expenditures of federal block grant funds. Under PA 30, the Department of Management and Budget must submit to the legislature an annual report on federal assistance. And PA 18 declared that, if appropriations are made from federal revenues, the amount expended shall not exceed the amount appropriated in the budget act or the amount paid in, whichever is the lesser.

Minnesota: Legislative control over federal funds is accomplished in several ways in Minnesota. First, most federal funds are appropriated by statute, with the legislature exerting a fairly high degree of control by specific sum appropriation to program or agency. Second, the legislature can attach "riders" to the eight omnibus appropriation bills to control the hiring of personnel and the commitment of state funds. In 1979, the legislature passed a law requiring legislative review of interim receipt and expenditure of federal funds. For new programs, personnel level changes, and proposed increases in state match, an agency must secure the recommendation of the Legislative Advisory Committee (which is generally followed). Finally, the legislature receives grant application "policy notes" which give reasons for application and provide funding level information. During 1981, the Minnesota legislature passed a bill requiring one-quarter of FY '82 block grant monies to be allocated according to prior categorical uses, with the remainder to be appropriated by the legislature when it reconvened. During the interim a full appropriations committee meeting was held on federal cuts and block grant legislation.

Mississippi: The legislature appropriates federal funds, and has an in-state tracking system for federal funds, but plays no role in the review of grant applications.

Missouri: The Missouri legislature exerts a fairly high degree of appropriations control over federal funds during session, appropriating specific sums to various programs or agencies. In 1978, a law was passed establishing a "federal grant program fund" which has allowed better tracking and control over federal funds. Under this law, agencies are required to provide a monthly report on federal grant expenditures. The legislature exerts no control over these funds during the interim due to a 1975 state Supreme Court case, Danforth v. Merrill (530 SW2d 209). The 1981 appropriation for the Department of Social Services included the following directive: ". . . Federal block grants received by the Department of Social Services shall be administered under the oversight of a (joint legislative-executive) committee."

Montana: The biennial Montana legislation controls federal funds to a high degree in the appropriation process through careful scrutiny by appropriations committees. Appropriations are accompanied by detailed background information provided through a statewide budget and accounting system that tracks all federal income by grant and includes all funds coming to the universities. Because of its biennial session and budget, the Montana legislature has tried to secure interim appropriations authority for a committee. Defeated in a 1975 Montana Supreme Court ruling, Montana ex rel Judge v. Legislative Finance Committee, the legislature passed a bill in 1981 requiring that a special session be held during the 1981-83 interim to appropriate federal funds. A special session was subsequently held in November 1981 at which time the legislature appropriated block grants. The legislature then recessed, but did not adjourn, in order to maintain appropriations control over any additional block grants that might come to the state before the legislature's next regular session.

Nebraska: Although the legislature exerts a limited amount of appropriations control over federal funds, making open-ended appropriations, the legislature's Executive Board has an advisory role in both the grant application process and in the interim receipt and expenditure of unanticipated federal receipts. In addition, the legislature receives federal grant application and award information.

Nevada: The Nevada legislature controls the flow of federal funds on a year-round basis. During session, it must authorize the expenditure of any funds and grants in an "authorized expenditure act." During the interim, the Interim Finance Committee must approve the acceptance of gifts or grants (subsequent to agency acceptance); gifts of \$10,000 or smaller, governmental grants of \$50,000 or less, and gifts or grants of the University of Nevada system and the Nevada industrial commission are exempt. SB 619, passed in 1981, requires that:

Whenever federal funding in the form of a categorical grant of a specific program administered by a state agency . . . is terminated and incorporated into a block grant . . . the agency must obtain the

approval of the interim Finance Committee in order to allocate the money received from any block grant.

New Hampshire: The New Hampshire legislature controls federal funds through specific sum appropriation by subprogram for block, categorical, and pass-through funds. Like other part-time legislatures, New Hampshire's concerns have focused on ways to exert year-round control. As a result, the Fiscal Committee, while not appropriating federal funds during the interim, must approve all new positions. Also, a bill was passed by the legislature in 1981 requiring the governor to notify the presiding officers of the Senate and House of Representatives of any block grant awards by the federal government. Any allocation of these grants must be approved by the General Court.

New Jersey: Although the New Jersey legislature exerts only a moderate amount of control over federal funds in the appropriations process, it has begun to exert control over these funds through two other procedures. First, the legislative budget officer must review and approve the receipt and expenditure of non-state funds received by the executive budget office. Second, the Legislative Budget Office monitors agency compliance with legislative intent in terms of program size and total appropriations. The Joint Appropriations Committee has also established a Federal Funds Subcommittee to work with the Legislative Budget Office, the governor's budget office and state agencies on matters pertaining to federal funds and federal programs. During 1981, the legislature formed a Subcommittee on Federal Aid and the Joint Appropriations Committee intensified its oversight of federal funds.

New Mexico: Although the New Mexico legislature cannot appropriate federal funds for constitutional institutions because of a 1974 State Supreme Court decision, it does play a significant advisory role over grant application awards, and unanticipated federal receipts through the Legislative Finance Committee (LFC) and its staff. The LFC receives grant application information on request and biweekly reports from the executive branch on grant awards. An interim Federal Funds Reduction Study Committee was set up in 1981 by the legislature to monitor the federal budget process, determine state and local impact, and draft legislation.

New York: In 1981, the New York legislature passed legislation which switched the state from cash accounting to generally accepted accounting principles. In the process, it also took on responsibility for appropriating federal funds. Under the new legislation, the state comptrollers must publish detailed monthly reports on the sources and uses of funds, including federal funds. The legislature also has an advisory role in grant application reviews.

North Carolina: In 1981, the North Carolina legislature passed a bill which required all federal block grant funds received by the state between August 31, 1981 and July 1, 1983 to be received by the General Assembly. It also established a Joint Legislative Committee to Review Federal Block Grant Funds. In February 1982, the North Carolina Supreme Court issued an opinion which found unconstitutional the delegation of approval/disapproval authority over interim federal receipts to the Joint Legislative Committee. The legislature makes specific sum appropriations of federal funds.

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North Dakota: The North Dakota legislature uses the appropriations process to control federal funds. Most appropriations are specific sum, made at the agency level. During the interim, appropriations chairmen serve on a five-member Emergency Commission, which authorizes the expenditure of unanticipated federal receipts.

Ohio: The Ohio legislature controls federal funds through the appropriations process, through agency federal fund information reports to legislative budget staff, and through participation on the State Controlling Board. This seven-member board, composed of six legislators and the state budget director, authorizes the receipt and expenditure of unappropriated federal receipts during the legislative interim. The legislature has also created a Joint Legislative Committee on Federal Funds to monitor the receipt and expenditure of federal funds and to review all new federal grant programs. This committee functions in an advisory capacity to the State Controlling Board and General Assembly in all matters related to federal grant programs.

Oklahoma: The legislature passed a bill (SB 326) dealing with legislative oversight of federal funds in 1981. That bill directed that claims by state agencies for federal funds may not be processed without written authorization from the President of the Senate and Speaker of the House. The bill also created a Joint Committee on Federal Funds with authority to approve/disapprove federal fund applications. However, a recently released advisory opinion by the Oklahoma attorney general found this latter procedure to constitute an unconstitutional delegation of legislative authority to a committee. The Oklahoma legislature does not appropriate federal funds.

Oregon: The Oregon legislature exerts a high degree of year-round appropriations and application control over federal funds. During the biennial session, it appropriates specific sums to subprogram activities. During the interim, the 17-member legislative Emergency Board, which was established by constitutional amendment in 1963, has the statutory authority to approve grant applications and to appropriate unanticipated federal receipts.

Pennsylvania: As a full-time legislature, the Pennsylvania General Assembly controls federal funds in its regular appropriations process through the passage of a separate federal appropriation bill. This activity is based on an improved state budget and accounting system which is beginning to track federal funds going to state agencies. The Pennsylvania General Assembly's authority to appropriate federal funds was upheld in all appeals of Shapp v. Sloan.

Rhode Island: The legislature does not appropriate federal funds, but its fiscal offices do review grant applications. The Executive Budget Agency is authorized to receive and expend unanticipated federal receipts during the

interim. The legislature does receive federal grant application and award notification data upon request, to review distribution of funds.

South Carolina: The South Carolina legislature exerts a high degree of control over federal funds, both through grant application approval and the appropriations process. Throughout the year, the Joint Appropriations Review Committee has authority to approve or disapprove grant applications and appropriations. In addition, the governor reports monthly on indirect cost recoveries and research grants and loans. South Carolina is also establishing a comprehensive federal funds tracking and budgeting system. These increased control mechanisms were authorized in a 1978 law requiring state legislative authority over "all funds." Recently, the executive branch challenged the constitutionality of the Joint Appropriations Review Committee. An opinion has not, as of this writing, been issued on the matter.

South Dakota: The South Dakota legislature uses the appropriations process to control federal funds. During session, the legislature makes specific sum appropriations to various programs. During the interim, the Joint Committee on Appropriations has the authority to approve or deny the expenditure of unanticipated federal receipts upon the recommendation of the governor. In the past, the legislature unsuccessfully tried to review grant applications, but the paperwork made this approach infeasible.

Tennessee: Although federal funds are automatically appropriated to some degree, the legislature exerts control over these funds in the following ways: 1) The legislature authorizes total spending levels, based on actual state appropriations and estimated federal receipts. To the extent that federal funds are reduced, so is the state share, but total spending authorization is not increased when federal funds increase. 2) No state agency can expand or adopt programs without notifying the Finance and Ways and Means Committees and securing comment from the chairmen. Although their approval is not required by statute, in practice this approval is needed before the agency can spend the additional funds. 3) A 1981 law requires the Commission of Finance and Administration to submit a plan for implementing federal block grants to the legislature.

Texas: The Texas legislature's level of appropriations varies from open-ended appropriations to specific appropriation of estimated federal receipts as one source of revenue for total program funding. (WDTM?) Federal funds for human service programs, transportation, and, to a lesser degree, education, receive a high degree of legislative scrutiny during the biennial session. During 1981, the legislature attached a rider to its appropriations bill which requires that if block grants replace categorical grants, the funds should be allocated to state departments and agencies as they were under categorical grants.

Utah: The Utah legislature exercises a fairly high degree of control over federal funds, through specific sum appropriations to programs and agencies, and through an advisory role in the grant application process. In addition, the governor, who is empowered to receive federal funds during the interim, can only accept funds for one fiscal year. The full legislature must approve multi-year programs in the subsequent session; in addition, they must act on all federal funds accepted by the governor for programs that require a state match.

Vermont: Like Nevada, the Vermont legislature exerts a high degree of control over federal grants because of its authority to accept grant funds prior to their expenditure (and subsequent to gubernatorial approval of grant applications). In addition to this mechanism adopted in 1979, the legislature also makes specific sum appropriations to subprogram levels and reviews grant applications during both the session and the interim.

Virginia: The Virginia General Assembly exerts a moderate degree of control over federal funds during its appropriations process, making mostly specific sum appropriations to subprogram levels. It has no authority over federal funds during the interim, but does restrict the amount of funds above appropriations that may be received and spent during the interim through provisions in the Appropriations Act. Under the 1981 amendments to the Virginia Appropriations Act, the governor must produce quarterly reports summarizing the implications of approvals of federal funds grants. The implications to be identified include significant and anticipated budgetary, policy and administrative impacts of federal requirements.

Washington: Although the Washington legislature exerts a high degree of control over federal funds through its appropriations process, it is a biennial legislature. As a consequence, the fact that the legislature controls no grants during the interim weakens its control. The governor is authorized to receive and spend most unanticipated receipts during the interim. The legislature can monitor and develop federal fund information through its computerized information system.

West Virginia: During its 1982 session, the West Virginia legislature passed a comprehensive bill dealing with legislative oversight of federal funds. The bill requires:

- o all federal funds to be deposited in a special fund account and made available for appropriation by the legislature;
- o the governor to itemize in the state budget, on a line-item basis, separately, for each spending unit, the amount and purpose of all federal funds received or anticipated for expenditure;
- o state agencies to send copies of federal grant applications to the legislative auditor at the time of submission.

Wisconsin: At the present time, the Wisconsin legislature appropriates federal funds on an open-ended continuing basis. It has interim control over excess state matching funds; the Joint Committee on Finance must appropriate these funds. The legislature has recently begun to receive federal grant application information.

Wyoming: The Wyoming legislature maintains a moderate degree of appropriations control over federal funds during its biennial budget process, making specific sum appropriations at the program level. It does not exert control over these funds during the interim, however; the governor is empowered to approve the receipt and expenditure of federal funds. The legislature also does not review grant applications.

A Bi-Monthly Report on Government Finance Issues in the States



THE FISCAL LETTER

An Information Service of the National Conference of State Legislatures — Earl S. Mackey, Executive Director

Editors: Karen Benker
BJ Summers

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LEGAL DEVELOPMENTS CONCERNING LEGISLATIVE OVERSIGHT OF FEDERAL FUNDS

Legislative Appropriation of Federal Funds Generally

The potential for increased state control over federal funds that came with the 1981 federal block grants heightened state legislative interest in controlling federal funds and spawned a series of new legal battles between state legislatures and governors.

The courts have upheld the right of state legislatures to appropriate federal funds in about half the cases that have gone to court. Court cases or opinions in Kansas, Montana, and Pennsylvania have all found in favor of the legislature. Most recently, the New York legislature established in court its right to appropriate federal funds.

Court actions over the past two years have strengthened the case for asserting a legislative right to appropriate federal funds in general and block grants in particular. During this same period, however, the case for legislative delegation to an interim body of binding authority over federal funds has been dealt several blows.

The majority opinion on the New York Court of Appeals case, Anderson v. Regan, said that the Constitution "quite simply requires that there be a specific legislative appropriation each time the moneys in the state treasury are spent." In so ruling, the court agreed with the legislature's claim that the following language in the New York Constitution gives it the authority to appropriate federal funds: "No money shall be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law."

(Continued on page 4)

Case law centers on three issues:

1. The authority of legislatures to appropriate federal funds generally
2. The right of legislatures to appropriate the federal block grant monies specifically
3. The extent of legitimate legislative budget control during the interim

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Legal Developments Concerning Legislative Oversight of Federal Funds

(Continued from page 1)

A noteworthy aspect of the New York case is that the court decision lays out a straightforward analysis of why legislative appropriation of federal funds is not only a legitimate but also a necessary function of the legislature. According to the court, checks on the executive's ability to commit the state to financial obligations that must be met by taxpayers, accountability in government, and maintenance of the balance of powers all demand that the legislature appropriate all state funds.

The courts have not upheld the legislative right to appropriate federal funds in all instances. The courts ruled against the legislature in Arizona, Colorado, Massachusetts, and New Mexico. The primary basis for the negative finding in these states was that legislative appropriation would violate the separation of powers doctrine. The 1972 decision by the Colorado Supreme Court in MacManus v. Love perhaps best exemplifies this argument:

The Colorado Constitution merely states in effect that the legislature cannot exercise executive or judicial power . . .

The legislative power is the authority to make laws and to appropriate state funds. The enforcement of statutes and administration thereunder are executive, not legislative, functions.

The power of the General Assembly to make appropriations relates to state funds. Custodial funds are not state moneys . . . federal contributions are not the subject of the appropriative power of the legislature.

The courts, then, are divided on the issue of whether or not state legislatures have the authority to appropriate federal funds. It should also be noted, though, that in more than two-thirds of the states, the legislature does appropriate federal funds, and in most of these states the authority of the legislature to make such appropriations has not been questioned.

But the legal analysis does not end here. Block grants have added a new and significant wrinkle to the legislative-executive debate over federal funds appropriation authority.

Legislative Appropriation of Block Grants

In those states where courts found that the

legislature did not have the authority to appropriate federal funds, a major basis for the finding was that such appropriation interfered with an executive function. The state's role with respect to federal funds, according to those courts finding against the legislature, is not to determine for what purposes money should be spent--a legitimate legislative function, but rather to administer program funds in a way already specified by the federal government--an executive function.

A 1978 Massachusetts advisory opinion by the justices of the Supreme Judicial Court reflects this logic. That decision concluded that federal funds "received by state officers or agencies subject to the condition that they be used only for objects specified by federal statute or regulations" imply a separate federal trust and are "not subject to appropriation by the legislatures" (emphasis added). But, with respect to this sort of argument, block grants are a very different kettle of fish.

Unlike their categorical sisters, federal block grants are intended to be used for very broad purposes (community development, social services, primary health care, etc.), with the specific objects of expenditure to be determined by the states. Moreover, Administration spokesmen have emphasized that the federal government is neutral with respect to the degree of state legislative involvement in the control of block grant expenditures.

The Massachusetts legislature, convinced that the 1978 opinion did not cover block grants, passed a law in 1981 giving it full appropriations authority over all block grants and all but a handful of other federal grants. The federal grant funds excluded from the 1981 bill include, "financial assistance from the United States Government for payments under Titles XVIII, XIX or XX of the Social Security Act or other reimbursements received for state entitlement expenditures. . . . and financial assistance for direct payments to individuals." To date, the executive branch has not challenged the constitutionality of the 1981 act.

The Colorado legislature also chose to interpret its 1972 Colorado Supreme Court case, which denied the claim of legislative authority to appropriate federal funds, as not being applicable to block grants. In its 1982-83 appropriations act, the legislature, which had not before appropriated any federal funds, appropriated the block grant monies for specific programs and line items. The Governor subsequently vetoed the language in the bill appropriating the block grants on the grounds that the legislature did not have the constitutional authority to appropriate

federal funds. Believing the 1972 Colorado Supreme Court case to be not applicable, the Colorado legislature decided to sue the Governor over his veto. The case has not yet gone to court.

. . . wording of previous cases concerning legislative appropriation of federal funds suggests there is good reason to believe that the courts will side with the legislatures.

Since this specific issue has not yet been subject to judicial review, it is too early to tell whether the courts will concur with the Colorado and Massachusetts legislatures' assessment that block and categorical grants are different enough from other federal funds that the courts may be expected to uphold their right to appropriate the former while denying their authority to appropriate the latter. But a careful review of the wording of previous cases concerning legislative appropriation of federal funds suggests there is good reason to believe that the courts will side with the legislatures.

Interim Control Over Federal Funds

Legislatures that meet in session for only part of the year face the problem of exercising federal funds oversight during the interim. The uncertainty over the amount of and conditions on grant receipts makes specific sum appropriations problematic if not virtually impossible. Rather than calling a special session each time a problem arises or leaving all interim decisions to the executive branch, the choice of most legislatures has been to designate a legislative committee to be responsible for federal funds matters during the interim.

Except where a legislature has explicit constitutional authority to do so, the courts generally have denied legislatures the right to assign to a committee the powers of the full legislature and have concluded that such action constitutes an unlawful delegation of authority. Cases in Alaska, Missouri, Montana and most recently in North Carolina and Oklahoma have found against the state legislature.

There are two main grounds on which the courts have struck down interim oversight committees. The first is unconstitutional delegation of authority: those powers specifically vested in the full legislature may not be delegated to a subgroup of the full legislature. The second is violation of the separation of powers doctrine: review of grant applications and approval of expenditure plans are executive, not legislative functions.

The recent opinion by the North Carolina Supreme Court, which found unconstitutional the delegation of approval/disapproval authority over interim federal receipts to North Carolina's Joint Legislative Committee to Review Federal Funds, offers a good example of judicial reasoning in rejecting interim legislative oversight committees:

. . . If the General Assembly has the authority to determine whether the State or its agencies will accept the grants in question, and, if accepted, the authority to determine how the funds will be spent, it is our considered opinion that the General Assembly may not delegate to a legislative committee the power to make those decisions.

In several of the instances set forth in [the law in question] the committee would be exercising legislative functions. In those instances there would be an unlawful delegation of legislative power. In the other instances the committee would be exercising authority that is executive or administrative in character. In those instances there would be a violation of the separation of powers provisions of the Constitution and an encroachment upon the constitutional power of the Governor. As stated above, our Constitution vests in the General Assembly the power to enact a budget--to appropriate funds--but after that is done, Article III, Section 5(3) explicitly provides that "the Governor shall administer the budget as enacted by the General Assembly.

The constitutionality of interim federal funds oversight committees in South Carolina and Kentucky is also currently being questioned, but decisions in these cases have not as yet been handed down.

The courts have not ruled against the assignment of legislative duties to an interim committee in all cases. The Louisiana Supreme Court, in a 1977 case, upheld the method of appointment to and functions of the Legislative Budget Committee, which has binding control over unanticipated federal receipts. Additionally, in 17 states, interim legislative bodies have binding control over the receipt of unanticipated federal funds, and in most of these states the authority of these bodies has not been challenged.

States concerned that they do not have the authority to create an interim committee with authority to revise block grant or other federal funds appropriations have several options open to them.

- First, they can follow Oregon's lead and seek a constitutional amendment allowing the legislature to delegate its authority during the interim. However, constitutional amendment proposals similar to Oregon's have failed in Alaska and Montana.
- Second, legislatures may detail in their appropriations bills just how federal funds are to be spent during the interim should additional funds become available or federal funding cutbacks occur. Iowa's 1982-83 federal funds appropriations bill (H.F. 2477) includes detailed procedures to be followed by the governor in the event that federal funds are more or less than anticipated or federal block grants are consolidated or expanded.
- Third, to limit the governor's discretion while the legislature is not in session, legislatures may follow Minnesota's lead in allowing the governor to only spend one-fourth of whatever new monies may become available during the interim, reserving the balance to be appropriated by the legislature at its next session.
- Fourth, legislatures can hold off appropriating federal funds until the funds have actually been received or the exact nature of the grants are known and then require a special session for appropriation. Montana did this in 1981.
- Finally, in those states where there is no legal limit on the length of the legislative session, the legislature may decide to recess instead of adjourn in order to maintain control over federal funds.

This is an excerpt from, "Strengthening Legislative Oversight of Federal Funds: Problems Issues and Approaches," Legislative Finance Paper No. 22. For further information contact Barbara Yondorf.

MORE ANNUAL MEETING

National Association of Legislative Fiscal Officers (NALFO)

Monday, July 26; 2:00-5:30 p.m.

WELCOME: Leo Mammott, President of NALFO
and Legislative Fiscal Analyst,
UT

SESSION: INNOVATIONS IN FISCAL ANALYSIS

"Combining Fiscal Analysis and
Program Evaluation," Gerry
Rankin, Director, Legislative
Fiscal Bureau, IA

"Using Demographic and Economic
Information Modeling in
Appropriation Analysis," Dr.
James Zingale, Director,
Economic and Demographic
Research Division, FL

SESSION: USE OF COMPUTER CAPABILITY TO ASSIST IN FISCAL ANALYSIS

Ted Ferris, Director, Senate
Fiscal Agency, MI
Don Weatherspoon, Director,
Division of Budget Review, MD

Fiscal Affairs and Oversight Committee

Tuesday, July 27; 9:30 a.m.-12:00 Noon

Moderator: Rep. Cleta Deatherage, Chair,
House Appropriation Committee, OK;
and Chair of FAO

Speaker: Harry Hatry, Urban Institute

Panelists: Rep. Herb Morgan, Chair, House
Appropriations Committee, FL
Rep. Linda Emmons, Ranking Member,
House Appropriations Committee, CT
Rep. John Brandl, MN

1:00-3:00 p.m.

Moderator: Don Weatherspoon, Vice Chair, FAO
Committee

Speakers: Rep. Richard Welden, IA
Rep. Roger Bremner, Chair,
Assembly Ways & Means Committee, NV
Bill Goodman, Asst. Director,
Legislative Research Bureau, AR

1979 Findings on State Mandated Programs. The 1979 interim Committee on Local Government recommended the following:

... that the requirement that county assessors maintain maps which they are currently required to prepare for their counties. Such maintenance would be discretionary with each county assessor. The committee recognized the importance of preparing these maps in order that counties may develop accurate information regarding valuations. It felt, however, that a continuing maintenance requirement was unnecessary.

... Allow the Board of County Commissioners of each county to post tax notices and reports of claims and expenditures paid by the county rather than publish these notices in a legal newspaper. In the event the board decides to post these notices, it shall furnish a copy of the report to every legal newspaper in the county.

... Allow the burning of solid wastes by both commercial and noncommercial interests in counties of less than 25,000 persons when, in the opinion of the commissioners, such burning will not result in a public nuisance which is injurious to the health and safety of the people. It was intended to allow county commissioners increased flexibility in meeting the individual needs of the county and so reduce costs.

... Change the fees for accepting and processing an application for a permit for an individual sewage disposal system from a fixed fee (not exceeding \$75) to a fee based on the average cost of processing the application in the preceding year. Testimony indicated that the current fee structure was inadequate to cover raising costs of inspection.

... Permit the modification or waiver of a mine operator's duties where a county was conducting a limited impact operation for the extraction of minerals used in the construction or maintenance of county roads. Currently counties are responsible for fulfilling all the reclamation duties applicable to a private firm when engaged in mining. Again, this represents a considerable cost imposed on county government which might be reduced.

... Permit the State Department of Health to bring suit or other action against a local board of health for being unwilling to act to prevent the spread of contagious diseases. Currently, the state can bring suit if the local board "... is unable or unwilling" to abate the spread of contagious diseases. In addition, provide that the nonprevailing side in such a case, rather than the local board of health, would bear the expenses of the case.

... Provide that a public official or employee may be compensated only at a rate sufficient to equal his normal income level while that official or employee is on annual military leave. This would reduce "double dipping".

... Redefine "seasonal employment" for the purpose of the Colorado Employment Security Act (unemployment insurance) to reduce a local government's liability for seasonal workers such as park workers, life guards, and similar seasonal employees.

... Broaden the categories of state traffic offenses for which a portion of the resulting fines, penalties, or forfeitures collected by local authorities could be retained. These offenses would consist of driving under the influence, driving while one's ability is impaired, violations of registration or driver licensing laws, violations of obligations of persons involved in a traffic accident, and violations of motor vehicle equipment requirements. This would allow local governments to recover some of the costs incurred by them as a result of enforcing state statutes.

... Require the Department of Social Services to pay 85 percent of the previous month's medicaid reimbursement to each nursing home vendor on the first of the month. The remainder should then be paid based on actual billings. The proposal is intended to reduce the cash flow problems now being experienced by nursing homes as a result of late state reimbursement payments.

... Allow county departments of social services to retain 50 percent of the amount of fraudulently obtained public assistance or fraudulently obtained overpayment which they recover. This is intended as an inducement to county government to vigorously pursue these cases in the manner they find most appropriate.

... Require the state to increase the advancement of funds to counties for homemaker services for elderly and disabled clients from 80 percent to 90 percent. This is intended to discourage the placement of elderly or disabled individuals in institutionalized settings such as county nursing homes.

APPENDIX E

COLORADO COMMISSION ON STATE AND LOCAL GOVERNMENT FINANCE

Summary of Findings and Recommendations
Presented to
Committee on State-Local Issues (New Federalism)
on July 23, 1982

FINDINGS AND RECOMMENDATIONS

Revenue Limits

Colorado statutes limit the growth in property tax revenues for local governments to 7% annually plus an adjustment factor . This limitation is an expression of public resistance to increased government taxation, and particularly to property taxes. However, other factors also build pressure on government budgets -- factors such as inflation; variations in population, local tax structures, economic conditions, and service needs; reductions in federal assistance to state and local governments; and increased costs in capital investment financing. State and federal mandates generate non-discretionary local spending for specific purposes without concern for overall community needs, priorities, and financial capacity.

Revenue limitations, expenditure limitations, and unfunded mandates imposed by one level of government on another are inconsistent with the basic principles of local control and representative government. These principles are the foundations for local self-governance, and can only be achieved when local governments have the authority and the responsibility to determine expenditures and to raise revenues.

Any strategy for addressing these issues should be designed to increase local flexibility and to minimize constraints. Where possible, the accountability for living within constraints should rest with the level of government at which those constraints are imposed.

Recommendation: Future costs which are mandated by the state should be fully funded by the state. The state should also pursue new financial arrangements for existing state-mandated

programs which force non-discretionary spending by local governments. After these steps have been taken, the state should reevaluate the need for the 7% limit now imposed on property tax revenues of units of local government.

Social Services

The current pattern of social services delivery provides limited discretion to county governments. The state serves as the central control point to assure compliance with federal and state laws and regulations. In this state-supervised, county-administered system, county governments finance 20% of the costs and the state funds 80%. At the county level these costs are financed through the property tax, and they impact the county structure as non-discretionary expenditures. Since county revenues fall under the 7% property tax limit, non-discretionary expenditures force reductions in discretionary spending where resources are limited. The Commission feels that the historical rationale for both county administration and financial involvement has changed, and that the present system should be adjusted to place greater fiscal responsibility with state government, where control of entitlement and non-discretionary programs clearly resides.

Recommendation: The State should assume all administrative responsibility for mandated public assistance programs by January 1984, and should relieve counties of all financing responsibility for those programs by January 1985. (The suggested process and rationale for state assumption are developed further in Chapter I of this volume).

Courts

The present court system is governed, administered, and primarily funded by state government. The exception is courtroom facilities financing, which continues to be a non-discretionary responsibility of the counties. This responsibility costs local governments an estimated \$9 million annually.

Although, as a matter of principle, this Commission does not support the imposition of non-discretionary costs on units of local governments, we do not feel it reasonable to expect all mandated costs to be removed at this time. We believe the State should continue to review the local court financing problem in the context of local capital investments. We believe that such financing alternatives as might emerge from such a review, combined with state assumption of mandated social services and the recommended action on revenue limits, would provide sufficient relief to allow local governments to handle court costs.

Jails

Recent court decisions -- at both state and federal levels -- support the principle that a prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication taken from him by law. Given the size, age and general condition of many Colorado jails, many local governments and local officials are finding themselves officially and personally liable in courts of law.

Colorado has no uniform standards for the construction and operation of jail facilities. This lack of standards may make local governments more vulnerable to lawsuits, and certainly complicates the process of assessing capital construction needs. A conservative statewide estimate of jail construction needs through 1986 is \$100 million.

County jails are required by Colorado statutes, and significant portions of jail and sheriff budgets are spent implementing state laws. Therefore, the state has a responsibility to help counties solve jail problems. At the same time, local control over police and jail services is central to the principles of local governance. Whatever role the state assumes toward jail financing should not compromise that control.

Recommendation: The State should reconsider a set of minimal jail standards which would serve to protect constitutional rights. At the request of individual counties, the State, (through its Division of Criminal Justice) should provide technical assistance to bring facilities up to those standards or to court mandates.

In the future, the state should fully fund the incremental increases in jail costs brought about by state mandates on local government. Further, this Commission requests the Division of Criminal Justice in the Department of Local Affairs to analyze the cumulative impact of HB 1232 (1981) and to report to the General Assembly on that impact in January 1983.

Local Water and Sewer Systems

The current pattern of local water and sewer construction, operation and maintenance must meet both federal and state standards for public health and environmental protection. Recent reductions in federal support by the Environmental Protection Agency, the Farmers Home Administration, and the Economic Development Agency, and a shift in priorities by the Colorado Water Conservation Board away from municipal water system assistance have dramatically affected historical patterns of intergovernmental financing. These changes have occurred at the same time borrowing costs have increased. Local capacity to finance construction and rehabilitation varies with economic feasibility, access to the market, bonding limitations, anticipated growth, and the actual costs of meeting standards and regulations. The Commission feels that the state should be involved in providing local water and sewer assistance to meet existing standards and respond to local financial problems.

Recommendations: We recommend that the state legislature provide statutory authorization to financially assist local government units to meet clean drinking water standards. Further, we support the creation of a Legislative Interim Committee to study the long-range issues of water and sewer financing alternatives.