

**NCSL Standing Committee on Natural Resources and  
Infrastructure**

**Policy Directives and Resolutions**

**2016 NCSL Legislative Summit  
Chicago, Illinois**

**Table of Contents**

AVIAN FLU RESPONSE .....	2
CLIMATE CHANGE.....	4
COVER CROP RESEARCH.....	8
POLLINATOR HEALTH .....	9
WILDFIRE FUNDING.....	11
EXAMINATION OF THE PROPOSED MERGER BETWEEN DOW CHEMICAL AND DUPONT .....	13
STATE SOVEREIGNTY IN AIR AMBULANCE REGULATION .....	15
AIR POLICY .....	16
ENVIRONMENTAL FEDERALISM.....	24
FEDERAL LAND POLICY MANAGEMENT ACT.....	29
WATER .....	33
WATERWAYS AND PORTS .....	43

1 **COMMITTEE:** **NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY:** **AVIAN FLU RESPONSE**

3 **TYPE:** **RESOLUTION**

4 A resolution of the National Conference of State Legislatures, expressing support for  
5 federal efforts to increase funding for avian flu research and vaccine development efforts.

6 **WHEREAS**, US farmers, poultry processing and food production plants supply a significant  
7 portion of poultry products consumed nationally and internationally; and

8 **WHEREAS**, agriculture is a key driver of rural and state economies and the tremendous  
9 productivity of United States farmers benefits the national economy and the country's  
10 international trade balance; and

11 **WHEREAS**, the highly pathogenic avian influenza (HPAI) H5N1 strain is a new mixed-  
12 origin virus that combines the H5 genes from the Asian HPAI H5N1 virus with N genes  
13 from native North American avian influenza viruses found in wild birds; and

14 **WHEREAS**, according to the USDA, since December 2014, confirmed cases of HPAI H5  
15 have been reported in the Pacific, Central, and Mississippi flyways (or migratory bird  
16 paths). The disease has been found in wild birds, as well as in a few backyard and  
17 commercial poultry flocks. The Centers for Disease Control and Prevention (CDC)  
18 considers the risk to people from these HPAI H5 infections to be low; and

19 **WHEREAS**, 223 detections of HPAI H5 have been reported across 15 states, with the  
20 Midwest being hit the hardest, affecting over 48 million birds; and

21 **WHEREAS**, farmers and agriculture related businesses have seen significant losses in  
22 revenue and workers have been laid off or subject to reduced work hours; and

23 **WHEREAS**, according to USDA statistics, nationwide, over 11% of the nation's laying  
24 hens and over 3% of the nation's annual turkey production have been impacted to date,

25 resulting in a significant threat to United States agriculture and the ability of our farmers to  
26 feed a growing world population; and

27 **WHEREAS**, state and federal governments have invested millions of dollars to address the  
28 fallout associated with H5N1 and find solutions to the virus; and

29 **WHEREAS**, the USDA Agricultural Research Service (ARS), Southeast Poultry Research  
30 Lab (SEPRL) is working to evaluate and develop avian influenza (AI) vaccines; and

31 **WHEREAS**, the National Conference of State Legislatures (NCSL) recognizes the serious  
32 threats posed by the HPAI outbreak and the key role that the federal government plays in  
33 harnessing resources and providing assistance to farmers and others affected by the virus,

34 **NOW, THEREFORE, BE IT RESOLVED** by the NCSL that it fully supports recent federal  
35 efforts to protect poultry production and the nation's food supply by aggressively working to  
36 contain and remediate outbreaks when they occur. NCSL also supports federal efforts to  
37 serve as technical advisors and the clearinghouse of information for all sectors, and  
38 investigating ways to stop the spread of the virus.

39 **BE IT FURTHER RESOLVED**, that the NCSL strongly encourages the federal government  
40 to increase the funding necessary for state and federal agencies to continue development  
41 of biosecurity containment strategies, time sensitive approaches to sharing information,  
42 and more aggressive research into what is causing avian influenza, why some fowl are  
43 more susceptible, and prevention measures, including the development of vaccines, that  
44 can be taken.

45 **BE IT FURTHER RESOLVED**, federal agencies should work closely with the states to  
46 align HPAI efforts and share best practices.

47 **BE IT FURTHER RESOLVED** that NCSL and the states are willing partners in the federal  
48 government's HPAI efforts and will closely monitor federal actions and progress on these  
49 and related efforts of utmost importance to the states and our nation's food supply, rural  
50 agriculture economies, environment, and natural resources.

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: CLIMATE CHANGE**

3 **TYPE: RESOLUTION**

4 NCSL urges the federal government to consult with state elected officials, their national  
5 representative organizations and existing interstate partnerships in developing a federal  
6 program. As Congress and the administration examine proposals for reducing greenhouse  
7 gas emissions, the National Conference of State Legislatures encourages the federal  
8 government to always take the following principles into account:

- 9 • Federal action should be flexible, allowing for a range of complementary strategies  
10 at the state and federal level maintaining a strong role for state, local and tribal  
11 government in any federal action.
- 12 • Federal legislation should provide states the authority and flexibility to work within  
13 an overall framework; to apply the law effectively to all sources of emissions and  
14 ensure achievement of climate change goals in the most cost effective, timely and  
15 efficient manner for each state.
- 16 • Federal legislation should not preempt state or local governments from enacting  
17 policy options that differ from federal choices or from enacting stricter or stronger  
18 measures within their jurisdiction.
- 19 • Federal legislation should afford states the flexibility to form regional cooperatives  
20 and implement innovative policies that advance federal efforts to reduce the effects  
21 of climate change.
- 22 • Congress must authorize and appropriate sufficient funds for federal, state and local  
23 governments to implement any federal legislation. These funds should be newly  
24 authorized appropriations, not reprogrammed resources.

25 • Federal legislation should ensure state legislative authority in any federal climate  
26 change legislation and affirm the active role played by state legislatures in both  
27 fiscal and substantive aspects of state policymaking.

28 • Federal legislation providing for the allocation of greenhouse gas reduction  
29 programs to states should include language making decisions related to such  
30 allowances subject to state legislative approval.

31 NCSL urges the federal government, should it choose to act on this issue, to take into  
32 account the following principles regarding program design components:

33 • Any national system must include short, medium and long-term goals and  
34 incorporate a rigorous oversight program that provide for ongoing study and  
35 analysis of the system to ensure it is achieving intended goals.

36 • A new national program should serve to address uncertainties that are hampering  
37 investment in generation, transmission and distribution and enhance the likelihood  
38 that appropriate technologies will be developed and other solutions implemented so  
39 as to achieve the desired reductions in GHG emissions in the most economical  
40 manner possible.

41 • Federal legislation should be designed appropriately to balance competing criteria,  
42 including, but not limited to, equity, economic efficiency and ease of administration.

43 • Revenue derived from a greenhouse gas reduction program should be directed to  
44 complimentary policies focused on mitigating climate change consumer costs  
45 including but not limited to energy research & development, weatherization,  
46 conservation and energy efficiency activities.

47 • A national program to reduce GHG emissions must also address adaptation issues.

48 • Auctioning of allowances may be the most economically efficient mechanism for  
49 achieving a GHG emissions reductions goal. However, the allocation of emissions  
50 allowances at no cost can serve as an appropriate transition measure necessary to  
51 ensure continued reliability, minimize economic dislocation resulting from the

52 carbon intensity of the existing infrastructure, and allow for development and  
53 deployment of needed new technologies and measures to reduce emissions.

54 • Priority distribution of allowances at no cost should be to those entities in affected  
55 sectors where existing regulatory structure provides the necessary oversight to  
56 ensure that the value of such allowances is accounted for in establishing price rates  
57 for consumers.

58 • The allocation of greenhouse gas reduction program to states under a federal  
59 greenhouse gas reduction program should include language making decisions  
60 related to such allowances subject to state legislative approval.

61 • The establishment of any new federal program should include provisions for  
62 transparent reporting and accountability and incorporate the use of third party  
63 verification to ensure reported outcomes are verifiable.

#### 64 **Unintended Consequences**

65 NCSL believes that federal legislation regarding the reduction of greenhouse gases should  
66 take into account the implications of actions and/or inactions on economic development,  
67 energy security, and those most vulnerable citizens. Evaluation should include the life  
68 cycle impacts of policy options including ancillary impacts.

69 NCSL believes that federal legislation should require continuing assessments of the  
70 potential impacts to the United States of climate change, by state or region including  
71 effects on water resources, agriculture, infrastructure, natural systems, environmental  
72 quality, public health, biodiversity and the cultures of our native peoples. Such an  
73 assessment will support the development of domestic and international adaptation-  
74 mitigation strategies. The Environmental Protection Agency (EPA) should provide funding  
75 and assist states in developing assessments and adaptation plans at the state and  
76 regional level.

77 NCSL also urges the federal government to fully consider how legislation will affect low-  
78 income households that already struggle to balance needs and expenses. NCSL  
79 encourages the federal government to expand and enhance long-term funding for the

80 Department of Energy's Weatherization Assistance Program and to ensure that any new  
81 federal program does not undermine existing federal, state and private sector energy  
82 assistance and outreach programs that assist our most vulnerable citizens.

### 83 **Research and Development**

84 NCSL strongly urges the federal government to authorize and appropriate funding and  
85 provide other incentives to spur expanded research and development (R&D), as well as  
86 advance the demonstration and deployment of new and existing technologies to improve  
87 energy efficiency, advance mitigation strategies and reduce greenhouse gas emissions.

88 NCSL urges the federal government:

- 89 • To ensure that legislation not limit the diversity of technologies supported, as future  
90 advancements cannot be predicted.
- 91 • To take into account state and regional differences, and not limit or specify the  
92 technologies used in each state and ensure sufficient flexibility for each State to  
93 determine how to best achieve nationally-set goals.
- 94 • To promote current and future innovations and expand the use of such technology  
95 through R&D transfer agreements with other countries.

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: COVER CROP RESEARCH**

3 **TYPE: RESOLUTION**

4 **WHEREAS**, growing concerns about water quality, soil fertility, weed control, nematode  
5 control, water retention and biodiversity; and

6 **WHEREAS**, farmers need real solutions to solve concerns and maintain yields and profits,

7 **WHEREAS**, cover crops have proven to increase yields in university studies as well as in  
8 replicated farm research on real-world field plots; are an increasingly popular way to keep  
9 soil healthy; help reduce the need for N and other nutrients, and create a healthier soil  
10 environment that resists disease and pests; inhibit weed growth by shading them out, by  
11 preventing emergence, and by compounds exuded by the roots; are shown to reduce  
12 populations of pathogenic nematodes and encourage populations of beneficial ones; break  
13 up soil compaction whether it is naturally occurring or a result of heavy cultivation and  
14 tillage; add diversity to the natural biological life in heavily farmed soils, often working in  
15 synergy with cash crops for bottom line benefits; add diversity to the natural biological life  
16 in heavily farmed soils, often working in synergy with cash crops for bottom line benefits.

17 **RESOLVED**, that the National Conference of State Legislatures supports federal efforts to  
18 further the development of and proliferation and use of cover crops.

19 **BE IT FURTHER RESOLVED**, that this resolution be submitted to appropriate federal  
20 officials and the U.S. Congress.

1 **COMMITTEE:** **NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY:** **POLLINATOR HEALTH**

3 **TYPE:** **RESOLUTION**

4 A resolution of the National Conference of State Legislatures Natural Resources and  
5 Infrastructure Committee, recognizing the importance of pollinators, stressing the negative  
6 ramifications of continued pollinator loss, and expressing support for federal efforts to  
7 protect pollinators.

8 **WHEREAS**, farmers depend on pollinator species such as bees, ants, butterflies, birds  
9 and bats to successfully produce approximately one third of all United States agricultural  
10 output; and

11 **WHEREAS**, in addition to food, pollinators also are vital to the production of fibers, edible  
12 oils, medicines, and other products; and

13 **WHEREAS**, urban and rural beekeepers play an important role in state and federal  
14 agricultural production; and

15 **WHEREAS**, agriculture is a key driver of rural and state economies and the tremendous  
16 productivity of United States farmers benefits the national economy and the country's  
17 international trade balance; and

18 **WHEREAS**, pollinator loss poses a significant threat to United States agriculture and the  
19 ability of our farmers to feed a growing world population; and

20 **WHEREAS**, pollinators are essential organisms in the ecosystems that provide  
21 biodiversity, recreation and enjoyment for people and habitat for wild plants and animals;  
22 and

23 **WHEREAS**, the National Conference of State Legislatures (NCSL) recognizes the serious  
24 threats posed by pollinator loss and the key roles that the federal government plays as  
25 landowner and manager, regulator of pesticide products, and financial and technical  
26 assistance provider to farmers and other private landowners; NOW, THEREFORE,

[BACK TO THE TABLE OF CONTENTS](#)

27 **BE IT RESOLVED** by the NCSL Natural Resources and Infrastructure Committee that it  
28 fully supports recent federal efforts to: develop best management practices and enhance  
29 pollinator habitat on federally owned or managed lands; incorporate pollinator health as a  
30 component of all future federal restoration and reclamation projects; revise guidance  
31 documents for designed landscapes and public buildings in order to incorporate pollinator-  
32 friendly practices; increase both the acreage and forage value of pollinator habitat in the  
33 Conservation Reserve Program and other federal conservation programs; provide  
34 technical assistance in collaboration with land-grant university-based cooperative  
35 extension services to federal departments and agencies, state, local, and tribal  
36 governments, and other entities and individuals including farmers and ranchers; assist  
37 states and state wildlife organizations, as appropriate, in identifying and implementing  
38 projects to conserve pollinators through the revision and implementation of State Wildlife  
39 Action Plans; assess the effects of systemic pesticides and parasites on bee and other  
40 pollinator health and take corresponding action, as appropriate, to protect pollinators from  
41 pesticides and parasites; and take immediate measures to support pollinators with proper  
42 habitat and nutrition during the current growing season and thereafter, including planting  
43 pollinator-friendly vegetation, increasing flower diversity in plantings, limiting mowing  
44 practices, and reduce or avoid, when necessary, the use of pesticides in sensitive  
45 pollinator habitats through the use of integrated vegetation, pest and colony management  
46 practices.

47 **BE IT FURTHER RESOLVED** that states work closely with affected individuals and serve  
48 as laboratories of innovation in problem solving and policy making. Federal agencies  
49 should work closely with the states to align pollinator protection efforts and share best  
50 practices.

51 **BE IT FURTHER RESOLVED** that NCSL and the states are willing partners in the federal  
52 government's pollinator protection efforts and will closely monitor federal actions and  
53 progress on these and related efforts of utmost importance to the states and our nation's  
54 food supply, urban and rural agriculture economies, environment, and natural resources.

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: WILDFIRE FUNDING**

3 **TYPE: RESOLUTION**

4 A resolution of the National Conference of State Legislators urging the federal government  
5 to address insufficient budget mechanisms for wildfire suppression and expressing support  
6 for federal efforts to fund catastrophic fires as natural disasters.

7 **WHEREAS**, Wildfire suppression costs have increased dramatically in the last decade;

8 **WHEREAS**, In the past two years, the U.S. Forest Service has had to transfer more than  
9 \$1 billion from other programs within the agency to pay for fighting wildfires;

10 **WHEREAS**, these fire transfers deplete resources from vital fire prevention and mitigation  
11 programs, including forest restoration and management activities to reduce future fire risk;

12 **WHEREAS**, increased fire activity can have substantially negative impacts on air quality,  
13 water quality, greenhouse gas emissions as well as reduce downstream water storage as  
14 sediment runoff lowers the effective level of dams and reservoirs;

15 **WHEREAS**, reduced restoration and mitigation funding also makes it easier for invasive  
16 pests and diseases to infest vulnerable forests;

17 **WHEREAS**, anticipated changes in climate will also cause fire risk to escalate in drought-  
18 ridden regions, further increasing wildfire suppression costs; and

19 **WHEREAS**, federal funding for wildfire suppression is currently allocated using the 10-year  
20 average cost for wildfire suppression activities; and

21 **WHEREAS**, the National Conference of State Legislators (NCSL) recognizes that wildfires  
22 must be managed on a regional basis and that increased risk for wildfires on federal lands  
23 ultimately will lead to increased costs for state wildfire programs.

24 **BE IT RESOLVED....** That NCSL urges Congress to address the budget structure of  
25 wildland fire accounts. NCSL believes that any federal policy on wildfires should minimize

- 26 the risk of fire transfers from prevention and mitigation programs and support federal
- 27 actions that would fund catastrophic wildfires similar to natural disasters.

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: EXAMINATION OF THE PROPOSED MERGER**  
3 **BETWEEN DOW CHEMICAL AND DUPONT**

4 **TYPE: NEW RESOLUTION**

5 A resolution of the National Conference of State Legislatures, urging the federal  
6 government to carefully examine a proposed merger of agricultural input companies.

7 **WHEREAS**, America's farmers provide food, fiber, and fuel for this nation and a growing  
8 world population; and

9 **WHEREAS**, farmers currently face significant financial challenges due to low commodity  
10 prices and no commensurate reduction in cost for inputs such as seed and fertilizer; and

11 **WHEREAS**, both farmers and consumers benefit from true competition in agricultural input  
12 markets; and

13 **WHEREAS**, excessive consolidation in the agricultural input sector has the potential to  
14 stifle innovation, create barriers to entry for smaller companies, and lead to higher prices  
15 and limited choices for farmers and consumers; and

16 **WHEREAS**, these impacts would have significant negative effects on state economic  
17 output, particularly in rural areas; and

18 **WHEREAS**, the proposed merger between Dow Chemical and DuPont could create the  
19 country's largest biotechnology and seed company in an industry that has already  
20 undergone significant consolidation in recent years; and

21 **WHEREAS**, the Antitrust Division of the United States Department of Justice is charged  
22 with enforcing section 7 of the federal Clayton Act and prohibiting mergers that would  
23 substantially decrease market competition; and

24 **WHEREAS**, the Antitrust Division's efforts ensure that farmers and consumers benefit from  
25 competitive markets for agricultural inputs and the abundant production, competitive

26 prices, innovation, and efficiency that result when markets function free from  
27 anticompetitive interference; and

28 **WHEREAS**, the Clayton Act empowers the Antitrust Division to stop or modify a proposed  
29 merger to prevent economic harm that would be more difficult to address once the merger  
30 is finalized; and

31 **WHEREAS**, the Antitrust Division has scrutinized and successfully blocked or modified  
32 several agricultural mergers resulting in substantial benefits for farmers and consumers,  
33 including the proposed mergers of Monsanto and DeKalb Genetics Corporation (1998),  
34 Cargill and Continental (1999), Case and New Holland (1999), Monsanto and Delta & Pine  
35 Land (1999); and Syngenta, Astrazeneca and Advanta (2004);

36 **NOW, THEREFORE, BE IT RESOLVED** by the National Conference of State Legislatures  
37 that it urges the Antitrust Division of the United States Department of Justice to carefully  
38 examine the proposed merger between Dow Chemical and DuPont in order to protect  
39 American farmers and state economic output from the negative effects of excessive  
40 consolidation and uncompetitive markets for agricultural inputs.

41 **BE IT FURTHER RESOLVED** that a copy of this resolution be sent to Attorney General  
42 Loretta Lynch, President Barack Obama, and all members of Congress.

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: STATE SOVEREIGNTY IN AIR AMBULANCE**  
3 **REGULATION**

4 **TYPE: NEW RESOLUTION**

5 **WHEREAS**, as many rural hospitals have recently closed, air ambulance services have  
6 become increasingly necessary and are being used more frequently to transport patients  
7 to faraway hospitals in an emergency; and

8 **WHEREAS**, competition among air ambulance services have increased costs; and

9 **WHEREAS**, air ambulance services can cost patients tens of thousands of dollars out-of-  
10 pocket when companies do not accept a patient's insurance, and emergency patients  
11 rarely have the capacity to choose their own air ambulance company; and

12 **WHEREAS**, some air ambulance companies refuse to reveal actual costs to insurers, and  
13 some insurers are unwilling to pay market value for the service; and

14 **WHEREAS**, federal government Medicare reimbursements cover only a small portion of  
15 the actual cost of an air ambulance, forcing air ambulance companies to charge patients  
16 more; and

17 **WHEREAS**, under the Airline Deregulation Act, states cannot regulate routes, services or  
18 prices of air ambulances; and

19 **NOW, THEREFORE BE IT RESOLVED THAT**, NCSL supports state sovereignty in air  
20 ambulance regulation in order to protect patients from overwhelming financial burdens for  
21 emergency medical services; and

22 **BE IT FURTHER RESOLVED THAT**, NCSL urges Congress to amend the Airline  
23 Deregulation Act in order to provide states the authority to enforce insurance regulations  
24 on air ambulance providers to protect consumers.

1 **COMMITTEE:**           **NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY:**               **AIR POLICY**

3 **TYPE:**                 **DIRECTIVE (WITH AMENDMENTS)**

4 **The Clean Air Act Implementation**

5 The National Conference of State Legislatures (NCSL) fully supports the goals embodied in  
6 the Clean Air Act Amendments of 1990 (CAAA) and urges the U.S. Environmental Protection  
7 Agency (EPA) to proceed diligently with full implementation of the law to achieve clean air for  
8 our citizens. It is essential that Congress and the EPA fulfill their responsibilities to facilitate  
9 implementation by the states.

10 NCSL makes the following recommendations:

- 11       • Implementation of the CAAA is the responsibility of the states. NCSL encourages  
12       Congress and the EPA to pay particular attention to the voices of that state expertise  
13       and experience.
  
- 14       • Communication with state legislators is of utmost importance because only state  
15       legislators can enact enabling legislation for state programs and appropriate state  
16       funds. Congress and the EPA should regularly and directly work with state legislators  
17       during federal action on air quality issues.
  
- 18       • EPA should work closely with states to assist them in developing all regulations,  
19       technical assistance and funding necessary for compliance. Furthermore, EPA should  
20       support any state regulation that enables that state to meet or exceed the CAAA  
21       standards.
  
- 22       • Federal grants authorized under the CAAA provide financial resources to the states for  
23       development and implementation of air quality programs and other clean air  
24       responsibilities. Congress and the EPA must ensure that states continue to receive  
25       adequate funding to cover all costs of program management including monitoring.

- 26 • Because the states have existing air pollution control programs to administer with  
27 current federal funding, any new air quality programs or responsibilities mandated by  
28 Congress or EPA should be accompanied by additional federal funding.
  
- 29 • NCSL urges EPA to provide as much administrative flexibility as the law allows in  
30 order to achieve clean air goals in the most cost effective and efficient manner.
  
- 31 • Cost-effectiveness should be permitted as a factor in state selection of transportation  
32 control measures and emissions control strategies.
  
- 33 • NCSL urges EPA to meet all deadlines for publication of documents required under  
34 the CAAA. NCSL urges Congress to amend the law to replace statutory deadlines for  
35 state action with language that provides a specific time period for state compliance  
36 after document publication.
  
- 37 • NCSL urges EPA to act expeditiously to enact the required regulations necessary to  
38 reduce emissions from federally preempted sources. Failure to act to require emission  
39 reductions from federally preempted sources can impede a state's ability to achieve  
40 attainment in some areas despite any and all actions available to a state in  
41 development of their state implementation plans.
  
- 42 • NCSL urges Congress to develop and implement sustainable management policies  
43 which will reduce fuel loadings on federal lands, thereby reducing emissions from  
44 catastrophic wildfires and improving carbon sequestration on those lands.
  
- 45 • EPA should provide training opportunities for states to help develop the skills and  
46 understanding needed to properly implement the CAAA. In addition, EPA should  
47 provide informational resources to help the public understand its role in achieving  
48 CAAA goals.
  
- 49 • Congress and EPA should take maximum advantage of tools and strategies to reduce  
50 emissions from mobile sources including but not limited to promoting alternative fuels  
51 and encouraging strict exhaust standards for light duty vehicles.

- 52 • Federal highway legislation should be made consistent with CAAA objectives. The  
53 EPA and the Department of Transportation (DOT) should work together to ensure  
54 coordination of federal policy.
- 55 • NCSL urges the adoption of national energy, transportation and other policy that  
56 emphasizes energy conservation in order to help achieve the goals of the CAAA. This  
57 should include strengthening of emission standards for automobiles as technologies  
58 improve, more energy-efficient lighting, buildings, and transportation, and more  
59 research and use of alternative forms of energy advanced energy resources. The  
60 federal government should allocate a significant portion of incentive funding to  
61 states that establish progressively increasing solar renewable energy  
62 standards, supported by mutually-beneficial net-metering policies made  
63 available under value-of-solar rate tariffs.
- 64 • NCSL urges the federal government to expeditiously apply the same CAAA  
65 requirements to federal facilities and motor vehicle fleets that are required for state  
66 facilities and fleets.

## 67 **Multi-Pollutant Legislation**

68 NCSL further believes that national efforts to fully implement the CAAA, to maintain and  
69 enhance air quality at the local, state and national level requires Congressional action on  
70 multi-pollutant legislation.

71 NCSL urges Congress to act expeditiously on multi-pollutant legislation to provide certainty in  
72 a time of limited federal and state resources and to enhance the impact of this federal  
73 program which is implemented at the state level. New legislation enacted by Congress should  
74 ensure the ability of all stakeholders to move forward with air pollutant emission reductions,  
75 enhance the environment and protect public health while providing a stable planning  
76 environment for energy providers and consumers.

77

78 NCSL recommends that:

- 79 • New federal standards should maintain and renew the commitment to statutory  
80 authority for states to enact state environmental standards that are more stringent than  
81 their minimum federal counterparts.
- 82 • New federal standards should acknowledge the existence of state programs and  
83 agreements in accord with these standards and should not preempt their continued  
84 implementation.
- 85 • New federal standards should be accompanied by adequate federal funding and  
86 technical assistance that are essential to state efforts to implement complete and  
87 adequate state programs that fully comply with these standards.
- 88 • New federal standards should provide states with maximum flexibility to apply the law  
89 effectively to all sources of emissions and ensure achievement of clean air goals in the  
90 most cost effective, timely and efficient manner for each state.
- 91 • New federal standards should allow states to maintain all of the enforcement tools  
92 available to states under the CAA to ensure compliance with state implementation of  
93 federal regulations.
- 94 • New federal standards should permit states to allow sources to trade emissions  
95 reductions and protect state authority to restrict which emissions may or may not be  
96 traded within a state's borders.
- 97 • New federal standards should allow for regional air planning coordination among  
98 states whenever they agree to address and act on issues with regional air quality  
99 implications.

## 100 **Sanctions**

- 101 • States should not be sanctioned for non-compliance if state's failure to comply was the  
102 result of EPA's failure to adhere to CAAA deadlines for promulgation of regulations or  
103 technical guidance that provide details and requirements of state programs.

- 104       • EPA should have the authority to waive sanctions on states that EPA determines are  
105           making reasonable good faith efforts to comply with CAAA requirements and  
106           deadlines.

### 107   **New Source Review Program**

108   NCSL urges ~~the Environmental Protection Agency (EPA)~~ to reform the NSR program to  
109   achieve improvements that enhance the environment and increase production capacity, while  
110   encouraging efficiency, fuel diversity and the use of resources without weakening the  
111   requirements intended to reduce emissions from new or modified sources of air pollution.  
112   Routine maintenance, repair or replacement activities which are not major modifications  
113   should not trigger NSR requirements.

### 114   **Motor Vehicle Inspection and Maintenance**

115   NCSL believes that:

- 116       • States should be granted flexibility to design inspection and maintenance (I/M)  
117           programs that achieve air quality targets and should receive full credit for emissions  
118           reductions those programs achieve.
- 119       • Congress and EPA should not require the states to use specific I/M technologies.  
120           Such rigid federal requirements may fail to account for technological advances in  
121           emissions testing programs and equipment.

### 122   **Alternative Fuels and Alternatively Fueled Vehicles**

123   NCSL urges the federal government to encourage an increase in the research, development  
124   and promotion of alternative fuels derived from domestic sources and alternatively fueled  
125   vehicles, including their commercial production and use, and to devote federal funds to  
126   evaluate the environmental and economic impacts of alternative fuels and alternatively fueled  
127   vehicles. The primary purpose of these efforts should be reducing the level of air pollutants  
128   and other emissions, reducing U.S. dependence on foreign oil, and providing a low cost,  
129   reliable energy source. NCSL further urges Congress to develop policies to encourage  
130   domestic manufacture of the infrastructure and equipment necessary to produce alternative  
131   fuels.

132 NCSL recommends the exploration and evaluation of all forms of alternative domestic fuels  
133 and alternatively fueled vehicles in order to reduce the incidence of toxic air emissions. NCSL  
134 recommends caution in promoting the replacement of traditional fuels with alternative fuels  
135 that could result in other pollution problems.

136 NCSL supports a federal Clean Alternative Fuels program that includes but is not necessarily  
137 limited to methanol, ethanol, or other alcohols, reformulated gasoline, ultra-low sulfur diesel,  
138 biodiesel, natural gas, liquefied petroleum gas, and hydrogen or other power source  
139 (including electricity). However, NCSL recommends that this program take into account other  
140 uses of source products, i.e. grains, when making recommendations for fuel usage or setting  
141 new national standards. Furthermore, NCSL urges Congress to improve the availability of  
142 source materials from our federal lands in accordance with multiple use mandates.

143 NCSL is concerned that the further development of alternative domestic fuels, alternatively  
144 fueled vehicles and conservation devices will depend, at least in the near future, upon the  
145 continued availability of tax credits designed to encourage investment in these technologies.

146 While tax credits and exemptions are important to the creation of an alternative fuels market,  
147 NCSL recognizes their negative fiscal impact on the overall federal budget, as well as  
148 inequities in the Highway Trust Fund. Consequently, NCSL urges Congress to:

- 149 • Encourage the use of alternative fuels through incentives that will increase the  
150 production and development of new vehicles with alternative fuels capability and  
151 vehicle conversion, in lieu of alternative fuels tax exemptions.
- 152 • Make federal tax credits available to alternative fuel production facilities should be  
153 extended for a limited time.
- 154 • Phase out the tax credits for the research and development of alternative domestic  
155 fuels and alternatively fueled vehicles when the technology or changing policies  
156 relating to petroleum-based fuels makes the product competitive in the market place.
- 157 • Retain state taxing authority to ensure that alternative fuels are competitively priced in  
158 an effort to mitigate the state-specific impact of these and other federal policy  
159 changes.

160 NCSL believes that there should be no warranty invalidation incurred by a provider if ASTM  
161 standards are met for the fuel and the vehicle is approved for that fuel.

162 In areas required under CAAA to utilize reformulated gas (RFG) or oxygenated fuels,  
163 selection of alternative fuel additives should be left to the discretion of the affected state,  
164 where costs, safety, and economic and environmental impacts can be considered.

165 With regards to fuel additives, NCSL recommends the following:

- 166 • Prior to approval of fuel additives, U.S. EPA should examine public health benefits and  
167 cross-media implications.
- 168 • Any fuel requirements should be in the form of performance-based goals. No specific  
169 chemicals or other additives should be prescribed in order to maximize state flexibility  
170 to achieve the goals.
- 171 • Any fuel requirement should be based on anticipated air quality benefits.

## 172 **Low Emission Vehicles and Zero Emission Vehicles**

173 NCSL believes that:

- 174 • EPA should maintain national Low Emission Vehicle (LEV) standards, referred to as  
175 the 49-state car, that are stricter than the law requires. States should be allowed, but  
176 not required, to adopt Zero Emission Vehicles (ZEV) requirements.

## 177 **Clean Diesel**

178 ~~The~~ NCSL supports the priority given to diesel retrofit projects under the Congestion  
179 Mitigation and Air Quality Program. NCSL believes that, due to the cost-effectiveness of  
180 diesel retrofit projects, funding should be substantially increased and provided for the Diesel  
181 Emissions Reduction Program administered by the EPA and that this funding should not  
182 jeopardize the availability of retrofit funding through federal supplemental environmental  
183 projects. NCSL further believes that the EPA should maximize efforts to ensure that diesel-  
184 fueled vehicles entering the United States from bordering and other foreign countries should  
185 meet or exceed U.S. and state environmental standards.

186 **Transportation Conformity with State Air Quality Plans**

187 NCSL supports the principles underlying transportation conformity provisions of the Clean Air  
188 Act that requires new or revised state transportation implementation plans (TIPs) to conform  
189 to the purpose of state air quality plans, also referred to as state implementation plans (SIPs).

190 Furthermore, NCSL believes that:

- 191 • Adequate funding should be made available to cover the cost of the resource-intensive  
192 requirements for development, revision and implementation of conforming TIPs.
- 193 • In evaluating the emissions budgets submitted by states, EPA should ensure state  
194 flexibility in balancing the burden of reduction among all air pollution sources.
- 195 • Conformity requirements should be limited to nonattainment areas and areas at risk of  
196 becoming nonattainment.

1 **COMMITTEE:** **NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY:** **ENVIRONMENTAL FEDERALISM**

3 **TYPE:** **DIRECTIVE (WITH AMENDMENTS)**

4 The National Conference of State Legislatures (NCSL) urges the federal government to  
5 renew its commitment to the state-federal partnership for environmental protection.

6 State governments, acting in partnership with the federal government, play an  
7 indispensable role in our mutual effort to protect natural resources and combat  
8 environmental degradation and pollution. State implementation of federal law is the  
9 cornerstone of our current system of environmental protection. States are particularly  
10 dependent upon federal pollution control laws to address the interstate migration and  
11 affects of pollutants. Given the increasing trend of delegating more authority to the states,  
12 it is essential that the federal government not abandon its commitment to uniform minimum  
13 federal standards, the state-federal partnership and the very laws and agencies that  
14 guarantee the success of our partnership.

15 In furtherance of the above, the following principles should guide NCSL's federal lobbying  
16 efforts with respect to the state-federal environmental partnership:

- 17 • NCSL supports the prevention of pollution at its source and believes that federal  
18 legislation and regulation, through delegated authority to the states, should  
19 encourage the implementation of activities designed to minimize the generation of  
20 hazardous pollution by regulated entities.
- 21 • NCSL further supports federal funding of pollution prevention research and  
22 development, training, technical assistance, and regulatory guidance for states.
- 23 • The present level of commitment and funding for natural resource and  
24 environmental protection efforts should be enhanced; specifically, the federal  
25 government should prevent efforts to further erode its commitment to provide  
26 technical support, research and financial assistance to states and avoid further cost  
27 shifts to the states.

- 28 • The federal government should provide funding to the states in the form of block  
29 grants that provide for maximum state flexibility to use federal monies in the manner  
30 which they deem proper and in a manner which is consistent with their intended  
31 purpose.
- 32 • Environmental protection should be based on a holistic comprehensive, flexible and  
33 integrated program that addresses environmental issues, the nation's broader  
34 economic prosperity, and policies that ensure long-term energy affordability &  
35 reliability.
- 36 • Uniform minimum federal standards for environmental protection should be  
37 preserved and strengthened.
- 38 • Statutory authority for states to enact state environmental standards that are more  
39 stringent than their minimum federal counterparts should be maintained and  
40 renewed.
- 41 • Within the framework of uniform minimum federal standards, states should have  
42 maximum flexibility in devising approaches and methods for obtaining compliance  
43 with such standards. The federal government should adopt performance-based  
44 standards which prescribe the end to be accomplished and leave the means of  
45 obtaining the end up to individual states. In return for this new level of autonomy,  
46 the federal government should adopt a system of performance audits and  
47 objectively quantifiable benchmarks that would allow the federal government to  
48 certify state performance results in meeting uniform minimum federal standards.
- 49 • Implementation schedules established under the framework of uniform minimal  
50 federal standards should ensure that the time to deploy emissions control  
51 technology reflects normal construction industry experience, technology availability  
52 and practices that maximize order and efficiency to avoid wasteful financial  
53 expenditures and any risks to energy reliability.
- 54 • Within this framework, states should have the flexibility to work with utilities to  
55 coordinate the closure and retrofitting of existing power generation stations in a

56 manner that will ensure the continued supply of electricity and that will allow power  
57 generators to upgrade their facilities in a manner that provides reasonable cost  
58 while attaining environmental compliance. State flexibility should allow for  
59 regulatory options for units that are necessary for grid reliability, that commit to  
60 retire or repower and establishing interim progress standards that ensure  
61 generation units meet EPA regulations in an orderly, cost-effective manner.

62 • There should be consistent, uniform and vigorous federal enforcement of  
63 environmental laws to deter non-compliant behavior and to reward those who are  
64 acting in compliance with such laws. The federal government should continue its  
65 present role of overseeing the efficacy of state efforts to enforce uniform minimal  
66 federal environmental protection standards.

67 • In light of the Supreme Court rulings in *Seminole Tribe of Florida v. Florida* and  
68 *Alden v. Maine*, which suggest that citizens will no longer be able to sue states in  
69 federal court for violations of federal environmental protection laws, the federal  
70 government needs to allocate adequate resources to ensure compliance among the  
71 states.

72 • Cost-benefit analysis should be performed in environmental decision making.  
73 Sound public policy decision making demands that benefits should be proportionate  
74 to costs, after factoring in the totality of the circumstances. However, cost-benefit  
75 analysis should not be the only determinative factor in any environmental decision  
76 making process. Rather, such an analysis should be one of the many tools that  
77 inform decision makers in formulating sound public policy. In the face of uncertainty  
78 in devising analytical methods, any default assumptions that are employed should  
79 favor enhanced environmental protection.

80 • In order to finance environmental protection efforts, Congress should create funding  
81 mechanisms that consistently generate revenue solely for such uses. All monies  
82 from such funds should be fully appropriated for their intended uses.

83 • NCSL supports a citizen's right to access public information. NCSL supports "right-  
84 to-know" laws and other statutory and regulatory mechanisms that readily provide

85 public access to public information while acknowledging the need to balance this  
86 right with security concerns relating to the distribution of sensitive material such as  
87 water security information regarding water infrastructure and sources of supply.

88 • NCSL supports the preservation of state authority to enforce chemical security  
89 standards that are more stringent than those established by the federal government;  
90 **finally.**

91 • NCSL opposes any attempt to preempt or circumvent the authority of state courts  
92 and local administrative bodies. Proposed federal legislation that would centralize  
93 decision-making in the Federal courts for compensation for land use and other  
94 regulatory actions represents a major threat to our Constitutional system of  
95 federalism. Improving the efficiency of the state and local judicial process is an  
96 issue for state legislatures, not Congress. Land use and regulatory policy must  
97 remain a primary responsibility of the states. The authority of state courts must be  
98 preserved.

99 • **NCSL opposes federal trade agreements containing mechanisms that**  
100 **undermine state environmental laws and regulations -- or that usurp state**  
101 **authority to set and maintain environmental policy and investments in the**  
102 **public interest -- including tactics such as “regulatory cooperation entities,”**  
103 **“harmonization,” “mutual recognition,” “international standardization,”**  
104 **“reducing trade irritants” or other means by which the Constitutional powers**  
105 **or decisions of the states could be directly or indirectly overridden, modified**  
106 **or preempted.**

107 • In acknowledgement of the unique needs and concerns of the arctic ecosystem that  
108 is undergoing rapid environmental change and extensive exploration for natural  
109 resources, ~~the~~ NCSL urges ratification of the United Nations (UN) Convention on  
110 the Law of the Sea, negotiated in 1982, and of the Treaty on Persistent Organic  
111 Pollutants, adopted by the U.S. in 2001 but never ratified.

112 • NCSL believes federal environmental health regulations require more and better  
113 data about the unique exposure patterns and sensitivities of children who are

114 uniquely vulnerable to environmental exposures because they are in a dynamic  
115 state of growth, with many vital systems not fully developed upon birth.

116 • NCSL supports consideration of the sensitivity of children to environmental  
117 contamination in all federal environmental policy, legislation, and regulation.

118 • NCSL supports federal funding for health research on the effects of exposure of  
119 children to environmental toxicants, and consistent reporting and tracking of birth  
120 defects, cancer, and other relevant diseases in children.

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: FEDERAL LAND POLICY MANAGEMENT ACT**

3 **TYPE: DIRECTIVE (WITH AMENDMENTS)**

4 **Federal Land Policy Management Act (FLPMA)**

5 The Federal Land Policy Management Act (FLPMA) provides for perpetual federal  
6 retention of public lands unless it is in the national interest to dispose of a particular  
7 parcel.

8 Ninety-three percent of all lands under federal jurisdiction in the United States are located  
9 in the West, and over sixty-three percent of the land area in the twelve western states is  
10 federally controlled. Further, many federal and non-federal lands are intermingled. This  
11 limits the western states' prerogatives in managing the uses of their own land and further  
12 limits the potential base of the states' economies. Units of governments whose property  
13 tax revenue bases have been reduced by large federal land holdings also require  
14 adequate funds to help make up the shortfall. With perpetual federal retention, Congress  
15 must assure state payments in lieu of taxes in perpetuity.

16 Federal-state relations regarding federal agency land planning vary widely and suffer from  
17 a lack of specificity on how and when cooperation should take place. No meaningful  
18 mechanism currently exists in the wilderness review process for the involvement of  
19 legislatures as the state policymaking bodies.

20 The National Conference of State Legislatures (NCSL) urges all federal agencies involved  
21 in the management of public lands to incorporate within their policies and regulations  
22 provisions for a continuous and cooperative involvement of state governments in public  
23 lands policy and public lands management. Furthermore, NCSL supports remedial  
24 legislation which will guarantee a state and tribal role in public lands management and  
25 establish procedures for designations, disposition, or use of certain public lands found to  
26 be excess property.

27 Federal agencies managing federal land should assure that uses, both on-site and off-site,  
28 do not cause adverse environmental impacts on the federal land or other adjacent lands or

29 waters and provide special protection for wetland resources in light of the goal of no loss of  
30 wetlands.

31 As Congress considers funding for federal agencies with public land management  
32 responsibilities, NCSL recommends that Congress assure appropriations sufficient for the  
33 full and proper execution of the agencies' legislative mandates to process lease  
34 applications properly and expeditiously and protect the environment during increased  
35 energy development.

36 If a federal wilderness designation occurs, state and/or tribal "inholdings" in wilderness  
37 areas should be purchased, or exchanged with lands of equal or greater value outside of  
38 these areas as designated by FLPMA.

39 NCSL also urges the establishment of an interagency coordinator or coordination program  
40 to facilitate tribal governments, state agencies and communities to address all relevant  
41 agencies in a "one stop" manner.

## 42 **Takings and Land Use Authority**

43 NCSL strongly opposes any federal legislation or regulation that would: 1) attempt to  
44 define or categorize compensable "takings" under the Fifth Amendment to the United  
45 States Constitution; (2) interfere with a state's or tribe's ability to define and categorize  
46 regulatory takings requiring state or tribal compensation; (3) preempt state or tribal  
47 eminent domain constitutional provisions or statutes; or (4) infringe on state or tribal  
48 sovereignty under the Eleventh Amendment. NCSL supports collaborative examinations of  
49 state, tribal and federal use of eminent domain authority.

### 50 ~~Conservation Easements~~

51 ~~NCSL urges Congress to enact legislation to make permanent the tax deduction for~~  
52 ~~charitable contributions by individuals and corporations of real property interests for~~  
53 ~~conservation purposes through conservation easements.~~

54

55 **Readiness and Environmental Protection Initiative**

56 The Department of Defense (DOD) Readiness and Environmental Protection Initiative  
57 (REPI) enables DOD to work with partners to protect valuable habitat and avoid land use  
58 conflicts in the vicinity of priority installations. Maintaining availability, accessibility and  
59 capability for realistic training, live fire testing and other operations is crucial to ensuring a  
60 trained and ready force to support the DOD mission to fight and win the nation's wars.

61 REPI provides significant and long term benefits to the people and the landscape in  
62 communities surrounding military installations. It enhances military readiness; protects high  
63 value habitat; strengthens military/community relations; and provides the opportunity for  
64 partnerships among key stakeholders, such as state, tribal and local governments and the  
65 military. NCSL supports REPI and believes there is a limited window of opportunity for  
66 REPI partnerships to protect land and habitat in support of military training and testing. In  
67 addition, the increasing numbers of willing sellers in the existing real estate market present  
68 significant near-term opportunities to leverage REPI funding with state, tribal and local  
69 partners.

70 NCSL applauds the United States Congress for recognizing the critical need to protect  
71 DoD bases and the limited window of opportunity to do so, and for continuing its strong  
72 bipartisan support for REPI.

73 **State-Federal Partnerships In Land Management Around Federal Facilities**

74 **The** NCSL calls on Congress and the Administration to enable and encourage federal  
75 agencies to enter into formal partnerships with state or tribal governments to enable the  
76 better management of land in and around military and other federal facilities. Such  
77 partnerships will enable states, federally recognized tribes, local communities and the  
78 federal facilities, ranges, and training air/sea/land space they serve to work jointly on  
79 matters of importance to all stakeholders. The adoption of memorandums of understanding  
80 or other agreements between federal agencies, tribal governments, and/or state wildlife,  
81 parks, and environment agencies will establish a mechanism for the federal agencies to:

- 82       • assist tribal governments and state agencies to acquire landowner agreements  
83       around military facilities;

- 84 • assist tribal governments, communities and states to be better prepared for the next  
85 BRAC round by ensuring mission capabilities at military facilities; and  
86 • identify within the federal agency the person or office to whom tribal governments,  
87 state agencies and communities may contact for assistance in coordinating  
88 conservation easement/contracts or other appropriate negotiated transaction.

89

90 In partnering with such agencies as the Department of Defense (DOD), the U.S.  
91 Department of Agriculture (USDA), the U.S. Department of Interior (Interior), and the U.S.  
92 Army Corps of Engineers (Corps) states, tribal governments and local communities will be  
93 able to:

- 94 • protect water resources benefiting tribal governments and local communities and  
95 federal facilities ranges, and training air/sea/land space;  
96 • improve wildlife habitat around federal facilities, ranges, and training air/sea/land  
97 space and throughout the state;  
98 • expand public understanding of how critical tribal and state land conservation  
99 actions are to protect the mission and economic welfare of federal entities;  
100 • expand public support for federal assistance of state efforts to acquire permanent  
101 conservation easements, contracts or other appropriate negotiated transactions and  
102 long term leases with landowners to protect federal installations from civilian  
103 encroachment that will adversely impact mission capabilities and economic benefits  
104 to communities, and increase land for contract training;  
105 • expand state agency, private landowners, and DoD facilities' ability to develop  
106 longitudinal training capabilities through partnerships that expand training  
107 opportunities in combination with preserving agricultural lands; and that permit  
108 federal and national guard training areas to be linked for expanded joint training;  
109 and  
110 • encourage tourism to the conservation lands acquired by state agencies.

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: WATER**

3 **TYPE: DIRECTIVE (WITH AMENDMENTS)**

4 Jurisdiction for federal water projects is scattered throughout agencies of the federal  
5 government and committees of Congress. The National Conference of State Legislatures  
6 sees a need for clearer, more coordinated and more consistent federal policies. These  
7 policies, however, should recognize and build upon the constitutions, statutes, policies and  
8 programs of the states as the fundamental basis for a truly national effort toward better  
9 water resources management. The federal government should recognize that water  
10 resources policy can and must be developed at the state level. The appropriate role for the  
11 federal government should be to provide technical, research and financial assistance to  
12 the states at their request.

13 NCSL endorses the following principles:

- 14 • Primary authority and responsibility for water resources management functions,  
15 including planning, development and regulation, rest with the states and their  
16 delegated interstate agencies. Water resources management, wetland protection,  
17 coastal zone management, and soil conservation projects should be clearly  
18 delineated by Congress as the primary responsibility of the states and their  
19 delegated interstate agencies, with federal oversight.
- 20 • A national water conservation initiative should be undertaken to encourage water  
21 conservation at the federal, state and local levels. Functions, such as navigation  
22 and flood control and other issues at the prerogative of the state, should continue to  
23 be shared with the federal government to the degree appropriate. Federal policy  
24 must recognize and respect the rights of the states to administer their individual  
25 water laws and to manage their water resources.
- 26 • The role of the federal government is four-fold: (1) to establish a framework of  
27 national objectives developed in cooperation with the states; (2) to provide  
28 assistance to the states in the development of programs to meet state needs within

29 such a framework; (3) to be consistent with such state programs to the maximum  
30 extent possible when undertaking direct federal actions pursuant to the national  
31 interest; and (4) to coordinate agency activities through a national coordinating  
32 entity reporting directly to the President and with provision for adequate state and  
33 public input.

34 ~~• The responsibility of the federal government is to establish, in full cooperation with  
35 states and other appropriate interests, national objectives for the protection,  
36 management, restoration, development, and use of water and related resources to  
37 meet national economic, environmental and social objectives and to assist in  
38 implementing such policies in federal actions and through assistance and support  
39 for state actions.~~

40 ~~• The essential steps toward orderly, efficient and balanced water resources  
41 management are to recognize the primary responsibility of the state and to put each  
42 state in the position to secure, in cooperation with local governments, coherent  
43 water management strategies.~~

44 Federal policy should be directed toward strengthening the capacity of the state to act as  
45 the integrator and manager of all programs affecting the water resources of the state. To  
46 do so effectively, states need:

- 47 • Realistic and dependable financial support to integrate management activities  
48 through expansion of provisions for state assistance;
- 49 • Full funding of authorized programs consistent with congressional intent;
- 50 • A common platform for compiling and accessing data across programs and  
51 agencies that is available to local, state, interstate and federal stakeholders; and
- 52 • Assurance that direct federal actions will be consistent with state programs,  
53 responsive to national policy, and carefully evaluated against mutually agreed upon  
54 standards.

- 55 • Federal actions, projects and programs must be consistent with adopted state and  
56 interstate water and related resources plans and programs.
- 57 • Greater flexibility in the entire federal support system for water resource planning  
58 and management.
- 59 • Federal project evaluation, planning, financing, cost sharing, and cost recovery  
60 policies should be reviewed and simplified.
- 61 • Project evaluation should promote equal consideration of both structural and non-  
62 structural solutions.

63 Many existing water programs create inherent financial biases which favor certain  
64 solutions to water problems over others, sometimes resulting in the approval of programs  
65 of only marginal utility. Accordingly, NCSL urges that:

- 66 • Cost-sharing policies should be consistent among alternative means for achieving  
67 the same purpose.
- 68 • Cost sharing policies should be consistent among federal agencies for the same  
69 purposes. There should be no financial grounds for non-federal participants to  
70 "shop around" for the best deal.
- 71 • The public participation requirements of project planning and evaluation criteria  
72 should be aggressively carried out.

### 73 **Water Conservation**

74 Water conservation must be a fundamental consideration in all future water management  
75 programs.

76 Accordingly, NCSL recommends:

- 77 • A national water conservation initiative implemented by the states as a part of their  
78 total water management programs with federal financial and technical assistance  
79 including a component for evaluation of the true benefits and costs of conservation;

- 80 • Encouraging comprehensive management of intermittently available freshwater  
81 resources to maximize the availability of surface and groundwater supplies;
- 82 • Closely examining the incentives and disincentives for encouraging conservation,  
83 recycling and reuse of water;
- 84 • Examining and promoting where feasible the practices of conjunctive use of water  
85 supplies; and
- 86 • Congress fund research into the use of saltwater or grey water sources as an  
87 alternative to the continued use of scarce freshwater resources.

88 Among water research programs, no specific mechanism exists which focuses the water  
89 research establishment on the planning and management concerns of the nation's  
90 principal water managers---the states.

91 As such, NCSL recommends that:

- 92 • The research agenda of both the federal agencies and the federally-supported  
93 water resources research centers be developed in conjunction with the expressed  
94 research needs of the state.
- 95 • Congress should recognize state primacy over all water rights within each state's  
96 boundaries and bring to closure the debate on the Federal Reserved **d** Water Rights  
97 Policy.
- 98 • Congress should respect and encourage state compacts for sharing and managing  
99 water resources.

## 100 **Wetlands**

101 NCSL supports a wetlands program that is flexible to balance the competing and legitimate  
102 demands for conservation and use of the Nation's resources.

103 NCSL urges Congress and the Administration to:

- 104 • Reaffirm the national goal of eliminating the net loss of both wetlands acreage and  
105 wetlands habitat values, as a result of any activities, and of increasing both  
106 wetlands acreage and wetlands habitat values;
- 107 • Designate a single federal agency to be the lead agency responsible for the overall  
108 development, implementation, and enforcement of a national wetlands policy in  
109 partnership with the states;
- 110 • Facilitate the delegation of wetlands protection programs to the states and provide  
111 technical and financial resources to assist states in developing and operating their  
112 programs;
- 113 • Establish a clear preferred sequence of mitigation options that begins with  
114 avoidance of adverse effects on wetlands followed by a reduction of unavoidable  
115 adverse effects, and allowing compensation by creating, replacing or restoring  
116 within the same ecosystem; and
- 117 • Recognize that private landowners have an economic stake in wetlands resources  
118 and establish a strong program of economic incentives that encourages and assists  
119 the private sector to exercise its management responsibilities in a way that will  
120 protect the public values wetlands provide while contributing to a reasonable return  
121 on investment.

122 Federal agencies, in conjunction with states, the private sector, and nonprofit groups  
123 should expand their educational outreach programs.

124 The U.S. Army Corps of Engineers and the EPA should agree on strategies for effectively  
125 and expeditiously monitoring, verifying, and enforcing permits authorizing activities in  
126 wetlands. In addition Congress and other regulatory authorities should take any necessary  
127 action, including amending existing laws to prevent the willful alteration of wetlands  
128 characteristics to circumvent regulatory jurisdictions.

129

130 **Aquatic Nuisance Species**

131 To combat the threats to biodiversity in the nation's coastal and estuarine habitats as well  
132 as inland navigable waters that are associated with aquatic nuisance species and to help  
133 prevent their introduction into state waters, NCSL calls on Congress to:

134 • ~~Reauthorize the Non-indigenous Aquatic Nuisance Prevention and Control Act of~~  
135 ~~1990;~~

136 • Provide for improved means for preventing the introduction of aquatic nuisance  
137 species;

138 • Increase the support for international, national, and state efforts to control and  
139 manage aquatic nuisance species; and

140 • Increase research and technical assistance resources available to federal, state,  
141 and local officials.

142 **Water Pollution Control**

143 NCSL urges that:

144 • Congress fully fund the Sewer Overflow Control State Grants Program;

145 • Congress separately appropriate full funding for non-point source pollution and  
146 ensure the effectiveness of the provisions of this program to restore and protect our  
147 nation's waters;

148 • Congress initiate an incentive program to encourage water conservation in the  
149 states;

150 • Congress authorize and fully fund new grant programs for wastewater and drinking  
151 water infrastructure developments;

152 • **Nutrient pollution be prioritized as a water quality improvement objective in**  
153 **the Mississippi River basin and wherever such pollution from pervasive point**

154 and non-point sources creates serious hypoxic conditions in waters of  
155 economic, ecological and/or recreational significance;

156 • The federal government foster and assist in the financing and support of  
157 working groups of state legislators within major watersheds where water  
158 pollution is a multi-state responsibility, with such working groups or  
159 compacts formed to coordinate the development of strategies, policies,  
160 statutes, regulations and spending priorities for the attainment of clean water,  
161 including goals, timelines and accountability for performance.

162 • EPA strengthen pretreatment pollution prevention requirements to reduce the  
163 amount of hazardous waste flowing to waters from wastewater treatment plants and  
164 from contaminated sludge; and that

165 • Uniform national wastewater monitoring standards and protocols should be required  
166 to assure achievement of water quality objectives, fair and uniform enforcement,  
167 and full disclosure of contamination.

## 168 Drinking Water

169 NCSL urges Congress and the Administration to increase federal appropriations for safe  
170 drinking water programs to necessary levels that also takes into account recent  
171 developments across the country regarding lead contamination. A special  
172 consideration for financial assistance should be given to those states that have  
173 communities and water systems that have limited resources to deal with the requirements  
174 of the Safe Drinking Water Act (SDWA). States should receive additional federal financial  
175 assistance in order to develop and maintain the administrative and technical capacity  
176 needed to implement the program's mandated objectives.

177 Furthermore, NCSL supports the following provisions:

178 • States should have the authority to prioritize activities based on state public health  
179 needs.

180 • States should be able to use federal drinking water funds to consolidate public  
181 water systems when it is economically or environmentally beneficial, and/or in the  
182 best interest of the public health.

183 • Congress should direct EPA to base its standards on scientifically sound principles  
184 for protection of human health. The ability of EPA to require water systems to test  
185 for additional contaminants must take into account the human health risk posed by  
186 the contaminant. Congress should adequately fund EPA's research efforts to  
187 develop scientifically sound standards which will assure safe drinking water.

188 • EPA should be directed to work closely with primacy states in establishing a  
189 comprehensive program of water testing which recognizes the potential of  
190 contaminants based upon source, storage and delivery of water. Human health  
191 protection should be the basis for establishing any contaminant management  
192 program.

193 Disapproval or withdrawal of primacy should not result in a decreased level of public health  
194 protection in that state.

### 195 **State Revolving Funds (SRFs)**

196 With respect to the Clean Water State Revolving Fund (CWSRF) and the Drinking Water  
197 State Revolving Fund (DWSRF), NCSL supports the following:

198 • Reauthorization of the CWSRF and DWSRF at levels commensurate with state  
199 needs.

200 • States should be able to extend the life of SRF loans as necessary to accommodate  
201 low-income communities provided the loan repayment period does not exceed the  
202 useful life of the project.

203 • States should be able to use the interest earnings from the SRF monies for grant  
204 assistance to low-income communities, or for other related projects as determined  
205 by the individual state.

206 • States should be allowed to use at least 6-8% of SRF funds for administrative costs.

- 207 • States should be able to use SRF funds to consolidate public water systems when it  
208 is economically or environmentally beneficial, and/or in the best interest of the  
209 public health.
- 210 • In years when federal funds increase by more than 20%, states may request a  
211 waiver of the increased match required, with current state funds used for state  
212 drinking water purposes qualifying as the match for that year.
- 213 • Any new requirements applied to the CWSRF or the DWSRF should not be applied  
214 retroactively to funding already in the SRF or projects currently in progress.

### 215 **Stormwater Management**

216 NCSL urges Congress and the Administration to:

- 217 • Commit to and provide full funding and resources for combined sewer overflows  
218 (CSOs), sanitary sewer overflows (SSOs) and storm water wet weather discharges.
- 219 • Include a federal cost share of at least 50 percent of the cost of remediation.
- 220 • Establish a zero-interest, or low interest, loan program for homeowners and  
221 businesses required to implement storm water management programs.
- 222 • Wet weather management funding should be in addition to, and not replace, other  
223 Federal funding programs.

224 NCSL further urges Congress and the Administration to:

- 225 • Authorize state environmental agencies to grant waivers for both municipal and  
226 private sector implementation based on economic hardship.
- 227 • Direct the EPA to encourage evidence-based abatement methods and promote  
228 compliance using alternative methods of abatement that are least costly to  
229 implement.

### 230 **Groundwater**

231 NCSL believes that the development of groundwater policy should take into account or  
232 include the following:

- 233 • State primacy must be assured in the development of groundwater legislation.
- 234 • There needs to be federal assistance available to states in protecting  
235 wellhead/recharge areas from contamination.
- 236 • A survey of state data collection and research needs should be completed to  
237 assess future needs for financial and technical assistance with respect to aquifer  
238 mapping, monitoring and classification.
- 239 • Any policy should recognize the diversity of hydrologic, climatic, economic, legal,  
240 and social factors within various states and regions.
- 241 • States' primacy in devising appropriate financing mechanisms for groundwater  
242 programs should be continued.
- 243 • Where necessary groundwater conservation programs with appropriate financing  
244 should be developed jointly by the federal, state and local governments, but  
245 implemented by state and local governments.
- 246 • A comprehensive review of groundwater contamination from pesticides should be  
247 undertaken and recommendations based on this review should be implemented.

#### 248 **Publicly Owned Treatment Works**

249 NCSL urges Congress to cooperate with states to eliminate barriers to local government's  
250 ability to restructure assets or raise the capital necessary for costly improvements to Public  
251 Owned Treatment Works (POTWs). While NCSL takes no position with respect to whether  
252 any particular POTW should pursue a public-private partnership, the decision to enter such  
253 a partnership should be made by the local unit of government pursuant to state law and  
254 local ordinance.

1 **COMMITTEE:** **NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY:** **WATERWAYS AND PORTS**

3 **TYPE:** **DIRECTIVE (WITH AMENDMENTS)**

4 The National Conference of State Legislatures (NCSL) recognizes the substantial benefits  
5 to the nation of the U.S. system of waterways and ports by providing access to the world's  
6 markets and the combined efforts of all levels of government and users in sharing the cost  
7 of port and waterway development and maintenance. NCSL further acknowledges the  
8 distinctive roles played by the states and the federal government in financing waterways  
9 and ports. The increase of state and local financial support in recent years should be  
10 concomitant with an increased planning authority, which is particularly important for the  
11 integration and support of other transportation systems for enhanced waterway and port  
12 activity.

### 13 **Ports**

14 NCSL believes that in order to sustain U.S. leadership in global trade:

- 15 • The nation's ports must receive adequate federal funds to improve and maintain  
16 federal navigational channels.
- 17 • Congress should adequately fund deepening projects to modernize our ports and  
18 make full use of the Harbor Maintenance Trust Fund to maintain the nation's  
19 harbors.
- 20 • NCSL opposes the accumulation of harbor tax receipts at the federal level, as it is a  
21 break in faith from the purpose of the Harbor Maintenance Tax and results in the  
22 imposition of a competitive burden without providing needed improvements  
23 necessary to achieve efficiencies to offset added taxes.

24

25 **Intermodal Connectors**

26 NCSL calls on Congress to significantly increase federal investment in highway and rail  
27 infrastructure and provide states added flexibility to improve intermodal connectors and  
28 surface transportation systems near the nation's ports. Where feasible, NCSL also  
29 encourages and supports the deployment of ferry crossings.

30 **Maritime Security**

31 NCSL believes that port security is a state-federal partnership, critical to the nation's  
32 homeland security strategy and that states need clear federal direction to ensure that  
33 resources are focused on the most needed security improvements.

34 As such, NCSL supports the Department of Homeland Security's Port Security Grant  
35 Program, which is vital to ports' abilities to make improvements quickly and comply with  
36 the Maritime Transportation Security Act of 2002. Federal assistance should fund federal  
37 directives and requirements regarding enhanced security of publicly operated ferries and  
38 the inspection of vehicles and freight in order to avoid unfunded federal mandates.

39 **Foreign Imports**

40 NCSL supports:

- 41 • Action by the Federal Maritime Commission to restrict foreign cargo shipments from  
42 nations that discriminate against U.S. carriers.
  
- 43 • Complying with the requirements, regarding the importation of hazardous materials,  
44 of the National Environmental Policy Act to insure proper notification and  
45 assessment of environmental impact.

46 **Inland Waterways**

47 NCSL supports the continued predominant federal role in inland waterway capital and  
48 operating expenditures due to the interstate commerce nature of this transportation  
49 system as well as the implementation of the 2014 Water Resources Reform and  
50 Development Act (WRRDA). NCSL also supports increased investment in the Inland

51 Waterways Trust Fund to repair and modernize the existing infrastructure. ~~This increased~~  
52 ~~level of investment should come from an increase of the per gallon fuel user fee~~  
53 ~~between \$.06 and \$.09 as such an increase is already supported by commercial~~  
54 ~~barge and towing companies, the users of the inland waterway system. The~~  
55 commercial barge and towing companies, joined by a diverse coalition of  
56 stakeholders, unanimously and voluntarily requested a 45 percent increase to the  
57 per gallon user fee to address the growing backlog of needed lock and dam  
58 construction. Congress approved the increase in 2014, and should now increase the  
59 federal level of investment to lock and dam infrastructure commensurate with the  
60 increasing revenue deposited into the Inland Waterways Trust Fund, to ensure full  
61 use of these funds annually, based on industry-endorsed capital investment  
62 strategy recommendations on priority projects. NCSL supports the utilization of U.S.  
63 Department of Transportation discretionary funds for emergency assistance to states for  
64 ports and waterways.

## 65 **Waterways—General**

66 NCSL believes that:

- 67 • The role of the U.S. Coast Guard in directing waterborne traffic should be  
68 enhanced. As such, adequate emergency response plans should be developed with  
69 a review of existing contingency plans. Additionally, Congress should continue to  
70 fund the Coast Guard's Integrated Deepwater Systems program while maintaining  
71 existing funding for other transportation programs.
- 72 • The user fee method of financing expenses incurred primarily for the user's benefit  
73 is an appropriate mechanism. However, the effect of such charges in a competitive  
74 worldwide environment should be carefully scrutinized. Any assessed fees should  
75 be equitable and nondiscriminatory and should be protected in trust fund accounts  
76 with their expenditure limited to the purposes for which they were collected. As  
77 such, commercial barge and towing should be directed solely to the Inland  
78 Waterways Trust Fund. Recreational boat user fees should be directed solely to  
79 boating safety programs. Additionally, user fees should not be assessed on

80 commercial traffic to recover uncompensated benefits to civilian navigation and  
81 search and rescue activities.

82 • A comprehensive liability and compensation system on marine environment should  
83 be maintained at the federal level to provide vulnerable states with a means of  
84 environmental restoration in the event of a shipping accident, or as a result of  
85 invasive species.

86 • It should be the policy of the United States to require that domestic oil producers  
87 and common carriers develop the capability to safely transport crude oil and other  
88 liquefied petroleum products and to quickly and effectively contain and clean up oil  
89 spills that occur.

90