

**Energy, Environment and Agriculture
Tentative Meeting Agenda**
States and Nation Policy Summit | Scottsdale, Arizona
Thursday, December 3, 2015
2:30 - 5:30 PM

- 2:30 PM** Call to Order
Welcome and Introductions
Approval of Minutes from Annual Meeting 2015
New member introductions
- 2:40 PM** Presentation: Energy Technologies and Policymaking
- 3:00 PM** Presentation: Energy Savings Performance Contracting: A Self-Funding Source of Money that Creates Jobs
- 3:20 PM** Presentation: State and Federal Subsidies for Electric Vehicles
- 3:35 PM** Model Policy Consideration Resolution Regarding Subsidies for Electric Vehicles
- 3:45 PM** Presentation: Ozone NAAQS: What Now?
- 4:05 PM** Presentation: Clean Power Plan: What it Means for Utilities and States
- 4:25 PM** Presentation & Discussion: Avoiding Premature Implementations: MATS, the Clean Power Plan and Utilities
- 4:55 PM** Presentation: The Case for Mutual Assistance “State Operating Authority” in Support of Electric Power Restoration
- 5:15 PM** Model Policy Review
- 5:25 PM** For the Good of the Order
- 5:30 PM** Adjournment

**Energy Subcommittee
Tentative Meeting Agenda**
States and Nation Policy Summit | Scottsdale, Arizona
Wednesday, December 2, 2015
9:00 – 9:45 AM

- 9:00 AM** Call to Order
Welcome and Introductions
- 9:05 AM** Presentation: Creating Energy & Saving Lives: Molten Salt Reactors and Medical Isotope Production
- 9:25 AM** Model Policy Consideration: Resolution Regarding Subsidies for Electric Vehicles
- 9:45 AM** Adjournment

DRAFT

Environmental Health and Regulation Subcommittee

Tentative Meeting Agenda

States and Nation Policy Summit | Scottsdale, Arizona

Wednesday, December 2, 2015

9:45 – 10:30 AM

- 9:45 AM** Call to Order
Welcome and Introductions
- 9:50 AM** Presentation: Reclaiming the Land: Successful Innovations in Mining Environmental Stewardship
- 10:10 AM** Presentation: Impact of Low Fuel Prices on Recycling
- 10:30 AM** Adjournment

DRAFT

Agriculture Subcommittee Tentative Meeting Agenda

States and Nation Policy Summit | Scottsdale, Arizona

Wednesday, December 2, 2015

10:30 - 11:30 AM

- 10:30 AM** Call to Order
Welcome and Introductions
- 10:50 AM** Nonnative Species Working Group
During the Energy, Environment and Agriculture Task Force Meeting at the 42nd ALEC Annual Meeting in San Diego, California, task force members voted to table the proposed *Act Requiring Legislative Approval for Introduction of Nonnative Species* and encouraged members to continue working to develop a policy addressing the concerns associated with the introduction of nonnative species in the states. All Task Force members are encouraged to participate in this Working Group.
- 11:30 AM** Adjournment

1 **Resolution Regarding Subsidies for Electric Vehicles**

2
3 **WHEREAS**, affordable and dependable energy is essential to modern life, America’s economic
4 competitiveness, and the well-being of American citizens and business;

5
6 **WHEREAS**, anything that increases the costs of energy – particularly without providing a measurable,
7 meaningful benefit to those affected by such an increase – has an immediate and negative impact on
8 citizens and institutions, especially the poor, the elderly, those on fixed incomes, and local institutions
9 such as schools and hospitals;

10
11 **WHEREAS**, consumers, individuals, families, and businesses should make their own decisions about what
12 kinds of cars to buy and what kinds of fuels to use;

13
14 **WHEREAS**, consumers, individuals, families, and businesses should not be forced to subsidize others,
15 especially those with more income and assets;

16
17 **WHEREAS**, the Federal government and a majority of individual States currently provide subsidies – in
18 the form of tax credits, rebates, or other incentives – to owners of electric vehicles and/or charging
19 stations;

20
21 **WHEREAS**, a recent study noted that 90 percent of all tax credits for the purchases of electric vehicles
22 went to the wealthiest one-fifth of households;

23
24 **WHEREAS**, some utilities have entered into agreements in which costs to construct and operate electric
25 vehicle charging stations will be placed in the rate base, meaning that all ratepayers will have to pay for
26 electric vehicle infrastructure that will ultimately likely be used by only a small minority of wealthier
27 ratepayers;

28
29 **NOW THEREFORE BE IT RESOLVED THAT** the American Legislative Exchange Council opposes all Federal
30 and state efforts to compel ratepayers to subsidize electric vehicle charging stations or the electricity
31 dispensed by such stations.
32

Five Year Model Policy Review

In accordance with the ALEC Task Force Operating Procedures, the Energy, Environment and Agriculture Task Force must review existing model bills and resolutions upon the fifth anniversary of their adoption. This exercise is to ensure that all policies maintained in the ALEC library are relevant and up-to-date.

The Task Force may take one of three different actions during this review: (1) retain the policy as adopted; (2) amend the policy; or (3) sunset the policy so that it is no longer considered to be ALEC policy.

During the 2015 States & Nation Policy Summit, the Task Force will be considering four models and two resolutions that were approved by the Task Force and adopted by the ALEC Board of Directors in 2010.

Existing Model Policies and Resolutions

An Act Granting the Authority of Rural Counties to Decentralize Land Use Regulation

This model authorizes rural counties to transition to a system of decentralized land use regulation based on restrictive covenants and the common law of private nuisance, abandoning previous zoning or planning authority and withdrawing from any other zoning or planning obligations to other government entities. During the transition, property owners will have the opportunity to apply for repeal or modification of existing restrictions; after modification these restrictions will become restrictive covenants.

Eminent Domain Authority for Federal Lands Act

This model authorizes the state to exercise eminent domain authority on property possessed by the federal government unless the property was acquired by the federal government with the consent of the Legislature and in accordance with the United States Constitution Article I, Section 8, Clause 17.

Environmental Priorities Act

This model recognizes the importance of both environmental stewardship and fiscal concerns by creating an environmental priorities council that uses sound science and cost-benefit analysis to create a list of environmental priorities.

Resolution to Retain State Authority over Coal Ash as Non-Hazardous Waste

This resolution agrees with EPA's 2000 findings that states are in the best position to regulate coal combustion byproducts as nonhazardous waste.

State Sovereignty Through Local Coordination Act

In instances in which the federal or state government imposes a law or regulation more restrictive than a local law or regulation, this model grants city and town governments the authority to demand by lawful means that the federal or state government coordinate its law or regulation with that of the local government. To coordinate is defined as the federal or state

government making a good faith effort to reach consistency with the local law. The model further authorizes litigation by cities and towns whose coordination rights are not granted by the federal or state government, as well as legal standing for taxpayers in the relevant jurisdiction if the city or town fails to enforce their right of coordination.

State Withdrawal from Regional Climate Initiatives

This resolution urges the governor of a state to withdraw from a regional climate initiative.

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An Act Granting the Authority of Rural Counties to Transition to Decentralized Land Use Regulation

Section 1.

(A) Findings and Purpose. The Legislature finds that the planning and zoning authority granted to rural counties may encourage land use regulation which is overly centralized, intrusive and politicized. The Legislature further finds that rural counties, local elected officials and their citizens may reasonably prefer transitioning to a system of decentralized land use regulation based on restrictive covenants and the common law of private nuisance. Accordingly, the Legislature herewith intends to grant rural counties the legal authority to abandon their planning and zoning authority in order to transition to decentralized land use regulation consisting of restrictive covenants and the common law of private nuisance.

(B) Legal Authority. Any county with a population of fewer than 100,000 residents is herewith granted legal authority to designate all or a portion of the area within its jurisdiction for decentralized land use regulation and, with respect to such designated area, to abandon its planning and zoning authority under any statute or law, to unilaterally withdraw from any obligation to exercise planning or zoning authority under any intergovernmental agreement, and to transition to decentralized land use regulation as provided in the following subsections:

(1) Mode of Exercise. The legal authority granted herein may be exercised through county legislation or local initiative, which shall state in reasonably intelligible terms with respect to a clearly designated area within its jurisdiction that the county is abandoning its planning and zoning authority, withdrawing from any intergovernmental agreement obliging it to exercise such authority, and transitioning to decentralized land use regulation based on restrictive covenants and the common law of nuisance. The procedures established by general law governing local legislation or local initiatives shall be applicable to local legislation or local initiatives that propose transition to decentralized land use regulation. However, in addition to such procedures, the prior public notice required for any such proposed local law shall be at least as effective as the public notice requirements applicable to county rezoning.

(2) Substance of Exercise. To effectively authorize the transition to decentralized land use regulation based on restrictive covenants and the common law of private nuisance, the local law shall reasonably detail two transitional implementation phases as follows:

(a) Phase 1. Sunset Review of Existing Planning and Zoning Regulations.

(1) Substantive Requirements. The local law shall require the county to repeal or modify any land use restriction stemming from the county's exercise of its planning or zoning authority, which prohibits or conditionally restricts the peaceful or highest and best uses of private property, or which would cause a diminishment in the value of the affected private property if the land use restriction were converted to a restrictive covenant, to allow the otherwise restricted uses unless the county: 1) fully compensates the affected land owner(s) for the loss of such value; or 2) a preponderance of the evidence considered at a sunset review hearing establishes the restriction is necessary for public health and safety and: (1) owners of properties located within 300 feet of

the property in question reasonably and detrimentally relied upon the restriction in purchasing or improving their property; (2) the restriction is roughly proportional to the costs the restricted land use would otherwise impose on public infrastructure; or (3) the restriction is roughly proportional to that which would result from enforcing the common law of private nuisance.

(2) Procedural Requirements. Owners of private real property within the county's designated area for decentralized land use regulation shall be given a reasonable opportunity after passage of the local law requiring transition to decentralized land use regulation to file sunset review applications with the local body responsible for rezoning seeking modification or repeal of any land use restriction stemming from the county's exercise of its planning or zoning authority, which prohibits or conditionally restricts the peaceful or highest and best uses of the owner's private property or which would cause a diminishment in the value of the affected land if imposed on the land as a restrictive covenant under the following subsection. Applicants for sunset review shall be responsible for complying with public notice requirements applicable to the most analogous private rezoning application; however, the sunset review applications are to be liberally construed in favor of the applicant. The local body responsible for rezoning shall then conduct a public hearing on each sunset review application to determine whether the challenged land use restriction must be modified or repealed under the factors of the previous subsection. All sunset review decisions shall be subject to administrative review without deference to the local body's determination. The local law shall set a reasonable deadline for interested parties to record final sunset review decisions against title to the affected real property and shall give reasonable notice to such interested parties of that deadline and of its legal implications; the failure to timely record such decisions shall be deemed the abandonment of any such sunset review application.

(b) Phase 2. Recordation of Zoning Map Applicable to Designated Area. Concurrently with the sunset review process, the local law shall authorize the county to record all or a portion of its zoning map, as it pertains to the designated area of decentralized land use regulation, in a format substantially equivalent to plats of subdivision, together with a printed statement of all restrictions on land uses entailed by the zoning map (which also specifies the objective factors, if any, established in the formerly governing zoning law allowing for modification of the restrictions of the specified zoning classifications by special exception, conditional use, variance or rezoning). Subsequently recorded sunset review decisions shall: i) refer to the document number of the recorded zoning map; ii) be effective as of the date the zoning map is recorded; and iii) shall be deemed to modify and supersede any contrary provision or classification of the zoning map and its accompanying statement. Upon recordation, the land use restrictions specified in the zoning map and related statement, as modified by recorded sunset review decisions, shall thereby become restrictive covenants against title to the burdened private properties specified in the zoning map, with the right to enforce such covenants presumptively running with title to all private properties within 300 feet.

(c) Effect of Completion of Phases 1 and 2. The general law applicable to private restrictive covenants shall apply to restrictive covenants created by this process subject to two exceptions: a) the local law shall provide that owners of properties burdened by such restrictive covenants shall have standing to file a special action in any court of competent jurisdiction seeking a declaratory judgment granting a special exception, conditional use, variance or rezoning under the objective factors of the previously governing zoning law, as set forth in the recorded zoning map; and b) in order to perfect the restrictive covenants established by this process against subsequent purchasers for value, the local law shall provide for a reasonable deadline by which benefited property owners must record their enforcement rights as running with title to the benefitted properties and against title to all burdened properties by reference to the document number of the recorded zoning map.

(3) Effect of Exercise. A local law effectively exercising the legal authority granted herein shall have the effect of: a) granting owners and subsequent transferees of private real property located within the respective designated decentralized land use regulation area a vested property interest under state law in every land use not prohibited by the restrictive covenants on title generated by the transition to decentralized land use regulation or the common law of nuisance to protect health and safety; b) prohibiting the exercise of county planning and zoning powers directly or indirectly with respect to private real property located within the designated decentralized land use regulation area under any statute or law, so long as the county's population is fewer than 100,000 residents; c) prohibiting the exercise of planning and zoning powers by any state agency, political subdivision of the state, special district or other local government within the designated decentralized land use regulation area which is similar to county planning and zoning powers under any statute or law, so long as the county's population is fewer than 100,000 residents; d) prohibiting the county from exercising development moratorium authority in the designated decentralized land use regulation area under any statute or law, so long as the county's population is fewer than 100,000 residents; and e) releasing the respective county from any existing obligation to exercise planning or zoning authority under any intergovernmental agreement in the designated decentralized land use regulation area.

Approved by the ALEC Board of Directors in 2010.

Eminent Domain Authority for Federal Lands Act

Summary

This bill authorizes the state to exercise eminent domain authority on property possessed by the federal government unless the property was acquired by the federal government with the consent of the Legislature and in accordance with the United States Constitution Article I, Section 8, Clause 17.

Legislation

Section 1.

The following shall be enacted as Section _____ of the eminent domain provisions of the State Code:

Other Property which may be taken – State as plaintiff.

(1) Subject to Subsection (2), property which may be taken under this part includes property possessed by the federal government unless the property was acquired by the federal government with the consent of the Legislature and in accordance with the United States Constitution Article I, Section 8, Clause 17.

(2) The state shall be the plaintiff described in the eminent domain complaint in an action to condemn property described in Subsection (1).

Approved by the ALEC Board of Directors in 2010.

Environmental Priorities Act

Intent

The legislature finds that there are a variety of current and potential environmental restoration projects, regulations and programs that would benefit the health of the environment, reduce pollution and improve the lifestyle and well-being of state residents. Support for these projects or regulations will help leave a legacy of environmental stewardship to future generations and improve the quality of life for current residents.

The legislature additionally finds that state funding is limited and ensuring the most effective use of those limited funds is not only responsible use of taxpayer funds but also provides the greatest environmental benefit.

The legislature finds that without an objective assessment of the state's environmental priorities, taxpayer dollars may be spent on projects that do not yield environmental benefits and waste opportunities to make real environmental improvements. Such an assessment would provide credible, thoughtful information to the legislature to assess our environmental priorities based on good science and sound economics.

Therefore the legislature adopts the Environmental Priorities Act and establishes the Environmental Priorities Council for the purpose of identifying and promoting effective environmental stewardship. The Council shall work to establish, through written report to the legislature, a list of environmental priorities based on an economic cost benefit analysis and scientific review.

Environmental Priorities Council

An Environmental Priorities Council (hereafter "Council") is created that includes:

- One member from each party in each legislative chamber
- A representative of a state environmental agency selected by the Governor
- A representative of the state chamber of commerce
- An economist selected by the other members. The economist will act as the chair of the Council

The Council will guide the development of the Environmental Priorities Assessment, select a contractor to undertake the project and help write the final report.

Environmental Priorities Assessment

The contractor selected by the Council shall produce an Environmental Priorities Assessment (hereafter "Assessment"). The Assessment, using a Copenhagen Consensus-style framework, will analyze the scientific and economic benefits and costs of current and potential environmental projects and policy options.

The Council shall develop a list of environmental projects and policy options to be analyzed. The list shall form the foundation for the Assessment and may include environmental restoration and cleanup

projects, environmental regulations and other environmental priorities involving government funding or legislation. The list should be comprehensive of significant current or likely potential environmental projects or policy options.

The contractor will analyze those projects and policy options using a comprehensive process to determine costs and benefits of each proposal. Their research shall include:

- Specialist papers written by credentialed economists highlighting these competing policy options. Each paper will address one particular policy or project. These experts will be sourced where possible from within the state. Each specialist will be chosen for his or her knowledge of a specific issue, and is required to identify the costs and benefits of each policy or project as well as potential alternatives.
- Specialist papers shall analyze the costs and benefits of each environmental project or policy, including:
 - Environmental benefits of policy or project
 - Economic benefits of policy or project using accepted economic standards for cost of a statistical life, discounting and other commonly accepted analyses
 - Impact on state budget
 - Macroeconomic impacts of the policy or project using accepted economic models
- This work shall be independently reviewed to ensure that a range of perspectives is accessed on the costs and benefits of solutions to each policy.
- The Council will join with the contractor to carefully review the research and engage with the specialist paper authors. They will create a ranked list identifying the best-to-worst possible policy options and projects for policy-makers.

The final Assessment shall include:

- A unique set of research papers prepared by the best specialists in each field, identifying the costs and benefits of different spending options.
- A prioritized list created by recognized economists highlighting the investments that should be made as a matter of priority.

Report to the Legislature

The Council shall present the final Assessment to the legislature prior to the beginning of the session for use in developing budget and policy priorities. The Council shall disband with the presentation of the Assessment to the legislature.

Approved by the ALEC Board of Directors in 2010.

Resolution to Retain State Authority over Coal Ash as Non-Hazardous Waste

WHEREAS, the U.S. Environmental Protection Agency (EPA) intends to propose federal regulations to govern the disposal of coal combustion byproducts (CCB) under the Resource Conservation and Recovery Act (RCRA);

WHEREAS, the EPA is considering changing the current regulatory status of CCBs from a non-hazardous waste under the RCRA Subtitle D to a hazardous waste under RCRA Subtitle C;

WHEREAS, the EPA is prohibited by Federal Law from declaring CCB to be hazardous until it “conduct[s] a detailed and comprehensive study and submit[s] a report” to Congress on the “adverse effects on human health and the environment, if any, of the disposal and utilization” of CCB;

WHEREAS, the EPA conducted the required studies and on two separate occasions reported to Congress that it is unwarranted to regulate CCB as hazardous waste since CCB can be safely regulated as non-hazardous waste;

WHEREAS, the EPA issued final regulatory determinations in 1993 and 2000 that concluded that CCBs do not warrant regulation as hazardous waste under RCRA Subtitle C;

WHEREAS, the U.S. Department of Energy, the Federal Highway Administration, the Department of Agriculture, the Electric Power Research Institute, state agencies, members of academia have spent nearly three decades studying CCBs and have found that the toxicity levels in CCB are far below criteria that would require a hazardous designation;

WHEREAS, in EPA’s 2000 determination, the agency concluded that hazardous waste regulation of CCB would be environmentally counterproductive because it would unnecessarily stigmatize coal ash and impede its beneficial use in sustainable construction practices, as well as raise concerns over legal exposure and product liability;

WHEREAS, CCB disposal has remained a state regulatory responsibility and states have an effective regulatory structure in place that is best positioned to continue to develop and implement programs that safely and effectively manage CCBs;

WHEREAS, the regulation of the CCBs as hazardous waste would drastically undercut states’ regulatory authority and would result in unnecessary compliance costs that require duplicative regulatory programs – adding more costs to already strained state budgets;

WHEREAS, regulating CCBs as hazardous waste would increase the cost of electricity for residential and industrial consumers, burdening them with unnecessarily high energy costs in order to accommodate an imprudent program;

THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council agrees with the U.S. EPA’s 2000 final regulatory determination that CCB does not warrant federal regulation as hazardous waste, and that the states are best positioned to continue as the principal regulatory authority of CCB as non-hazardous waste.

Approved by the ALEC Board of Directors in 2010.

State Sovereignty Through Local Coordination Act

Legislation

Be it enacted by the Legislature of the State of {insert state}:

Section 1. Title __, chapter __, article __, _____ Revised Statutes, is amended by adding section _____, to read:

Federal Regulations; Local Coordination for Cities, Towns, Counties, and Special Districts

(A) Definitions.

(1) "Coordinate" means the action necessary to achieve coordination.

(2) "Coordination" means the process by which the federal or state government seeks in good faith to reach consistency between a federal or state regulation, rule, plan or policy and a city, town, county, or special district law, regulation, plan or policy that is less restrictive than the federal or state regulation, rule, plan or policy.

(3) "Less restrictive" means a city, town, county, or special district law, regulation, plan or policy imposes or would impose less of a burden on the exercise of rights, privileges or immunities enjoyed by individuals, organizations and businesses within the city's or town's jurisdictional boundaries.

(B) Demand. If a city, town, county, or special district has laws, regulations, plans or policies that are less restrictive than a federal or state regulation, rule, plan or policy, the city, town, county or special district shall demand by any lawful means that the federal or state government coordinate with the city, town, county, or special district before the federal or state government implements, enforces, expands or extends the federal or state regulation, rule, plan or policy within the city's, town's, county's, or special district's jurisdictional boundaries. This subsection is mandatory unless the city, town, county, or special district specifically votes to not demand coordination at a duly noticed public hearing.

(C) Litigation. Unless its elected public body shall vote against authorizing such litigation at a duly noticed public hearing, if the federal government fails to coordinate in good faith with the city, town, county, or special district after demand has been made, the city, town, county, or special district shall authorize appropriate litigation to enforce its coordination rights and powers.

(D) Taxpayer Standing. Any taxpayer residing or doing business within the jurisdiction of the relevant city or town shall have standing to enforce the obligations created by this statute by way of special action filed in state court against the relevant city or town, without first exhausting any administrative remedy, if the relevant city, town, county, or special district fails to discharge its obligations under this statute within sixty (60) days after the taxpayer serves each member of the relevant elected local public body with a written demand that the city or town comply with this statute. To be effective, the written demand must specify the federal and local laws, regulations, plans or policies, with which coordination ought to be sought by the city, town, county, or special district.

Approved by the ALEC Board of Directors in 2010.

Resolution to Retain State Authority over Coal Ash as Non-Hazardous Waste

WHEREAS, there has been no credible economic analysis of the costs associated with carbon reduction mandates and the consequential effect of the increasing costs of doing business in the State of {state}; and

WHEREAS, forcing business, industry, and food producers to reduce carbon emissions through government mandates and cap-and-trade policies under consideration for the regional climate initiative will increase the cost of doing business, push companies to do business with other states or nations, and increase consumer costs for electricity, fuel, and food; and

WHEREAS, the Congressional Budget Office warns that the cost of cap-and-trade policies will be borne by consumers and will place a disproportionately high burden on poorer families; and

WHEREAS, simply reducing carbon emissions in the State of {state} will not have a significant impact on international carbon reduction, especially while countries like China, Russia, Mexico, and India emit an ever-increasing amount of carbon into the atmosphere; and

WHEREAS, a tremendous amount of economic growth would be sacrificed for a reduction in carbon emissions that would have no appreciable impact on global concentrations of CO₂; and

WHEREAS, no state or nation has enhanced economic opportunities for its citizens or increased Gross Domestic Product through cap and trade or other carbon reduction policies; and

WHEREAS, Europe's cap and trade system has been undermined by political favoritism, accounting tricks and has failed to achieve the carbon reduction targets.

THEREFORE, BE IT RESOLVED, that the legislature of the State of {state} urges the Governor to withdraw {state} from the regional climate initiative.

Approved by the ALEC Board of Directors in 2010.