alec.org

ALEC American Legislative Exchange Council
LIMITED GOVERNMENT • FREE MARKETS • FEDERALISM

the STATE FACTOR

NOVEMBER 2014

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

States Are Engaging EPA on Clean Power Plan

By Rep. Thomas Lockhart, WY (HD-57), Rep. Bette Grande, ND (HD-41) and Rep. Chuck Martin, GA (HD-49)

Background

On June 2, 2014, the U.S. Environmental Protection Agency (EPA) made headlines by proposing a rule the agency calls the "Clean Power Plan." This incredibly far-reaching regulation seeks to reduce carbon dioxide emissions from existing fossil fuel-fired power plants by 30 percent from 2005 levels.

As a part of the proposal, EPA has assigned each of the 49 states with fossil fuel-fired power plants a different carbon dioxide emissions limit that must be implemented by 2020 and achieved by 2030. These emissions limits vary by state and are based upon each state's existing electric generating mix and an EPA assessment of each state's ability to implement four emissions reduction measures referred to as "building blocks." These so-called building blocks include the following measures: (1) improving thermal efficiency of existing coal-fired units by 6 percent, (2) increasing the capacity factor of existing natural gas combined-cycle plants to 70 percent, (3) installing new renewable generation capacity, perhaps even via a state-based renewable portfolio standard (RPS) program and (4) increasing end-use (or consumer) energy efficiency that would reduce electricity use by 12 percent.

North Dakota, for example, would be required to reduce carbon dioxide emissions by what may appear to be a fairly modest 11 percent, while Washington State would be responsible for a 72 percent reduction.

The Role of EPA

When President Richard Nixon and Congress came together to establish the EPA in 1970, they did so with a deliberate vision

To learn more about how the American Legislative Exchange Council helps develop innovative solutions in partnership with lawmakers and business leaders, or to become a member, please visit www.alec.org.

American Legislative Exchange Council
2900 Crystal Drive, Suite 600
Arlington, VA 22202
Tel: 703.373.0933
Fax: 703.373.0927
www.alec.org

EPA predicts that almost 50 gigawatts of installed coal-fired generating capacity will be retired between 2016 and 2020 as a direct result of the Clean Power Plan.

for how national environmental policy should be implemented. Based upon a vision of *cooperative federalism*, EPA would work closely with the states to balance economic growth with environmental protection.[1]

Indeed, the preamble of the federal Clean Air Act clearly reflects this *cooperative federalist* framework when it states that "air pollution prevention…and air pollution control at its source is the primary responsibility of States and local government," and that "federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional and local programs to prevent and control air pollution."[2]

Such an arrangement as outlined in the Clean Air Act makes logical sense. States have unique circumstances and conditions that policymakers need to consider when implementing any sort of policy measure, especially those pertaining to environmental protections. At the same time, however, the federal government has a responsibility to provide technical assistance and financial resources necessary for implementing meaningful environmental regulations.

Unfortunately, much to the detriment of states and individuals, this *cooperative federalist* approach has slowly deteriorated over time. Many examples of EPA's departure from this model are outlined in *The U.S. Environmental Protection Agency's Assault on State Sovereignty*, released by the American Legislative Exchange Council (ALEC) in 2013.

How the Proposed Regulation Will Affect States

EPA has historically interpreted its authority under the Clean Air Act as only being able to regulate emissions directly at affected power plant units. With the proposed Clean Power Plan, however, it has become apparent that EPA now intends to go beyond the "fence-line" of the power plant by transforming the way states have carefully developed their electric generation mixes to support their economies. Instead of merely setting carbon dioxide emissions limits for electricity generating units, the proposed rule (as explained earlier) sets individual state emissions rate goals and suggests building blocks for achieving those goals. Only the first building block—improving thermal efficiency of existing coal-fired units by six percent—comes within the "fence-line" of the power plant.

EPA itself is expecting a widespread curtailment of operations as a result of its Clean Power Plan. Using its Integrated Planning Modeling (IPM), EPA predicts that almost 50 gigawatts of installed coal-fired generating capacity will be retired between 2016 and 2020 as a direct result of the Plan. Legislators and other state policymakers can quickly determine which plants within their borders are expected to shut down from EPA's list of state-by-state plant closures.[3] These closures will inevitably lead to job losses and losses in tax revenues, especially in rural communities. EPA has also acknowledged that an additional 71 gigawatts of installed capacity is slated for retirement between 2010 and 2020 as a result of other environmental regulations. This total capacity of just over 120 gigawatts slated for retirement by 2020 represents roughly 33 percent of the coal-fired generation in the U.S. and provides enough electricity to power 60 million homes.

Since EPA's estimates of its own regulatory impacts are typically on the conservative side, can we trust its prediction that only modest increases in electricity prices will result from its Clean Power Plan? Not when we compare 2013 electricity prices in Wyoming (7.55 cents/kWh), North Dakota (8.19 cents/kWh)

and Georgia (9.53 cents/kWh) to the prices of electricity in states with self-imposed carbon dioxide emissions limits, which range from 10.98 to 15.68 cents per kilowatt hour.[4]

Not only will citizens directly pay for increased electricity costs in their homes, but the cost of goods and services will also increase. According to a study conducted by the American Enterprise Institute for Public Policy Research (AEI), nearly half (46 percent) of what individual Americans pay for energy comes embodied in the costs of goods and services. Increased electricity prices also affect citizens differently. Lower and middle income families continue to struggle to make ends meet and would be required to spend an even greater amount of their income on electricity. Food prices in particular would also increase, since about 40 percent of the energy required to grow crops and raise livestock comes in the form of electricity.[5]

Most states will not be able to reduce their carbon dioxide emissions rates with these measures, because doing so will be cost prohibitive. Furthermore, EPA's building blocks are unrealistic and may be impossible to achieve and cannot be implemented in the 12 to 24 months between EPA's final approval of the rule and the deadline for submitting a state implementation plan (SIP). When states inevitably fail to achieve one or more of the four building blocks, states will be forced to retire even more coal-fired generation in order to comply with the regulation.

Since the New Deal, the regulation of retail electricity sales and local distribution has been a sovereign state function. In proposing the Clean Power Plan, EPA is intruding into the sovereign authority of states without any clear congressional authorization.

States are Taking Action

Many policymakers are rightfully concerned about the effects of this new regulation, especially those in states with heavy manufacturing- and agriculture-based economies that rely on continuous 24/7 baseload generation.

Already, many state attorneys general have questioned the legality of EPA's proposal by filing a lawsuit against the agency. On September 3, 2014, led by Attorney General Patrick Morrisey (WV), the states of Alabama, Indiana, Kansas, Kentucky, Louisiana, Nebraska, Ohio, Oklahoma, South Dakota, South Carolina, West Virginia and Wyoming filed a motion to expedite the court review of the lawsuit, noting that doing so will "reduce irreparable harm to the states and to the public" given the gravity of the situation.[6]

Before EPA published its proposal in early June, ALEC, as well as many legislatures, attorneys general and financial and environmental regulators, passed resolutions and sent letters to EPA expressing their views on how carbon dioxide emissions could be reduced at affected power plant units via supplemental voluntary measures. On paper, it may appear that EPA incorporated these recommendations, but in reality they did not. Now is the time for states to fight for their sovereign authority and to protect their citizens and economies from this unreasonable EPA mandate.

EPA should withdraw the proposed rule and issue new guidelines that (1) respect the primacy of states, (2) maintain an adequate, reliable, affordable electrical generating fleet, (3) are based on EPA guidelines for cost-effective, achievable reductions at the affected power plant units, rather than states, (4) establish emissions guidelines based on adequately demonstrated systems that are fuel and technology specific, (5) provide credit for significant emissions reductions already made or being made, (6) avoid premature retirements and stranded assets and (7) be fair and equitable to all electricity customers.

Electricity Price by State, 2013

States with self-imposed carbon limits* have higher electricity prices than states that don't

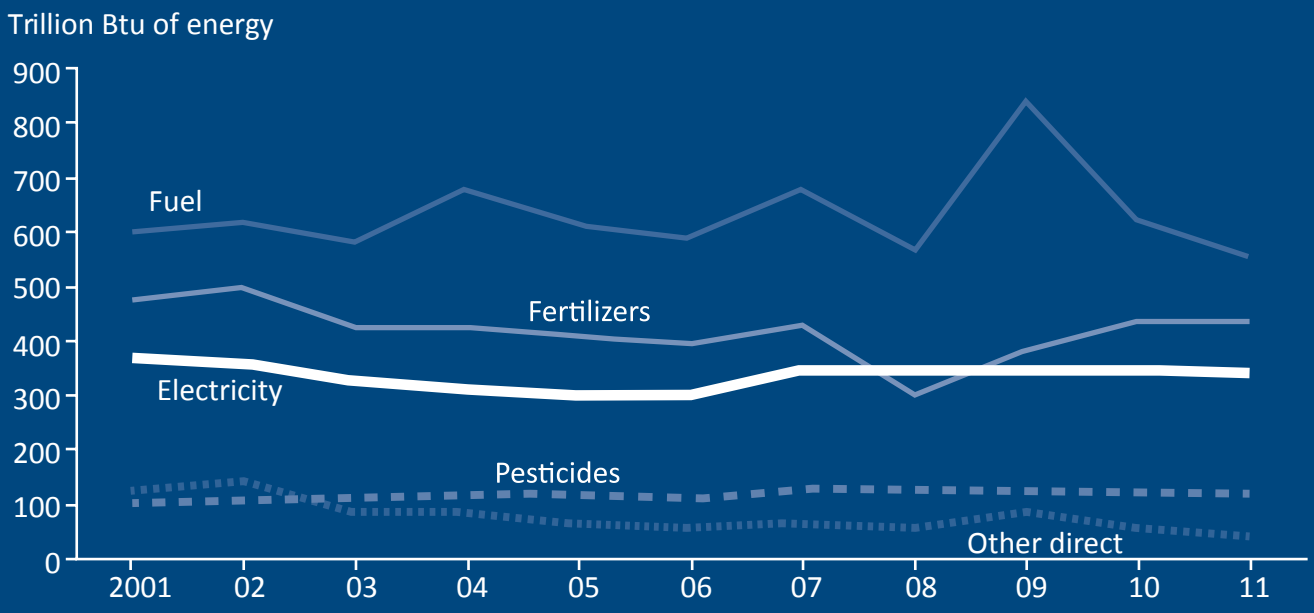
Rank	State	Primary Source	Nominal Price (Cents per kWh)	Inflation Adjusted 1 Year Change	Inflation Adjusted 5 Year Change
1	Washington	Hydroelectric	7.06	+<0.1%	0.50%
2	Kentucky	Coal	7.54	3.20%	12.70%
3	Wyoming	Coal	7.55	3.80%	25.90%
4	Idaho	Hydroelectric	7.61	10.10%	23.50%
5	Oklahoma	Natural Gas	7.81	3.60%	-7.00%
6	Arkansas	Coal	7.82	2.10%	-2.10%
7	West Virginia	Coal	7.91	-4.10%	32.20%
8	Illinois	Nuclear	7.99	-6.70%	-19.90%
9	Louisiana	Natural Gas	8	14.40%	-19.30%
10	Iowa	Coal	8.12	3.30%	8.90%
11	Utah	Coal	8.18	2.80%	17.70%
12	North Dakota	Coal	8.19	3.70%	14.10%
13	Oregon	Hydroelectric	8.39	0.30%	7.20%
14	Montana	Coal	8.58	2.90%	4.30%
15	Indiana	Coal	8.63	4.10%	13.80%
16	Nebraska	Coal	8.69	5.20%	22.10%
17	Texas	Natural Gas	8.77	0.60%	-24.40%
18	South Dakota	Hydroelectric	8.84	2.20%	14.40%
19	Missouri	Coal	8.96	4.30%	21.20%
20	Virginia	Nuclear	9.01	-2.20%	4.70%
21	Alabama	Coal	9.02	-3.10%	-0.20%
22	Nevada	Natural Gas	9.04	-0.30%	-13.90%
23	South Carolina	Nuclear	9.14	-0.60%	7.50%
24	Mississippi	Natural Gas	9.16	5.40%	-3.50%
25	Ohio	Coal	9.16	-0.30%	1.80%
26	North Carolina	Coal	9.18	-0.50%	6.50%
27	Tennessee	Coal	9.22	-2.30%	4.90%
28	New Mexico	Coal	9.24	2.70%	4.80%

Rank	State	Primary Source	Nominal Price (Cents per kWh)	Inflation Adjusted 1 Year Change	Inflation Adjusted 5 Year Change
29	Minnesota	Coal	9.52	6.20%	13.90%
30	Georgia	Natural Gas	9.53	0.90%	-0.30%
31	Kansas	Coal	9.57	2.80%	19.50%
32	Colorado	Coal	9.8	3.20%	6.50%
33	Pennsylvania	Coal	9.83	-2.10%	-1.50%
	United States Average	Coal	10.08	0.90%	-3.50%
34	Arizona	Coal	10.16	2.40%	3.00%
35	Florida	Natural Gas	10.3	-2.90%	-11.30%
36	Wisconsin	Coal	10.63	1.30%	10.10%
37	Delaware	Natural Gas	10.98	-2.70%	-17.10%
38	Michigan	Coal	11.26	1.20%	17.20%
39	Maryland	Coal	11.65	1.30%	-17.10%
	District of Columbia	Natural Gas	11.85	-1.30%	-16.40%
40	Maine	Natural Gas	11.87	-1.10%	-20.70%
41	New Jersey	Nuclear	13.7	-2.70%	-11.90%
42	Rhode Island	Natural Gas	13.91	6.60%	-19.70%
43	New Hampshire	Nuclear	14.31	-0.90%	-9.70%
44	Vermont	Nuclear	14.45	-0.20%	8.30%
45	Massachusetts	Natural Gas	14.51	4.00%	-17.60%
46	California	Natural Gas	14.57	4.80%	8.80%
47	New York	Natural Gas	15.62	1.70%	-12.90%
48	Connecticut	Nuclear	15.68	-0.40%	-18.50%
49	Alaska	Natural Gas	16.51	0.60%	4.80%
50	Hawaii	Petroleum	33.27	-3.50%	7.30%

**California and New England states in RGGI have self-imposed carbon limits*

Source: Nominal electricity prices by state and economic sector are based on aggregated data from individual electric utilities derived from United States Form EIA-861 and Form EIA-826. To control for the changing value of the United States Dollar, nominal prices were converted to Real 2010 US$ using the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI).

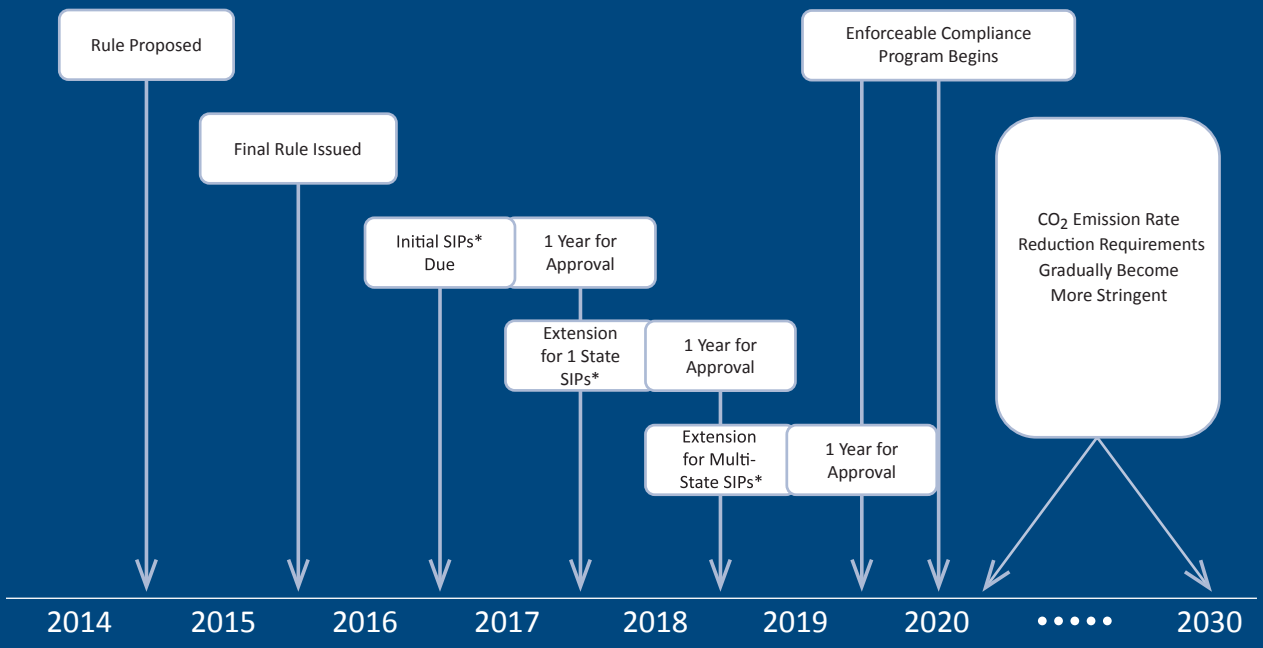
Energy Inputs Consumed on U.S. Farms (2001-2011)



Electricity accounts for approximately 40 percent of all energy use on U.S. farms. When electricity costs increase, families will pay more for food.

Source: Miranowski (2005) and USDA, Economic Research Service calculation in Beckman, Borchers, Jones (2013) USDA Bulletin 112.

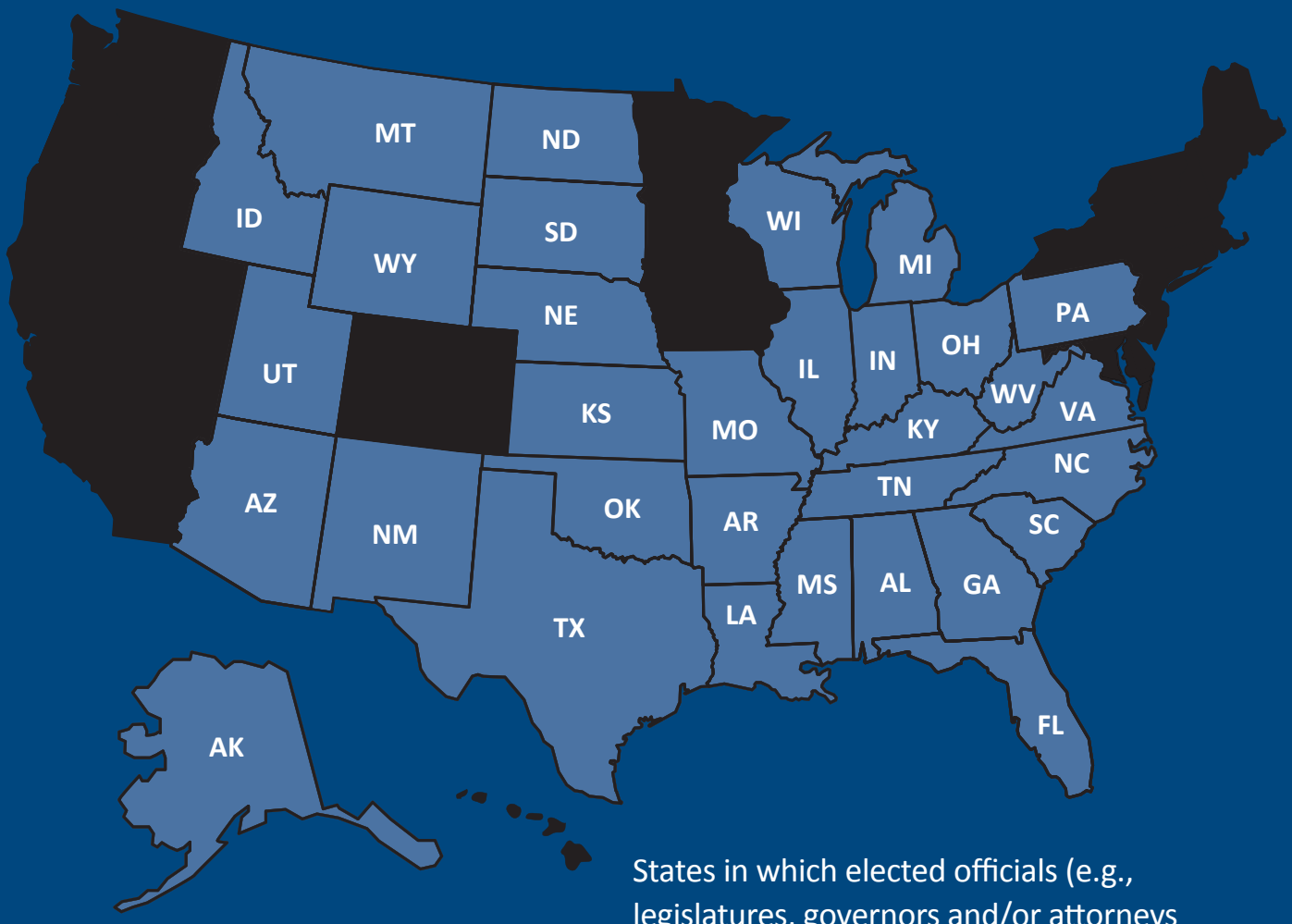
Proposed EPA 111(d) Regulatory Timeline



*SIP: State Implementaion Plan

Source: "Carbon Polluting Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," A proposed rule by the Environmental Protection Agency, June 18, 2014, https://www.federalregister.gov/articles/2014/06/18/2014-13726/carbon-pollution-emission-guidelines-for-existing-stationary-sources-electric-utility-generating.

32 States Oppose EPA's Carbon Proposal for Power Plants



States in which elected officials (e.g., legislatures, governors and/or attorneys general) have expressed firm opposition to EPA's proposed Clean Power Plan.

ALEC Resources

ALEC is a public-private partnership of state legislators from across the country, members of the private sector and the general public that exists to advance principles of limited government, free markets and federalism at the state level.

At the 2014 ALEC Annual Meeting in Dallas, the Task Force on Energy, Environment and Agriculture passed the model *Resolution Concerning EPA's Proposed Guidelines for Existing Fossil Fuel-Fired Power Plants*. The resolution calls upon state legislators and other state policymakers to raise any concerns they may have about the proposed rule, including concerns about the legal, economic, employment, timing, achievability, affordability, implementation scheduling and reliability issues that arise from the Plan by the December 1 deadline.

This latest resolution follows similar ALEC adopted models, such as the *Resolution Concerning EPA Proposed Greenhouse Gas Emission Standards for New and Existing Fossil-Fueled Power Plants* and the *Resolution in Response to EPA's Plan to Regulate Greenhouse Gases Under the Clean Air Act*. ALEC maintains policy supporting fuel diversity and energy efficiency measures but holds the position that carbon dioxide emissions should not prevent states and electric utilities from providing affordable, reliable and safe electricity while the environment is being protected.

End Notes

1 William Yeatman, *The U.S. Environmental Protection Agency's Assault on State Sovereignty*, Arlington, VA: American Legislative Exchange Council, 2013, page 1.

2 42 U.S. Code § 7401 – Congressional findings and declaration of purpose.

3 "Clean Power Plan Facts – Expected Plant Retirements," American Legislative Exchange Council, *http://www.alec.org/cpp-facts/expected-plant-retirements/*.

4 *Southern States Regional Energy Profiles,* Southern States Energy Board, 2014, *http://www.sseb.org/wp-content/uploads/2014/07/2014-Southern-States-Energy-Profiles_FINAL.pdf*, page 59.

5 Jayson Beckman, Allison Borchers, and Carol A. Jones, "Agriculture's Supply and Demand for Energy and Energy Products," United States Department of Agriculture Economic Research Service, *http://www.ers.usda.gov/media/1104145/eib112.pdf*, page 10.

6 "Petitioners' Motion to Set a Consolidated Briefing Schedule and to Expedite Consideration," *State of West Virginia, et al. v. United States Environmental Protection Agency, http://www.ago.wv.gov/pressroom/Documents/Motion%20to%20expedite%20-%20File%20Stamped.pdf*.

ALEC American Legislative Exchange Council
LIMITED GOVERNMENT • FREE MARKETS • FEDERALISM

2900 Crystal Drive, Suite 600
Arlington, VA 22202
www.alec.org

the STATE FACTOR

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

To learn more about how the American Legislative Exchange Council helps develop innovative solutions in partnership with lawmakers and business leaders, or to become a member, please visit www.alec.org.

American Legislative Exchange Council
2900 Crystal Drive, Suite 600
Arlington, VA 22202
Tel: 703.373.0933
Fax: 703.373.0927
www.alec.org