

ANALYSISSTATE AND LOCAL FISCAL ASSISTANCE ACT AMENDMENTS OF 1975Section 1

The amount of a recipient government's revenue sharing allocation is determined by the data factors of that government relative to the data factors of all other competing governments. In the process of improving the data, it is sometimes necessary to make data corrections after the final allocation of funds, and after the period during which the vast majority of data corrections have been processed. Each data correction of this type, absent a special procedure, would result in retroactive changes to the allocations and payments of many governments which had expended the funds or had come to rely on those allocations and payments for budgetary purposes.

To mitigate the inequity arising from this unfortunate but inevitable circumstance, 31 CFR 51.25(a) has been promulgated. It establishes an Obligated Adjustment Reserve that is funded by administratively holding in reserve a small percentage (.005) of the revenue sharing funds appropriated for each entitlement period from which adjustments can be made to alleviate hardships caused by prior misallocations. The amount of revenue sharing funds held in reserve and the decision to make adjustment payments is determined at the discretion of the Secretary, as the equity of the situation requires.

The creation of the Reserve Fund has proved necessary for the orderly administration of the General Revenue Sharing program due to the

complexity of the allocation process. The proposed amendment to section 102 of the Act is recommended in the first section of the bill to clarify the authority of the Secretary to make adjustments in this manner.

Section 2

Section 105(b)(1) of the present Act provides for the periodic appropriation of funds from the general fund of the Treasury to the State and Local Government Fiscal Assistance Trust Fund. Funding under this section is provided through December 31, 1976, with an increase of \$150 million each full fiscal year with the exception of early periods and the last period of six months. That six-month period also provides for a step increase of \$150 million.

Clause (1) of section 2 of the bill provides for a continuation of the General Revenue Sharing program for 5-3/4 additional years, concluding with the fiscal year beginning October 1, 1981. This recommendation strikes a reasonable balance between the need of recipient governments for fiscal stability and the legitimate desire of the Federal Executive and the Congress to review the law in the light of future national economic concerns. Thus, the total amount to be distributed under the 5-3/4-year renewal program is \$39.85 billion, which includes \$75 million moved forward from the final six months of the current program. The original Act provided for a \$150 million increase for the six-month entitlement period which was to end the GRS program. Since the program is to be extended, the legislation seeks to continue linear \$150 million annual stairstep increases in funding level.

The amendment also creates a three-month appropriation period beginning July 1, 1976, and ending September 30, 1976, to provide for the transition to

the new October 1 Federal fiscal year. The entitlement period beginning July 1, 1976, combines this quarter with the following fiscal year so that the entitlement period would end on September 30, 1977.

When the revenue sharing allocation of Alaska or Hawaii is determined by the three-factor allocation formula, it becomes eligible for the non-contiguous State adjustment. Pursuant to section 106(c) of the Act, an adjustment may be made to the basic allocation for these States in which civilian employees of the U.S. Government receive an allowance under 5 U.S.C. section 5941. Section 105(b)(2) appropriates the funds used to make this adjustment.

Clause (2) of section 2 of the bill would amend section 105(b)(2) by extending this appropriation at the existing rate of \$4,780,000 per year. Further, this amendment, like that of clause (1) of section 2 above, would result in two appropriation periods being combined under the new fifteen-month entitlement period proposed for section 141(b). This will allow for the transition to the new Federal fiscal year and at the same time identify all the appropriations being proposed for this section, including the transition quarter.

Clause (3) of section 2 of the bill would amend section 105 of the Act to add subsections (d) and (e). The new subsection (d) provides that the funds appropriated for the extension of the General Revenue Sharing program are exempt from the appropriation procedures of section 401(a) and (b) of the Congressional Budget Act of 1974 (P.L. 93-344). This Act specifically provides that any extension of the General Revenue Sharing program is eligible for this exemption. The appropriation of funds at

the outset for the extension of the General Revenue Sharing program is vitally important to recipient governments to assist them in planning for their service programs, capital improvement programs, and financial policies without being subject to the inherent delays and uncertainties of the annual appropriation process.

The new subsection (e) provides that the Secretary of the Treasury shall submit a report, with recommendations concerning the extension of the Act, to the Congress two years before the expiration of funding under this bill. A requirement to review the renewal of the General Revenue Sharing program two years in advance of its expiration would remove much of the uncertainty for State and local governments regarding availability of future funds and would provide the Congress adequate time to review the program.

Section 3

Section 107(b)(5) of the Act provides a special rule to measure State assistance to local governments during the six-month-long entitlement period (July 1, 1976 - December 31, 1976). This provision is no longer needed in view of the fact that this legislation would replace the six-month entitlement period with a new longer entitlement period. Accordingly, it is proposed that section 107(b) be amended to delete paragraph (5). In situations in which either the recipient government's fiscal year does not coincide with an entitlement period or where an entitlement period is greater than or less than a full year, the Office of Revenue Sharing has provided by regulation (31 CFR 51.26) that the

(B) the day after the date of enactment of this Act.

(c) TRANSFERS FROM TRUST FUND TO GENERAL FUND.--The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

(d) NEW SPENDING AUTHORITY EXEMPTION.--Funds appropriated pursuant to subsection (b)(1) and (2) are exempt from the provisions of sections 401(a) and (b) of the Congressional Budget Act of 1974.

(e) SECRETARY'S REPORT ON EXTENSION.--No later than September 30, 1980, the Secretary shall submit a report with appropriate recommendations concerning the extension of this title to the Congress.

SEC. 107. ENTITLEMENTS OF STATE GOVERNMENTS

* * *

(b) STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.

* * *

[(5) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1976.--
In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph

treated the same as a waiver by any other unit of local government, and the amount waived should be added to the county government entitlement. Section 4(a) of the bill would accomplish that purpose.

Section 4(b) of the bill provides that beginning with the entitlement period that begins on July 1, 1976, the present maximum limitation on the amount of revenue sharing entitlements be raised. In order to insure that some communities would not receive extremely high or low allocations, the maximum and minimum limitations on the revenue sharing allocations to county areas and units of local government were imposed upon the revenue sharing formula. Under the current law, the maximum limitation for any county area or local government in a State is 145 percent of the per capita allocation to all local governments in the State.

The effect of this 145 percent maximum is as follows: after the entitlements of local governments within a State are computed according to the formula, any jurisdiction which is entitled to receive more than 145 percent of the average per capita allocation to all local governments in that State has its allocation reduced to the 145 percent level. The funds taken from these jurisdictions, which are generally characterized by low-income population and high levels of tax effort, are then redistributed according to the formula to the remaining jurisdictions within the State which are not so constrained and which would otherwise receive smaller amounts.

To reduce the impact on local governments which have been receiving additional funds that are redistributed because of the operation of the

145 percent constraint upon other jurisdictions within their State, the maximum allocation constraint would be raised gradually, in five steps, by an increase of 6 percentage points per entitlement period until a new maximum constraint level of 175 percent is reached. The purpose of raising the maximum per capita allocation constraint to 175 percent is to allow low personal income and high tax effort to be more fully reflected in the operation of the basic formula.

Due to the responsiveness of the revenue sharing formulas to changes in data--the allocation of revenue sharing funds is based on annually changing data elements such as adjusted taxes, and on periodically updated data elements such as per capita income and population--the effect of this proposed change will vary in any entitlement period and from State to State. As a result of the gradual phase-in, and as a result of the stairstep increases in the total amount being distributed each entitlement period, however, the potential losses to almost all jurisdictions in any given year should be fully offset so that they will not suffer an actual decrease in their revenue sharing payments as a consequence of this change.

Increasing the maximum constraint as proposed will, as a general rule, cause increased revenue sharing funds to be received by the 4,000 places that have been constrained in the past. These places include both major cities and smaller jurisdictions. Approximately 23,000 places would no longer receive additional redistributed funds from the constrained

places, but the amount involved for any given place is relatively small. Had the 175 percent constraint limitation been fully implemented in FY 1974, these 23,000 places would have received an average of \$3,000 less than they were actually paid in FY 1974, which is an average 2.2 percent less than they actually received.

Section 108(c) of the Act enables State governments, by enactment of a State law, to adopt an alternative formula for the distribution of revenue sharing allocations among the county areas and among the municipalities located therein. Section 4(c) of the bill amends section 108(c)(1)(C) for the sole purpose of reflecting the extension of the General Revenue Sharing appropriations until September 30, 1982.

Section 5

Section 109(a)(5) of the present Act states that, except as provided in the regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of each period. Further, section 109(a)(7) provides for uniformity of data and states the general rule that the data shall be the most recently available data. These provisions are effective and permit the orderly computation of entitlements before the beginning of each period so that States and local governments may be advised, for planning purposes and for purposes of informing their citizens, well before payments are made. In section 109(c)(2)(B) the definition of the general tax effort for States defines the most recent

reporting year as the one taken into account by the Bureau of the Census prior to the close of that entitlement period. This definition appears to conflict with the definition for all other data items and appears to conflict with the earlier section providing for uniformity of data and for computation of entitlements three months before the beginning of an entitlement period.

Were this non-conforming definition to be given precedence, it would necessitate substitution of these data during an entitlement period while payments were being made, and would result in changing the entitlements for all 38,000 recipient governments during the middle of the payment year.

Section 5 of the bill would eliminate this non-conforming language by amending section 109(c)(2)(B) by deleting the word "close" in the phrase "made before the close of each period", and inserting in lieu thereof the word "beginning". Thus, the phrase would read, "made before the beginning of such period". In this way, data from which the general tax effort factor is computed, and which is published by the Department of Commerce by October of each year, would be used for the computation of the entitlement period beginning in the following year, and no tax effort adjustments to the general universe of recipients would be necessary.

Section 6

Section 121(a) of the Act requires States and units of local government to submit a report to the Secretary of the Treasury at the close of

each entitlement period setting forth the amounts and purposes for which funds received during such period have been spent or obligated. The purpose of this section is to keep the Secretary and the public abreast of how recipient governments are spending their General Revenue Sharing funds.

Attempts to measure the various effects General Revenue Sharing funds have had on recipient governments from the Actual Use Reports submitted to date have met with only limited success. Section 6(a) of the bill is intended to give the Secretary more discretion to determine the form and content of the reports submitted under section 121(a) of the Act. This additional authority to regulate the substantive content of the Actual Use Reports will be used to require recipient governments to report financial and use information in a fashion that is more meaningful to the general public, to the Congress, and to the Executive Branch.

Section 121(b) of the Act requires States and units of local government expecting to receive revenue sharing funds for any entitlement period to submit a report to the Secretary of the Treasury setting forth the amounts and purposes for which they plan to spend or obligate the funds during such period. The so-called Planned Use Report is intended to be used to inform the Secretary and the public as to how recipient governments plan to expend their General Revenue Sharing funds.

Section 6(b) of the bill is intended to serve the same function for the Planned Use Reports as section 6(a) serves for the Actual Use Reports. In each case, we believe the effectiveness of the reports could be

significantly enhanced if the Secretary were allowed more administrative discretion to determine their content. The present requirement that the Planned Use Report set forth the amounts and purposes for which the recipient government plans to spend or obligate the funds does provide beneficial information. However, section 6(b) would make it possible for the reports to provide data that is more useful to local citizens and the Federal Government.

Section 121(c) of the Act requires each recipient government to publish a copy of each report which it submits to the Office of Revenue Sharing in a newspaper which is published within the State and has general circulation within the geographical area of that government. Based on our administrative experience, this section should be modified. The Office of Revenue Sharing has received a large number of complaints, particularly from small units of government, regarding the relatively high cost of publication. Some small governments receiving less than \$1,000 have had to spend \$100 or more for publication due to a variety of local circumstances. In other instances, the unavailability of a newspaper circulating generally within the geographical area of a county has been called to our attention. In still other cases, we have been advised that there are more effective ways to get the information contained in the report to the citizens of the community.

Section 6(c) of the bill would amend section 121(c) to authorize the Secretary to establish alternative procedures where it is determined that the requirement of publication in a newspaper is unreasonably expensive

in relation to the amount of revenue sharing funds involved, or, where the Secretary finds that in terms of public understanding, there are better methods to get the information before the residents of the community.

Section 7

Section 122(a) of the Act provides that no person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with revenue sharing funds. The statutory authority of the Secretary of the Treasury to enforce the above nondiscrimination provision is set forth in section 122(b) of the Act. It presently states that upon a determination by the Secretary that a recipient has failed to comply with subsection 122(a), and after notification to the Governor of the State (or, in the case of a unit of local government, the Governor of the State in which such unit is located) and after failure to secure voluntary compliance within a reasonable period of time, the Secretary may either: refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or take such other action as may be provided by law.

Title VI of the Civil Rights Act of 1964 prohibits discrimination in the use of Federal financial assistance by way of grant, loan, or contract,

(42 U.S.C. 2000d-1). In order to receive such assistance, generally the State or local government must file an application satisfying the requirements of the particular program. Revenue sharing payments are based on a statutory entitlement for which States and units of local government are automatically eligible pursuant to section 102 of the Act. The Secretary has no discretion to approve or disapprove in advance payments to any participating recipient government after certain minimal statutory requirements are met.

Recognizing the unique aspects of revenue sharing entitlements, section 7 of the bill is intended to express clearly in the Act certain authority of the Secretary in applying the nondiscrimination provisions of section 122. This is accomplished by stating explicitly that the Secretary has authority to withhold all or a portion of entitlement funds due a State or unit of local government, to terminate one or more payments of entitlement funds, and to require repayment of entitlement funds previously expended in a program or activity found to have been in violation of subsection (a). The changes in section 122 will further enhance the Secretary's ability to ensure that entitlement funds are not utilized in a discriminatory manner.

Section 8

Broad public participation in State and local decision making as to how revenue sharing funds are to be expended is an essential ingredient of General Revenue Sharing. For this reason, section 121(c) requires that the news media be notified when the Planned Use and Actual Use Reports are published in a local newspaper. By regulation, recipient

governments must also make these reports available to the general public. Additionally, to encourage citizen involvement, section 123(a)(4) of the Act requires recipient governments to provide for the expenditure of revenue sharing funds only in accordance with the laws and appropriation procedures which are applicable to the expenditure of their own revenues.

Clause (1) of section 8 of the bill would further strengthen the general public's role in the General Revenue Sharing process. It amends section 123(a)(5) of the Act to the extent that in order to qualify for revenue sharing funds, a State or unit of local government must establish to the satisfaction of the Secretary of the Treasury that it will provide the residents under its jurisdiction with an opportunity to give their recommendations and views on how the revenue sharing funds should be spent. This opportunity for public involvement may be provided either in a public hearing or, where appropriate, by other means prescribed in regulations to be issued by the Secretary of the Treasury. This amendment would serve to ensure that all recipient governments, regardless of whether they have State or local public participation requirements, will include the public in the decision-making process on the expenditure of revenue sharing funds.

Section 123(a)(8) of the Act provides that Indian tribes and Alaskan native villages must spend their revenue sharing funds for the benefit of members of the tribe or village residing in the county area from which its revenue sharing entitlement originates. This provision affects Indian

reservations which are located in more than one county, thus resulting in the tribe receiving separate revenue sharing allocations from each county area.

Clause (2) of section 8 proposes to eliminate this provision for two reasons. First, it is very difficult for the Indian government to administer since it demands that an analysis be made of each proposed revenue sharing expenditure to ensure that the proper percentage of residents in the applicable counties will benefit in proportion to the percentage of revenue sharing funds generated from each county. Second, this requirement frustrates reservation-wide planning by limiting the capacity of the tribal government to concentrate its revenue sharing expenditures in areas which have the highest priority.

Section 9

Section 141 of the Act defines the entitlement periods which govern the distribution of funds to recipient governments. Section 9 of the bill would revise the last entitlement period (July 1, 1976, to December 31, 1976) by extending it to September 30, 1977. This fifteen-month entitlement period would provide for the transition to the new Federal fiscal year and would combine the appropriations of subparagraph (G) and proposed subparagraph (H) of section 105(b)(1). Also, section 141 would be amended to extend the General Revenue Sharing program until September 30, 1982.