

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
August 11-12, 2003

RESOLVED, That the American Bar Association supports increased federal funding to state, local and territorial governments, including public authorities, to enable these "first responders" to prevent terrorist attacks and increase their readiness to respond to any attacks that do occur.

REPORT

The Constitution delegates to Congress the power and responsibility to provide for the common defense, while most of the burden of protection of the nation's public health, safety, and welfare falls on state and local governments that operate critical infrastructure and provide public safety and emergency response forces. As a result of the nation's war on terrorism and vulnerability to terrorist acts these governments entities face unprecedented, permanent new requirements that include provision of 'homeland security' as part of their traditional public safety responsibilities. The magnitude and urgent nature of the September 11, 2001, terrorist attacks, the anthrax crisis, and the implementation of a national alert system have forced state and local governments to undertake enhanced anti-terrorism roles. For instance, Governors now must initiate and implement a comprehensive state strategy, in coordination with the federal government, to detect, prepare for, prevent, respond to, and recover from terrorist attacks within their own borders.

Ensuring the health, safety and welfare of our nation's citizens is essential, and the federal government must provide adequate technical and financial federal resources to assist state and local governments to maintain a heightened level of alert, and enable our first responders during this time of crisis to meet their enhanced responsibilities. As called for in the Homeland Security Act of 2002, the federal government, in coordination with state governments, should:

- provide general guidelines and recommendations for state preparedness in order to tie the nation together in a unified planning effort;
- be fully coordinated with state and local governments;
- address sustainability issues; and
- build upon, utilize, and improve upon the existing emergency management and response systems.

The federal government has recognized the critical role that local "first responders" and state governments play in the nation's preparedness. As of April 3, 2003, \$3.5 billion was appropriated in the FY2003 Omnibus Appropriation Act, and an additional \$2.23 billion in the 2003 Wartime Supplemental Appropriations Act for the nation's "first responders" – the police officers, firefighters and medical personnel who risk their lives every day defending our homeland. The funding is to help pay for new equipment, training, and overtime costs, based on what states, cities and counties agree they need in order to implement their anti-terrorism plan.

Cities, however, have incurred expenses of over \$8 billion just for homeland security-related police overtime since September 11, with little federal financial assistance. (Survey by the International Association of City Managers)- Other state and local homeland security requirements have only barely begun to be met. For example, the deployment of interoperable communications equipment is estimated to cost at least \$18 billion nationwide. Most water systems are required to perform vulnerability assessments, at a cost of up to \$900 million. Neither of these needs currently has received federal funding

support. Other areas include un-reimbursed expenditures for airport, maritime port security, and border protection. According to the National Conference of State Legislatures, Phase II of the smallpox vaccinations is estimated to cost \$200 million, not including potential liability judgments.

In short, while the Federal Government recognizes the importance of funding state and local governments for homeland security, actual appropriated federal support has lagged well behind both actual expenditures by state and local governments, and far behind their needs for equipment, training, emergency communications, first responder exercises, support for existing urban search and rescue teams, state and local emergency planning, and Community Emergency Response Teams (CERT).

Accordingly, the federal government must properly reimburse states and local governments for security-related spending, including for the defense of critical infrastructure, communication networks, the food supply, and emergency preparedness.

In receiving what to date has been insufficient Federal funding, those jurisdictions with higher risk exposure have had to shoulder extraordinary expenses. Current distribution criteria for such funding need to be reexamined and funds provided need to be sufficiently flexible so that they can be allocated to those communities and jurisdictions where the vulnerability, threats, and burdens to provide for public security are greatest. In addition, needed Federal funding should be distributed as soon as available to help state and local jurisdictions ease the burdens on their already-strained finances.

While recognizing that the federal government is under significant fiscal burdens for a variety of reasons, state and local governments themselves are experiencing the most severe fiscal crisis in decades. Failure to provide essential financial resources will undercut needed protections in these times of heightened threats, and any expenditures for newly imposed homeland security expenses by state and local governments that go un-reimbursed will necessarily lead to reductions in other critical public services.

Respectfully submitted,

Mary Massaron Ross
Chair
August 2003

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Section of State and Local Government Law

Submitted By: Mary Massaron Ross, Chair

1. Summary of Recommendation(s).

We recommend that the ABA formally support increased funding to state, local and territorial governments, including public authorities, to enable these first "responders" to prevent terrorist attacks and increase their readiness to respond to any attacks that do occur.

2. Approval by Submitting Entity.

Approved by the Council of the Section of State and Local Government Law on May 11, 2003.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

None of which we are aware

5. What urgency exists which requires action at this meeting of the House?

This is the first House meeting since creation of the Department of Homeland Security and state and local governments, already under intense fiscal pressure, urgently require Federal funding to carry out their roles in homeland security.

6. Status of Legislation. (If applicable.)

As of May 12, 2003, no additional supplemental appropriations bills for FY 2003 were pending. During August, 2003, at the time of the meeting of the House, appropriations bills for FY2004 are likely to be under active consideration (in Committees, on the floor of the House or Senate, or perhaps even in Conference).

7. Cost to the Association. (Both direct and indirect costs.)

This resolution is a policy recommendation and would not impose a monetary cost on the ABA.

8. Disclosure of Interest. (If applicable.)

Many members of the State and Local Government Law Section either represent or are employed by state and local governments.

9. Referrals.

Copies of this report were sent to the following Sections and Committees on May 19, 2003.

Government and Public Sector Lawyers Division
Section of Health Law
Section of Administrative Law & Regulatory Practice
Standing Committee on Law and National Security
Section of Criminal Justice
Section of Public Contract Law

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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