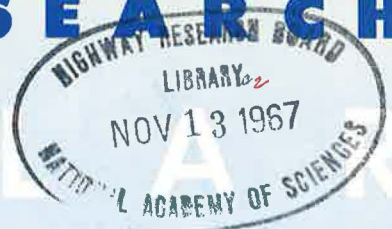


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HIGHWAY RESEARCH

CIRCULAR



NUMBER 70

Subject Classification: Land Acquisition August 1967

COMMITTEE ACTIVITY

Committee on Condemnation and Land Use Control, LS-1,
Department of Legal Studies, Highway Research Board

LAND ACQUISITION
MEMORANDUM #189

189-1 STUDY OF ADVANCE ACQUISITION OF HIGHWAY RIGHTS-OF-WAY

Highway officials have long recognized the need to reserve the routes of future highways as soon as they were identified. All too often, without the appropriate legal and financial tools, they are compelled to watch helplessly as unimproved land is developed and improved property changed to even more intensive uses without being able to acquire those portions that would inevitably be needed for future highway use. These highway officials know that the taxpayers want public highways to be constructed but that they will protest vigorously if the facilities cost too much because expensive improvements must be removed to permit construction.

In recognition of the increasing need to acquire lands for future highway use, the Congress, in the Federal-Aid Highway Act of 1966, directed the Secretary of Commerce to undertake a study of the advance acquirement of highway right-of-way for the Federal-aid highway systems. In the study, emphasis was to be given to the provision of adequate time for the disposal of improvements located on rights-of-way, the relocation of affected persons and businesses, methods of financing advance acquisition, and related matters.

Pursuant to this mandate, the Bureau of Public Roads has reviewed the existing literature and materials which have been produced on this subject matter in the past; has sought new and current data from the State highway departments related to elements of advance right-of-way acquisition; and has consulted with the Committee on Right-of-Way of the American Association of State Highway Officials. It has also obtained pertinent materials from the files of the Special Subcommittee on the Federal-aid Highway Program and valuable suggestions on advance acquisition from its staff.

Future or advance right-of-way acquisition may mean different things to different persons. It is considered for the purpose of this report to be the acquirement of real property for highway purposes at least two years prior to its need for highway construction.

Vast sums of money already have been spent and more will be expended to make public highways the most efficient channels of transportation that we know how to provide. The 1965 right-of-way cost estimate for the Interstate System alone was \$7.2 billion including the amount expended before January 1, 1965; of this, it is estimated that approximately \$3 billion of right-of-way remains yet to be acquired. Additionally, considerable sums are being spent each year for other public highways, both on and off the Federal-aid highway systems for

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rights-of-way, and untold amounts will be involved in right-of-way acquisition programs that are needed but as yet unauthorized, especially in the urbanized areas of the Nation. If these investments of the efforts of men and resources are to yield the maximum of beneficial results, past mistakes, particularly those of omission, must serve as guides for future conduct.

Benefits which can be harvested by the public from an appropriate program of acquiring property for future highway use include:

- (1) Right-of-way costs will be minimized by forestalling costly development of land ultimately required for highway purposes.
- (2) There can be more orderly, deliberate, and beneficial relocation of persons, businesses, farms, and other existing uses of property at lower economic and social costs.
- (3) More orderly development of communities will be achieved by the early identification and reservation of highway locations.
- (4) Private developers and property owners will be enabled to plan their private land uses and development wholly consistent, physically and functionally, with an ultimate highway plan.
- (5) Highway improvement activities will be facilitated by the provision of more leadtime which the advance acquirement of right-of-way makes possible. Advance engineering planning and design will be stimulated, thereby making possible a more rational and deliberate approach to the provision of a modern highway plant.
- (6) Without the pressure of having to meet short deadlines, negotiations with property owners can be much more serene and satisfactory from every point of view. Public relations generally will be facilitated.

These advantages notwithstanding, advance acquisition is not an Aladdin's Lamp. It has some potential shortcomings that must be reckoned with:

- (1) Great care must be taken in the administration of a program of advance right-of-way acquisition to make sure that commitments are not made only to be abandoned after further study is made.
- (2) In areas of stable land use, potential advantages may be questionable. Economic and social returns from the application of the concept will be greatest in the undeveloped suburban and urban fringe areas of metropolitan places and in downtown areas where land uses are being upgraded or are rapidly changing.

- (3) When improved property is purchased in advance of need, the State must maintain the acquired properties if neighborhood deterioration is to be avoided. Under these circumstances, the State may be plagued with all the usual problems associated with a landlord and tenant relationship. If properties remain vacant, vandalism and policing can become an acute problem.

A few illustrations of cost savings effected by advance right-of-way acquirement are noteworthy. In the Birmingham area of Alabama, a large undeveloped shopping center site, purchased by the State highway department in 1959, will not be needed for highway purposes until some time this year; the site was purchased for \$275,000, and this represented a savings of several million dollars in land and improvement costs which would have been incurred had the shopping center been built. The Arizona Highway Department purchased a 5-acre tract in East Phoenix for \$57,700; one of the largest Phoenix builders had optioned this property in order to build a large condominium apartment project; had the project been built, many thousands of additional dollars of right-of-way cost would have been involved.

The economics of advance right-of-way acquisition can be approached negatively, so to speak, as well as positively as has been done in the foregoing illustration. In one State, for example, a new trailer park was acquired for highway purposes costing \$200,000. The land value amounted to only \$32,000. Had the parcel been purchased before construction of the the trailer park, \$168,000 might have been saved.

Since 1952, California has used an advance right-of-way acquisition revolving fund of \$30 million with which the State has purchased property estimated at \$66 million. If these acquisitions had not been made and normal improvements permitted to proceed, the costs in the future to the State would have approximated \$366 million. The indicated savings, therefore, are estimated at \$300 million, over a 12-year period, or an average of \$25 million per year. In 1965, the capital outlay for highway right-of-way in California was \$178 million; the savings, through advance purchases, from this fund alone, amounted to approximately 14 percent of its total right-of-way costs. In addition, the State acquires in advance to a considerable extent from current funds.

It has been generally recognized that under many circumstances it would be in the public interest to acquire property for future highway rights-of-way. The inquiry may then be made as to whether such an activity is now authorized under existing Federal-aid laws. The answer is in the affirmative. For all Federal-aid highway systems, including the Interstate System, right-of-way acquisition can be financed, in the usual Federal pro rata, out of each State's annual apportionment from Federal Highway Trust Funds as long as 7 years in advance of construction. For the most part, this time period has been found to be adequate, though in a few isolated instances it has not.

The legal status of advance acquisition at the State level is not so clearly defined. Statutes specifically authorizing the acquisition of lands for future highway use have been found in 27 jurisdictions.^{1/} In 26 of these

^{1/} Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Idaho, Indiana, Kansas, Louisiana, Maryland, Michigan, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Puerto Rico, Utah, Virginia, Washington, West Virginia, Wisconsin.

jurisdictions, the legal authority is granted to the highway department, but in Wisconsin, the authority is bestowed on the Milwaukee County Expressway Commission. In addition, in 16 other States^{1/} and the District of Columbia, authority to acquire lands for future highway use is implied by the statutes or by court decisions in those jurisdictions. Accordingly, in 43 jurisdictions, there is either express or implied authority to anticipate the future in highway land acquirement activities.

It does not follow, from the fact that many States have express or implied authority to acquire property for future highway use, that such authorizations are fully utilized or are completely adequate to deal with a full range of advance acquisition problems. The contrary actually prevails. Necessary or desirable elements of authority and practice are dealt with in several recent studies, discussed later in this report. The elements include such matters as an appropriate declaration of legislative policy, a delegation of authority to acquire lands for future highway use, definition of future use, standards for the exercise of the power, type of interest to be acquired, the power to sell lands no needed, power to lease, application to improved or unimproved lands, financing, definition of terms, intergovernmental relationships, and other matters.

A completely adequate legislation authorization to acquire lands for future highway use is useless unless the financial resources to do the job are somehow provided. At the Federal level, while funds available for Federal-aid highway improvement may be used for advance right-of-way acquisition, this use is in competition with the demands for physical construction of highways. The level of Federal-aid highway funding authorized is insufficient to encourage much, if any, acquisition of property for future highway use; it is barely sufficient to finance Interstate and other Federal-aid construction programs. From the State side 12 of the States^{2/} have established specific funds for advance acquisition, of varying size and adequacy in terms of the need. The magnitudes range from \$300,000 in Delaware to \$50,000,000 in New York. Additionally, seven other States set aside funds of various sizes for this purpose from budgeted highway funds. All but three States have indicated that present funding practices are inadequate for advance acquisition purposes. A corollary benefit from an advance right-of-way program would accrue from more orderly relocation practices. In accordance with Federal regulations, and in many instances under their own statutes, State highway departments advise owners and occupants of property needed for highway purposes of relocation advisory assistance that is available. Past experience indicates that approximately three percent of individuals and businesses forced to vacate have done so within 30 days or less after notice; 76 percent between 30 and 180 days; and the remaining 21 percent have vacated after 180 days or more. States sometimes grant 30-90 days rent-free occupancy. The most prevalent method of disposing of improvements is through public auction or sealed bid. The time required varies.

^{1/} Delaware, Iowa, Kentucky, Maine, Mississippi, Missouri, New Hampshire, New York, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Texas, Wisconsin, Wyoming.

^{2/} Arizona, California, Connecticut, Delaware, Maryland, New Jersey, New York, North Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

After vacation of the improvement, an average of two months are required for advertisement, sale, and removal.

The management of property acquired in advance of need is an essential element of any advance acquisition activity. Of the 50 States, the District of Columbia and Puerto Rico, 48 jurisdictions have legal authority to lease, and 37 of these make use of this power to some extent. Management expenses range from 3 to 30 percent of gross rental income, excluding real estate taxes. Federal funds participate in all elements of property management except for real estate tax payment, an exception that will bear further policy study. Seven States must pay real estate taxes on properties used for other than highway purposes, and three of these States must make such payments only if the property is income-producing.

Tables 1 and 2 summarize some advance acquisition data by States.

The outright acquisition of property in advance of need is but one of several different methods of making sure that the lands needed for future highway purposes will be available at reasonable cost. It may be the best of such methods, since it makes use of the power of eminent domain and immediate compensation is paid for the property taken. Other ways of achieving the same goals involve reservations of various kinds under the State police power, as is done by or for the State highway departments in nine of the States. Additionally, in 37 States, varying degrees of coordination and cooperation have been effected between the highway departments and local government agencies having reservation authority under the police power.

Also allied to the legal authority to acquire property for future highway use is the power to acquire, and later dispose of, so-called "excess" lands, that is, land finally determined to be not needed for the highway improvement itself. Such takings arise partly in connection with the taking of entire parcels or tracts of land where portions will be left and partly from unavoidable revisions as project plans actually are drawn. Approximately 42 States are involved in this practice, but a few have no eminent domain powers to acquire land beyond actual and detailed needs.

Policies of the Bureau of Public Roads

Three policies of the Bureau of Public Roads deserve special comment. In view of the difficulties which have been encountered by some of the States, the Bureau is proposing to alter its previous policy on real property taxes. Such taxes will now become eligible for Federal-aid reimbursement where such taxes are presently required by State law, and then only as an offset against property management income. If the recommendations of this report are implemented, the difficulties associated with the eligibility for Federal-aid reimbursement of interest or holding charges paid by the States will become largely academic. Because the resources will have been provided by Federal funds, no interest charges would be involved.

Finally, following program approval, authorization by the Bureau of Public Roads shall constitute its commitment to participate, in the ratio established for the class of project involved, in the properly-supported net costs of the subject property even though the property, or a portion of it, is

eventually determined to be surplus to highway needs. This should effectively eliminate any further difficulties in this area.

Recommendations

The following recommendations are derived from the assembly, analysis, and evaluation of considerable data obtained from various sources and from the recognized needs for advance acquisition in connection with the Federal-aid highway programs:

I. Need for Advance Acquisition

There is a present need for the acquisition of property in advance of highway use, especially in the undeveloped suburban and urban fringe areas of metropolitan areas and where land uses are undergoing rapid changes. It is recommended that the Congress amend the Federal-aid highway laws to authorize a revolving fund from the Highway Trust Fund for the advance acquisition of rights-of-way for future construction of highways on the Federal-aid highway systems and that such funds be limited to the purchase of parcels more than two years in advance of construction; and that the present seven-year limitation on use of Federal funds for right-of-way acquisition be continued, subject to the conditions set forth in Recommendation V.

II. Magnitude of Revolving Funds

While State right-of-way revolving funds have been found to be helpful indeed, they are found only in a handful of States and are generally inadequate in magnitude when measured in terms of the need. Accordingly, it is recommended that a Federal-aid revolving fund be established in the amount of \$300,000,000, to be established in \$100,000,000 increments over a three-year period.

This amount was estimated in the following manner: The States estimated that \$1.7 billion could be used advantageously during the next five years for advance acquisition, or approximately \$345 million annually. These data were evaluated in light of the recent past performance of the States in connection with Interstate right-of-way acquirement and the estimated capabilities of the States to go forward promptly with an accelerated right-of-way acquisition program. A sum of \$100 million annually, for the next three years was so derived. It is assumed that after three years, the fund will become truly revolving in the sense that advances previously made by it will be repaid the fund, enabling it to make advances for other projects.

The Federal-aid right-of-way fund would be available for making interest-free advances to the States to be used for advance purchases more than two years before construction is to commence. Regulations will be formulated which will define how the fund may be used, project eligibility, time periods permitted, repayment to the fund, applicability of other Federal-aid regulations, and other pertinent matters. For an advance acquisition program to be fully successful, it will be necessary to permit Federal-aid participation in all the costs of advance acquisition and property management incidental thereto, with offsets from rental incomes and other receipts.

III. Sources of Funds

The following possible sources of funds to finance advance acquisition through the Federal-aid mechanism are recommended for consideration:

1. The Highway Trust Fund
2. Intra-year loans or advances from the General Fund to the Highway Trust Fund during period when the available balances in the Highway Trust Fund may not be sufficient for this purpose. Advances or loans so made would not be exempt from the provisions of Section 209(g) Federal-Aid Highway Act of 1956, the "Byrd Amendment."

IV. Coordination with Relocation Assistance

It is recommended that the States be required, as a part of any Federally financed advance acquisition program, to provide a fully adequate program dealing with the displacement and relocation of individuals, businesses, nonprofit organizations, and farms. The advantages of so doing are very real and tangible.

V. Administration of the Program

In the execution of the program, it is suggested that no advance right-of-way shall be acquired prior to at least one public hearing and firm establishment of location. Nor shall any advance right-of-way be acquired for a project in an urban area unless the project is deemed to be consistent with the comprehensive transportation plan developed for the metropolitan area as a whole under the provisions of Section 134 of Title 23, and Section 204 of the Demonstration Cities Act.

The Federal Highway Administration intends to establish priorities for the selection of projects for advance acquirement, if that becomes necessary as a result of competition for the funds available, to favor those projects going to construction within a three-to-five year period. No advance acquisition may be approved for projects, the construction of which would require authorization beyond the latest year for which the Interstate highway program is authorized.

Each State will receive its share of each year's advance acquisition funds based upon a composite ABCI formula, providing it can demonstrate within six months that it will use the funds in that year. Funds in excess of any State's needs during any year will be pooled and distributed according to criteria established by the Secretary.

Problems Anticipated

It is anticipated that a substantially new program of the kind recommended in this study will generate a few special problems of its own. Much new legal authority at the State level will need to be obtained if the States are to take full advantage of advance acquisition on Federal-aid projects with Federal funds. Additionally, any substantial advance acquisition program will seriously burden existing State highway department right-of-way personnel who, with few exceptions, already are working at capacity; in this connection, a right-of-way training

program of appropriate design must be encouraged if advance acquisition becomes a reality.

Within the past few years, many States have instituted organizational and procedural revisions brought about by an increased awareness of management needs. Several have installed the Critical Path Method or other program control devices to assist in the coordination of resources, and the forecasting of long and short range cost and manpower requirements. In most States however, engineering operations will need to be accelerated to provide the means of going forward with an advance acquirement program. Finally, a new dimension in internal highway department coordination may need to be achieved in order to realize the maximum benefits of the kind of program here envisioned.

Conclusion

An advance acquisition program of reasonable size is most desirable. Care must be exercised that advance acquisition is not overdone; otherwise it can result in future embarrassment of the highway program. This must be steadfastly guarded against. If the concept of advance acquirement is applied with wisdom and restraint, it will generate considerable benefit and conserve valuable highway dollars. It is believed that such a proper balance could be achieved.

TABLE 1
PERTINENT ADVANCE ACQUISITION DATA BY STATES

STATE	STATUTORY AUTHORITY TO ACQUIRE FOR FUTURE USE	SPECIAL FUNDING FOR ADVANCE ACQUISITION	ADVANCE PLANNING PROGRAM PERIOD IN YEARS	MINIMUM ENGINEERING REQUIREMENTS BEFORE ACQUISITION	LEGAL AUTHORITY TO				PURCHASE FOR PROTECTION OR HARDSHIP	PROTECTION BY USE OF POLICE POWER		EXTENT OF ADVANCE ACQUISITION
					PURCHASE EXCESS TAKINGS	CONDEMN EXCESS TAKINGS	LEASE OR RENT	SELL EXCESS		BY STATE LAW	BY COOPERATION WITH LOCAL BOARDS	
Alabama	None		1	Prelim. Design	No	No	Yes	Yes	Both		All Development	General
Alaska	Explicit 1/		1	" "	Yes	Yes	"	"	"	All Improvements		Minor
Arizona	Explicit	\$ 500,000	5	" "	"	"	"	"	"		Zoning	General
Arkansas	Explicit		3	" "	"	"	"	"	"		None	Limited
California	Explicit	30,000,000	5-10	Location Fixed	"	"	"	"	"	Subdivision	Building & Zoning	Extensive
Colorado	Explicit	*	1	Final Design	"	"	"	"	Hardship		None	Limited
Connecticut	Explicit	2,000,000	3-6	" "	"	No	"	"	Protective		"	Minor
Delaware	Explicit 2/	300,000	1	Prelim. Design	"	Yes	"	"	Hardship	Improvement	Building & Zoning	Limited
Florida	Explicit		1	Final Design	"	Doubtful	"	"	Both		" "	Minor
Georgia	None		1	Prelim. Design	"	No	"	"	"		" "	Limited
Hawaii	None		1	" "	"	Yes	"	"	"		All Development	Minor
Idaho	Explicit		5	Final Design	"	"	"	"	"		" "	"
Illinois	None		1	Prelim. Design	Remnants Only	No	"	"	"		Building & Zoning	"
Indiana	Explicit	*	3	"	Yes	Yes	"	"	"	All Improvements	All Development	General
Iowa	Implicit	*	5	Prelim. Design	"	No	"	"	"		None	"
Kansas	Explicit		5	Final Design	"	Yes	"	"	Hardship		All Development	Minor
Kentucky	Implicit		3	Prelim. Design	"	"	"	"	"		Zoning	"
Louisiana	Explicit		1	" "	Yes	No	"	"	Both		Building & Zoning	"
Maine	Implicit		2	Final Design	"	Yes	"	"	Hardship		None	"
Maryland	Explicit	5,000,000	6	Prelim. Design	Landlocked Only	Landlocked Only	"	"	Both		All Development	General
Massachusetts	None		1	" "	No	No	"	"	"		Zoning	Limited
Michigan	Explicit		5	Location Fixed	Yes	Yes	"	"	"		Building & Zoning	"
Minnesota	None		5	Prelim. Design	"	"	"	"	"		" "	Minor
Mississippi	Implicit		2	" "	"	"	No	"	"		None	"
Missouri	Implicit	*	5	" "	"	"	Yes	"	"		Building & Zoning	Extensive
Montana	Explicit		3	" "	"	"	"	"	Hardship	Improvement		Minor
Nebraska	Explicit		2	" "	"	No	"	"	Both		Subdivision	"
Nevada	Explicit		1	" "	"	Yes	"	"	"		All Development	"
New Hampshire	Implicit		4	" "	"	"	"	"	"		Building	"
New Jersey	Explicit	4,000,000	2	Location Fixed	"	"	No	"	"		All Development	Limited
New Mexico	Explicit		3&5	Prelim. Design	"	No	Yes	"	"		Building	Minor
New York	Implicit	50,000,000	6	" "	Remnants Only	Remnants Only	"	"	"		Building & Zoning	Limited
North Carolina	Implicit	1,500,000	5	" "	Yes	No	"	"	"		" "	General
North Dakota	Explicit		5	" "	"	Yes	"	"	Protective		Building	"
Ohio	Explicit	*	5	" "	"	"	"	"	Both		Building & Zoning	Limited
Oklahoma	Explicit		2	" "	"	"	"	"	Protective		" "	Minor
Oregon	Implicit		2-5	" "	"	"	"	"	Both		Zoning	"
Pennsylvania	None		6	" "	No	No	"	No	"	Improvement		Limited
Rhode Island	None		1	" "	Remnants Only	Remnants Only	"	Yes	"		Building & Zoning	"
South Carolina	Implicit		1	" "	Yes	No	"	"	Hardship		None	Minor
South Dakota	Implicit		1	" "	"	Yes	No	"	"		"	"
Tennessee	Implicit	5,000,000	5	"	"	No	Yes	"	Protective		Building & Zoning	"
Texas	Implicit	*	6	Prelim. Design	No	"	No	"	Both		All Development	Extensive
Utah	Explicit	*	3	" "	Yes	"	Yes	"	"		Building & Zoning	Limited
Vermont	None		3-6	Final Design	No	"	"	"	"		None	Minor
Virginia	Explicit	4,117,000	3&9	Prelim. Design	Yes	Yes	"	"	"		Building & Zoning	General
Washington	Explicit		6	Prelim. Design	"	No	"	"	"	Improvement	Building & Zoning	Minor
West Virginia	Explicit	2,000,000	3&6	Location Fixed	"	"	"	"	Protective		None	General
Wisconsin	Implicit	5,000,000	2&10	" "	"	Yes	"	"	"	Subdivision	All Development	"
Wyoming	Implicit		1	Prelim. Design	No	No	"	"	None		None	Minor
Dist. of Columbia	Implicit		6	" "	Yes	Yes	"	"	Hardship		Building & Zoning	"
Puerto Rico	Explicit		2&3	Final Design	"	"	"	"	"	Improvement		Limited

1/ Means that State statute specifically authorized advance acquisition

2/ Means that a State judicial decision authorized advance acquisition

* From highway funds budgeted for normal acquisition

TABLE 2

CLASSIFICATION OF STATES BY EXISTING LAW AND PRACTICE TO ACQUIRE IN ADVANCE OF NEED ^{1/}						
State	Legal Authority	Appreciable Funding	Advance Planning Program	Authority to Acquire on Prelim. Plan	Authority to Acquire Excess Lands	
					Purchase	Condemnation
Alabama				x		
Georgia				x	x	
Hawaii				x	x	x
Illinois				x		
Massachusetts				x		
Minnesota			x	x	x	x
Pennsylvania			x	x		
Rhode Island				x		
Vermont			x			
Alaska	x			x	x	x
Arkansas	x		x		x	x
Florida	x				x	
Idaho	x		x		x	x
Kansas	x		x	x	x	x
Kentucky	x		x	x	x	x
Louisiana	x			x	x	
Maine	x				x	x
Michigan	x		x	x	x	x
Mississippi	x			x	x	x
Montana	x		x	x	x	x
Nebraska	x			x	x	
Nevada	x			x	x	x
New Hampshire	x		x	x	x	x
New Mexico	x		x	x	x	
North Dakota	x		x	x	x	x
Ohio	x		x	x	x	x
Oklahoma	x			x	x	x
Oregon	x		x		x	x
South Carolina	x			x	x	
South Dakota	x			x	x	x
Washington	x		x	x	x	
Wyoming	x			x		
Dist. of Columbia	x		x		x	x
Puerto Rico	x		x		x	x
Colorado	x	x			x	x
Delaware	x	x		x	x	x
New Jersey	x	x		x	x	x
Connecticut	x	x	x		x	
Maryland	x	x	x	x		
New York	x	x	x	x		
Texas	x	x	x	x		
Iowa	x	x	x	x	x	
North Carolina	x	x	x	x	x	
Tennessee	x	x	x	x	x	
Utah	x	x	x	x	x	
West Virginia	x	x	x	x	x	
Arizona	x	x	x	x	x	x
California	x	x	x	x	x	x
Indiana	x	x	x	x	x	x
Missouri	x	x	x	x	x	x
Virginia	x	x	x	x	x	x
Wisconsin	x	x	x	x	x	x

^{1/} In terms of the elements contained in this table, the States at the lower end of the tabulation presently appear to be better equipped to go forward with advance acquisition than the others. For example, the States at the beginning of the table do not have legal authority to proceed, funding, etc. The States at the lower end of the table possess the several elements necessary to go forward with an advance acquisition program.

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LS-1

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