



	1
Department of Commerce	2
Department of Education	3
Department of Health & Human Services	4
Department of Homeland Security	5
Department of Housing & Urban Development	6
Department of Justice	7
Department of Labor	8
Department of Transportation	9
Department of the Treasury	10
Election Assistance Commission	11
Environmental Protection Agency	12
Federal Communications Commission	13
Office of Management & Budget – Council of Economic Advisors	14
Office of the U.S. Trade Representative	15





Federal Issue Brief

REAUTHORIZATION OF CHILD NUTRITION PROGRAMS

Issue Description

In June 2004, the Child and WIC Reauthorization Act of 2004 (P.L. 108-265) was signed into law, reauthorizing the School Lunch Program, School Breakfast Program, Summer Food Service Program, Child and Adult Care Food Program (CACFP) and WIC (Women, Infant and Children) Program for five years, through 2009. There were important reforms in this legislation intended to improve access to and improve the management of federal child nutrition programs. NCSL worked to achieve a bipartisan child nutrition program reauthorization with new federal funding. The 2009 reauthorization offers a chance to further strengthen these programs, which are especially critical in the current difficult economic climate.

State Concerns

State legislators are concerned about the vast numbers of hungry Americans, especially children. Hunger in early childhood leaves children at risk of mental and physical development problems, and school-age children who are hungry aren't ready to learn in the classroom. This means that the whole continuum of federally supported food assistance is important—from WIC to healthy meals and snacks at day care to school lunch and breakfast to summer feeding programs are all important. The demand is rising for the services of child nutrition programs. At the same time, costs to provide these programs are rising as costs for food, energy and program operations increase. Another issue is that these programs can be administratively complex for sponsors to operate and for families to access. Besides combating hunger, these programs have become an important means of helping children receive healthier food and nutrition education, a critical function given the epidemic of childhood obesity. However, state legislators believe that such efforts must build on local and state efforts to provide nutritious foods, and not come in the form of unfunded mandates.

NCSL Position

NCSL sees reauthorization as an important opportunity to improve access and nutrition quality in these programs. Some of these improvements will require new federal dollars. NCSL supports expanding pilot programs that eliminate or reduce paper applications and rely more on electronic applications, or cross certification with other programs and on alternative means (such as district-wide census data) to determine eligibility and reimbursement for schools and other providers. NCSL also supports reducing the current 50 percent eligibility threshold used as the standard to determine family child care, afterschool and summer nutrition funding to serve more children; and enhanced reimbursements for the school and community based providers offering these programs. NCSL calls for the continuation and expansion of pilot programs to allow more children to participate in these programs. For example, start up equipment grants and support for universal school breakfast programs are two ways of increasing the reach of the school breakfast programs.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Sheri Steisel, Senior Committee Director
Federal Affairs Counsel
NCSL Human Services and Welfare Committee
sheri.steisel@ncsl.org
(202) 624-8693

Lee Posey, Committee Director
NCSL Human Services and Welfare Committee
lee.posey@ncsl.org
(202) 624-8196





Federal Issue Brief

FARM BILL IMPLEMENTATION ISSUES

Issue Description

In June 2008, P.L. 110-246 (the Farm Bill), legislation reauthorizing most farm-related programs and federal nutrition assistance programs, became law. Although many interests are represented in the Farm Bill, including energy, environment, and specialty crops, the Farm Bill remains the major vehicle for federal changes to programs that have a critical impact on the 89 million Americans who call small town and rural America home, whether or not they are engaged in production agriculture. And it is a critical piece of legislation for all the families who depend on the nutrition assistance programs administered by USDA.

State Concerns

Overall, states sought to avoid new federal mandates and preemption of state authority in reauthorization. States entered the Farm Bill discussion wanting to ensure the federal financial participation for nutrition assistance and rural development programs. There were some other specific issues that states policymakers were concerned with. One was the ability for processors to sell state inspected meat to be sold across state lines, which was accomplished by a Farm Bill compromise. The ability of school nutrition programs to utilize a geographic preferences for purchasing food was another issue of great interest to states, and NCSL was pleased with the clarifying language in the Farm Bill.

NCSL Position

During the Farm Bill process, NCSL weighed in strongly to secure a \$10.4 billion increase in the nutrition title of the Farm Bill. NCSL had long supported the Farm Bill's changes in eligibility and benefit calculations that would improve the Food Stamp Program (now the SNAP program) and raise benefits, which are as low as \$1 a meal, for needy families in a time of rising food costs. Critical additional funding was also made available for other programs, including the Emergency Food Assistance Program (TEFAP), the Fresh Fruit and Vegetable Programs for schools, and Senior Farmers Markets. NCSL has been please so far with USDA's actions to implement the changes to the nutrition program and continues to work to ensure that outreach measures are timely, effective and include state legislators as community leaders. However, NCSL will want to monitor a provision in the Farm Bill that requires states to notify the secretary of agriculture of approvals for significant changes to its SNAP program.

NCSL was active in the Campaign for Renewed Rural Development, a 28 organization efforts to highlight the need for adequate federal funds for these programs that would not be at the mercy of the congressional appropriations process each year. While the Campaign was successful in creating a strong voice for rural development, it was disappointing that the Farm Bill only contained \$150 million in mandatory money for rural programs. The Campaign continues to press to ensure sufficient and stable funding through the appropriations process. NCSL policy also calls for a White House Conference of Rural Life, envisioned in the 2002 Farm Bill but never held. NCSL believes that such a conference could be an important way to bring together policymakers and representatives of rural America.

NCSL will continue to monitor implementation of other parts of the Farm Bill as well. There are already several examples of USDA using its regulatory authority in a problematic way. USDA's interpretation of the 10 Acre Rule, a provision regarding farm size and eligibility for farm payments, caused Congress to enact a moratorium on the Rule for two years. Also, the USDA indicated that it might implement the Average Crop Revenue Election (ACRE) program using lower commodity prices to set revenue guarantee benchmarks that those in the Farm Bill, which required that 2007 and 2008 prices be used to determine 2009 guarantees.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Lee Posey
Committee Director
NCSL Agriculture and Energy Committee
lee.posey@ncsl.org
(202) 624-8196



**NCSL****Federal Issue Brief****ARTS, CULTURE AND ECONOMIC DEVELOPMENT****Issue Description**

Arts and culture can influence an array of policy goals. These goals include, but are not limited to, economic and rural development, urban revitalization, tourism, education, and youth development. For many of these areas, states and the federal government have collaborated and coordinated efforts. Support for the production, distribution, and infrastructure of the arts is critical to success in tourism, attracting business interests, and economic development.

State Concerns

Tourism is a vital element of state economic development, diversification, and rural development programs and states rely on those dollars as a vital source of revenue. Unfortunately, in tough economic times, budget constraints may force states to reduce or eliminate funding of various arts and culture related programs.

As federal and state budgets experience economic downturns, states are concerned that these programs may not be considered top funding priorities. States are also concerned that collaboration between federal entities and states may suffer.

NCSL Positions

NCSL encourages a better and stronger understanding of the federal-state partnership as well as a reasoned study and understanding of the benefits of arts and culture programs and activities. NCSL also encourages Congress and the Administration to open and maintain consultative processes with state governments, and state legislatures in particular, to ensure that state and federal policies and programs encourage the continued vitality of tourism. Further, federal economic development and disaster recovery programs should include tourism among activities eligible for support.

NCSL supports continued collaboration and coordination among federal agencies and budgetary line-items with state legislatures to ensure that policy and program outcomes meet the needs and goals identified by state policymakers. This collaboration and coordination should improve the identification and sharing of best practices from and among the states and the federal government.

State Activity

States have taken a variety of approaches to address arts, culture, and economic development through various tax incentives to attract businesses for urban renewal or other economic development initiatives. Many states have also offered incentives to attract artists for historic preservation and urban renewal projects. States have also taken steps to ensure the study of the arts remain a vibrant part of education through public school initiatives.

FOR FURTHER INFORMATION PLEASE CONTACT:

Diana Hinton Noel, Committee Director
State-Federal Relations
Labor and Economic Development
diana.hinton@ncsl.org
(202) 624-8187

Robert Strange, Policy Associate
State-Federal Relations
Education, Labor and Economic Development
robert.strange@ncsl.org
(202) 624-8698





Federal Issue Brief

ELEMENTARY & SECONDARY EDUCATION

Issue Description

No Child Left Behind (NCLB) was signed into law by President Bush in January 2002, as the latest iteration of the federal Elementary and Secondary Education Act (ESEA). ESEA is the largest of the federal programs for K-12 education, accounting for 40 percent of the U.S. Department of Education's budget and was due to be re-authorized by October 1, 2007. A provision in the law allows for a one-year grace period, but appropriations beyond authorization will effectively continue NCLB/ESEA as is until Congress acts to reauthorize. Serious attempts by the administration and the House to reauthorize met with strong bipartisan resistance in the spring and summer of 2007. Unable to effect statutory changes to NCLB, the Secretary approved more than 400 pages of regulatory changes in the waning months of the administration, adding to the thousands of pages of statute and thousands of pages of existing regulations and regulatory guidance.

State Concerns

NCLB, hailed as a revolutionary change of tactics and reform strategy when it passed in 2002, is now burdened by what House Education Chair George Miller calls "the most toxic brand name in America." The unlikely coalition between President Bush and congressional democratic and republican leaders who advocated for a much enhanced federal role in K-12 issues has fractured, leaving NCLB support among rank-and-file members hollowed out and limited to the democratic leadership. Many states protested vigorously during the implementation of the law and are still struggling to comply with the many process, procedural and fiscal requirements. Legislatures are beginning to feel the fiscal and policy pinch of the law's goal of 100 percent proficiency in reading and math by 2014.

NCSL Position

The National Conference of State Legislatures strongly recommends a comprehensive rewrite of NCLB/ESEA. NCSL policy points to the findings of the NCSL Task Force on NCLB (see below) as the basis for congressional action. The current law's enhancement of federal authority is disproportionate to the 8 percent of overall educational funding now provided through federal appropriations. Funding increases as a result of NCLB resulted in a 2% increase in overall K-12 resources, about enough to meet compliance costs, leaving little or no additional resources for meeting the lofty goals of 100 percent proficiency.

State Activity

State legislators in a strong majority of states were vocal in their opposition to NCLB/ESEA, leading then-president of NCSL Speaker Marty Stephens (Utah) to create the NCSL Task Force on NCLB in May 2004. The task force report, issued in February 2005, comprehensively reviewed NCLB. It found that the basis of the law's accountability formula (Adequate Yearly Progress-AYP), was a "flawed and discredited metric that over identifies failure and leads to a process and compliance model of federal-state interaction." A new task force--the NCSL Task Force on Federal Education Policy--was formed in June 2008 to delineate a set of recommendations for the new President and Congress to use as guidelines for the next reauthorization of the law.

FOR FURTHER INFORMATION PLEASE CONTACT:

David Shreve, Federal Affairs Counsel
State-Federal Relations
Education
david.shreve@ncsl.org
(202) 624-8187

Robert Strange, Policy Associate
State-Federal Relations
Education, Labor and Economic Development
robert.strange@ncsl.org
(202) 624-8698





Federal Issue Brief

MAINTENANCE OF EFFORT

Issue Description

Section 116 of the *College Opportunity and Affordability Act of 2008 (Public Law 110-315)*, the most recent reauthorization of the Higher Education Act, requires states to maintain higher education appropriations at or above the rolling average rate of the previous five years or lose federal grant money under the College Access Challenge Grant program. This provision known as a “maintenance of effort” (MOE) is an attempt by Congress to control rising college tuition costs and increase college affordability. Unfortunately, it does nothing to address these issues but rather discourages states from increasing higher education appropriations for fear of not being able to maintain the increases in tough budget years.

State Concerns

The maintenance of effort provision in the *College Opportunity and Affordability Act of 2008* sets a dangerous precedent for federal intrusion into state policy and appropriations authority. The MOE creates a federal mandate on state spending in an area where there is little direct federal investment to states. This action is likely to have the unintended effect of reducing state support for higher education. Postsecondary tuition rates are determined through a complex interplay of individual state and regional economic factors. By ignoring this complexity and assuming uniformity, the MOE provision establishes a perverse and unnecessary component to the policymaking process. But perhaps the most unfortunate and ironic consequence of this provision is that it punishes low-income students for the cyclical nature of higher education funding by putting them in the crosshairs of state budgeting decisions.

NCSL Position

The National Conference of State Legislatures strongly opposes Section 116 of the *College Opportunity and Affordability Act of 2008 (Public Law 110-315)*. The MOE violates all principles of federalism and places the federal government in charge of determining when state legislatures and governors have adequately funded higher education. This is counter to NCSL's official policy positions on Federalism, Federal Grants and Programs, and Federal Mandate Relief.

State Activity

State legislators were vocal in their opposition to the maintenance of effort provision in the *College Opportunity and Affordability Act of 2008 (H.R. 4137)*. Legislators from 12 states (*Florida, Hawaii, Kansas, Massachusetts, Nevada, New Mexico, North Carolina, Rhode Island, South Carolina, Utah, Washington and West Virginia*) sent letters to their congressional delegations urging the removal of the MOE requirement from H.R. 4137. In an even stronger condemnation of the MOE, the legislatures in Idaho and South Dakota passed resolutions urging Congress to remove the provision from H.R. 4137 before its final passage.

FOR FURTHER INFORMATION PLEASE CONTACT:

David Shreve, Federal Affairs Counsel
State-Federal Relations
Education
david.shreve@ncsl.org
(202) 624-8187

Robert Strange, Policy Associate
State-Federal Relations
Education, Labor and Economic Development
robert.strange@ncsl.org
(202) 624-8698





Federal Issue Brief

FEDERAL FUNDING FOR SPECIAL EDUCATION

Issue Description

The Individuals with Disabilities Education Act (IDEA) remains a longstanding, unfunded federal mandate that establishes requirements for states without providing adequate or even promised funding levels to achieve its goals. Recent reports indicate that actual spending for special education services is not 40 percent above average per pupil expenditure (APPE) as originally estimated, but is, in fact, closer to 95 percent above APPE. Current federal funding provides less than half of the promised amount--17 percent of APPE. Federal appropriations therefore provide half the amount promised--which is half of what is needed to meet the mandate, causing state and local jurisdictions to shoulder more than a \$30 billion yearly unfunded mandate. In addition, the 1997 reauthorization of IDEA preempted the constitutional guarantee (11th Amendment) of state sovereign immunity. Section 604 of the act establishes that states shall not be immune to suit in federal court for violations of the IDEA. Coupled with provisions that provide for increased cause of action, this preemption will leave states open to ever increasing fiscal and legal costs. The most recent IDEA reauthorization establishes an arbitrary and unnecessarily punitive standard for compliance with the law's monitoring and enforcement provisions.

State Concerns

States are faced with losses in excess of \$1 billion as a result of proposed changes in regulatory policy at the Centers for Medicare and Medicaid Services (CMS). CMS's change in reimbursement policy will eliminate the states' ability to obtain payment from Medicaid for legitimate claims that will now have to be covered by state and local education agencies. IDEA repeatedly asks states to do more with less, exacerbating existing funding issues already present in the implementation of IDEA.

NCSL Position

For 30 years, Congress has put off meeting its commitments to special education funding. In the 2004 reauthorization, Congress attempted to address this issue by setting voluntary spending targets in a glide path to full funding by 2011. The targets were ignored in the first cycle of appropriations after the reauthorization. NCSL strongly urges Congress to honor its original commitment and fully fund 40 percent of the average per pupil expenditures as authorized by the act and to move state allotments for special education from the discretionary side to the mandatory side of the federal budget. NCSL further urges Congress to reject any action that would curtail or eliminate legitimate Medicaid services for special education students.

State Activity

States have enacted their own statutes and regulations to comply with federal laws and, in many cases, have gone beyond what is mandated by the federal government in providing services. State and federal laws and regulations, combined with the extensive and increasingly complex case law that has developed around this act, have made delivering services to students with disabilities complex and costly for states and communities.

FOR FURTHER INFORMATION PLEASE CONTACT:

David Shreve, Federal Affairs Counsel
State-Federal Relations
Education
david.shreve@ncsl.org
(202) 624-8187

Robert Strange, Policy Associate
State-Federal Relations
Education, Labor and Economic Development
robert.strange@ncsl.org
(202) 624-8698





Federal Issue Brief

CHILD SUPPORT ENFORCEMENT FUNDING RESTORATION

Issue Description

The Deficit Reduction Act (DRA) of 2005 (P.L. 109-171) prohibited states from using child support enforcement incentive funds awarded for meeting performance goals to draw down additional dollars for their child support programs. This provision reversed a practice allowed since the Child Support and Performance Incentive Act was passed in 1998. Overall, this change represented a 20 percent cut in federal dollars for child support enforcement funding. The Congressional Budget Office (CBO) called this provision of the DRA an unfunded mandate, and also estimated that \$11 billion of child support will go uncollected over a 10-year period because the cut reduces enforcement efforts.

State Concerns

States used the additional dollars they drew down with child support incentive funds to support core functions of the child support program, including establishing paternity and establishing support orders. The cut went into effect Oct. 1, 2007. Initially, some states were able to make up the funding gap in their programs with state dollars for FY 2008, but with the worsening fiscal problems in states and more states facing budget gaps, this has become increasingly difficult or impossible in some states. In a recent survey, 19 of 28 states responding had identified funding deficits in their child support programs. They were starting to implement cutbacks in their programs such as staff reductions and eliminating initiatives such as technology modernization and services for non-custodial parents intended to encourage child support payment and involvement in their children's lives. If the federal funding is not restored, states expect to see child support performance declines, leaving them facing the risk of federal financial penalties for not meeting performance standards. In addition, states out of compliance with child support program standards face penalties against their Temporary Assistance to Needy Families (TANF) funds. Research supports state concerns if the incentive match is not restored. A recent Lewin Group study shows finds that as child support funding decreases, performance will decline. States also know that for the 17 million children and their parents receiving child support services through the IV-E program, child support payments represent 31 percent of family income when received. Without child support, these households will become or remain dependent on other programs such as Food Stamps and TANF.

NCSL Position

NCSL has strongly supported restoration of this funding. States have improved performance in their child support programs and increased state funding for their programs, exactly as the Child Support and Performance Incentive Act intended. The Office of Management and Budget (OMB) gives the child support program its highest rating for effectiveness. It makes no sense for the federal government to continue a policy that risks reversing this improvement. Child support dollars also represent an incredibly cost-effective government expenditure. For every \$1 spent, \$4.58 is collected. In 2006, \$24 million was collected in child support. With the downturn in the economy, it is important to note that these dollars tend to be spent right away and thus can help stimulate the economy. A two-year restoration is approximately \$2 billion. This ill-advised cut should be restored cut immediately.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Sheri Steisel, Senior Director
Human Services and Welfare Committee
sheri.steisel@ncsl.org
(202) 624-8693

Lee Posey, Committee Director
Human Services and Welfare Committee
lee.posey@ncsl.org
(202) 624-8196





Federal Issue Brief

FATHERHOOD

Issue Description

State legislators agree that children deserve two involved parents. Children need a strong family bond and support system, including the positive influence of fathers, even when they do not live in the same house. The passage of the Deficit Reduction Act (DRA) of 2005 (P.L. 109-171) resulted in funding for a healthy marriage program and fatherhood through the Department of Health and Human Services (HHS). Services directed toward assisting healthy marriages receives \$150 million each year, and \$50 million of that is used each year to promote fatherhood, including, according to HHS, "counseling, monitoring, marriage education, enhancing relationship skills, parenting and promoting economic stability." In general, family law falls under state jurisdiction, but the federal government provides states with funding to assist with programs such as paternity testing, child support collection, and providing avenues for non-resident parents (most often fathers) to have access to their children that are part of reaching out to and engaging fathers. Programs that promote economic stability for fathers include Work First services, job search, job training, subsidized employment, job retention and enhancement, and education programs.

State Concerns

States have three main concerns with regard to engaging fathers: expansion of the Earned Income Tax Credit (EITC) for non-custodial parents; the restoration of child support enforcement funding; and the flexibility for states to expand and create fatherhood programs.

- **EITC.** On June 14, 2007, Indiana Senator Evan Bayh introduced S. 1626, the Responsible Fatherhood and Healthy Families Act of 2007. The EITC is a refundable federal income tax credit for low-income workers who must meet certain requirements and file a tax return. The tax credit in most cases does not affect a low-income worker's eligibility for other social programs, including Medicaid, Supplemental Security Income (SSI), food stamps, low-income housing, or most Temporary Assistance for Needy Families (TANF) payments. In his bill, Senator Bayh included a section on the EITC, extending the EITC credit to non-custodial parents if the parent follows certain criteria, including: 1) has a child that meets the age requirements before the end of the taxable year, 2) makes child support payments for no less than one-half of the taxable year, and 3) has made full child support payments.
 - HHS and the Treasury Department would be required to set up verification of payment procedures, and, with state input, develop a procedure to let such a parent know that he or she is complete on payments and eligible for the additional EITC credit. Many states have enacted their own EITC programs to complement the federal EITC program, and are very interested in proposals to expand the federal EITC.
- **Child Support Enforcement Funding.** As discussed in the Federal Issue Brief *Child Support Enforcement Funding Restoration*, the cut in federal funding for child support enforcement has had detrimental effects on child support payments and programs aimed at encouraging relationships between children and non-custodial parents.
- **Flexibility.** The key to state-federal partnerships is for federal programs to allow states the flexibility in running their programs. Different avenues for progress work best for different states, and the federal government should allow states to develop their programs within flexible guidelines in order to best serve their citizens who require services.

NCSL Position

NCSL has two policies that deal with fatherhood: *Financial Policies That Reward Work: Earned Income Tax Credit and Individual Development Accounts* and *Nurturing Responsible Families*. The EITC policy states that NCSL supports the



federal EITC "as a means of reducing poverty among working poor families," and also supports "expanding the EITC to single workers, especially noncustodial parents, to the have the same impact on low-skilled fathers," in order to assist those fathers to be responsible and involved with their children. NCSL continues to state the need for states to have flexibility in how they administer their EITC programs.

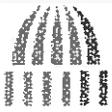
The *Nurturing Responsible Families* policy states that NCSL recognizes that for many low-income fathers, paying child support is not always a question of wanting to but rather being able to afford to pay. NCSL encourages the federal government to assist states in "efforts to help low-income fathers be better parents and providers..." NCSL also urges the federal government to remember that each state is different and that states should have the flexibility to administer and run their programs as they see fit.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Amanda Naughton, Policy Specialist
Human Services & Welfare
amanda.naughton@ncsl.org
(202)624-3572

Sheri Steisel, Senior Committee Director
Federal Affairs Counsel
Human Services & Welfare
sheri.steisel@ncsl.org
(202)624-8693

Lee Posey, Committee Director
Human Services & Welfare
lee.posey@ncsl.org
(202)624-8196



NCSL

Federal Issue Brief

IMPLEMENTING THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008

Issue Description

The Fostering Connections to Success and Increasing Adoptions Act of 2008 was signed into law on October 7 and became P.L.110-351. This law is designed to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, and improve incentives for adoption. H.R. 6893 reauthorizes several programs that would have expired without reauthorization, including the Adoption Incentives Program. P.L. 110-351 will provide state options for subsidized guardianship payments for relatives, incentives for adoption, adoption assistance, kinship navigator programs, new family connection grants, and federal support for youths to age 21. P.L. 110-351 also creates new requirements with regard to relative notification, educational stability, health oversight and coordination, sibling placement and informing foster parents about tax credits. It amends sections B and E of title IV of the Social Security Act.

State Concerns

As regulations are issued with regard to the new law, states are concerned that rules remain flexible and continue to provide opportunities for individual states to determine their own procedures. States are mindful of the economic downturn and look to the new regulations to reflect the shifting economic situation. New regulations must be issued in consultation with the state and local governments as directed under the Unfunded Mandate Reform Act (UMRA). Definitions in the act, such as “reasonable effort” or “due diligence,” should be defined by state programs and state agencies to allow for flexibility. State programs must reflect the individual needs and unique challenges faced by each state without federal obstruction. Many states previously maintained pilot programs that used state funds or TANF funds to perform the same services that this new law provides. These pilot programs need to be transferred into the new permanent services in this law while preserving state innovations from those pilot projects.

NCSL Position

NCSL supported the bipartisan legislation. State legislators know the importance of finding permanency for children in the child welfare system, whether through adoption or relative guardianship, and the need to help youth preparing to transition from foster care in their states and communities. NCSL seeks continued state flexibility in future regulations regarding this law and looks forward to cooperating with the Department of Health and Human Services.

State Activity

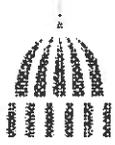
NCSL is planning a half-day implementation conference on this law providing legislators information about the new funding and state options in this law. Legislators will seize the opportunities provided in this law in the upcoming legislative sessions.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Sheri Steisel, Federal Affairs Counsel
State-Federal Relations
Human Services and Welfare
sheri.steisel@ncsl.org
(202) 624-8693

Lee Posey, Committee Director
State-Federal Relations
Human Services and Welfare
lee.posey@ncsl.org
(202) 624-88196





NCSL

Federal Issue Brief

HEALTH INFORMATION TECHNOLOGY (HIT)

Issue Description

The 110th Congress and the Administration have made great strides toward the development of federal standards to support the broad implementation of a range of health information technology applications. Despite these efforts, there is still considerable work to be done. Both the Congress and the Administration have successfully initiated e-prescribing programs that are in the initial stages of implementation. The next steps are considerably more complex, but extremely important. Critical questions that must be addressed include:

- Should the system be centralized or decentralized (regional, state-based, sub-state)?
- Should individuals be required to participate in an electronic health record program? Should there be an opt-out?
- What level of privacy is desirable? What level of security is necessary?
- Should the federal standards set a floor or a ceiling?
- How will HIT initiatives be funded?

State Concerns

State legislators, while extremely supportive of the development of an interoperable electronic health information system, are concerned about efforts that are more focused on uniformity than interoperability. States are particularly concerned about the potential adoption of federal privacy and security provisions that would be less protective than current state laws. Legislators are also mindful of the considerable costs associated with the establishment of health information systems and are concerned about equity across the states. Finally, it is extremely important to legislators that federal health information technology initiatives include Medicaid.

NCSL Position

NCSL strongly supports the development of an interoperable system of electronic health information for the United States that has the potential to: 1) facilitate the coordination of health care regardless of patient location; 2) improve both the quality and efficiency of care; 3) provide easy access to health care information to both patients and health care providers, which can contribute to more informed decision-making on the part of patients; and 4) reduce medical errors and some of the fraud and abuse that plagues our health care system. NCSL firmly believes that the potential of benefits of an interoperable health information system cannot be realized unless: 1) consumers trust the system and want to participate in it; 2) the full range of health care providers trust the system and find it affordable and easy to use; and 3) employers support the system and believe that it is cost-efficient and improves quality of care.

NCSL urges Congress and the Administration to continue to move forward on the development of this important system and that legislators be involved in all stages of the development. The system should be based on a set of common, but not necessarily uniform values and technical standards. NCSL supports a system that: 1) guarantees that patients in consultation with their authorized health professionals make decisions regarding the sharing of health information; 2) stores health information locally within the respective states, where the services are being rendered, not in a centralized national or regional database; 3)



creates a nationwide capability for health information exchange building on existing systems; 4) facilitates communication among the full range of information networks, states and communities; and 5) allows participating entities to use a wide range of different software and hardware. Every effort must be made to make the system available and affordable to the widest range of providers and consumers.

Interoperability, not uniformity should be the focus of initiatives to get this important system in place. The security of the data must be a priority. It is critical that the current HIPAA law and regulations and subsequent laws and regulations enacted to facilitate an interoperable electronic health information system continue to establish a floor, but not a ceiling when it comes to protecting patient privacy and to the permissible use of stored data. Uses of stored health information data should be limited to treatment, payment, public health and research. Severe penalties should be established for individuals or entities that compromise information in the system.

NCSL supports the establishment of a Health Information Technology Resource Center to identify best practices and to provide technical assistance to interested parties. NCSL also supports the establishment of grant, loan and demonstration programs to provide financial and technical support to health care providers, state and local governments, and other entities that will play a key role in the development and successful operation of an interoperable health information system. It is critical that publicly financed programs such as Medicaid and Medicare be active participants in the system and that creating this capacity be a priority within the federal budget. Finally, NCSL urges the federal government use its leverage through Medicare and other programs to promote e-prescribing utilization and support its adoption by providers.

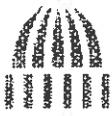
State Activity

States are experimenting with a broad range of health information technology applications and are particularly interested in developing new initiatives within the Medicaid program. Many states are looking at incentives to get more physicians to use e-prescribing. States are likely to continue to move forward with some caution pending federal action.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Joy Johnson Wilson, Federal Affairs Counsel
State-Federal Relations
Health
joy.wilson@ncsl.org
(202) 624-8689

Rachel Morgan, R.N., Senior Policy Specialist
State-Federal Relations
Health
rachel.morgan@ncsl.org
(202) 624-3569



NCSL

Federal Issue Brief

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

Issue Description

On Sept. 30, 2008, President Bush signed H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329), which added an additional \$250 million to the Weatherization program and fully funded the Low Income Home Energy Assistance Program (LIHEAP) at \$5.1 billion for FY 2009. This is the first time in LIHEAP's history that it has been funded at the \$5.1 billion authorized level. By comparison, states received \$2.57 billion in FY 2008. The funds were divided between the formula grant funding and the emergency contingency funds, with \$4.509 billion going to the regular grant program and \$590 million to emergency funds. Also, states were allowed to raise the income ceiling to 75 percent of state median income, compared to 60 percent for FY 2008.

On Oct. 16, Secretary of the U.S. Department of Health and Human Services (HHS) Mike Leavitt released the \$5.1 billion of LIHEAP funding to the states, and the Office of Community Services in the Administration for Children and Families (ACF) within HHS distributed the \$4.5 billion to states, territories, tribal areas and the District of Columbia according to the formula grant. Of the \$590 million in contingency funds, \$100 million was distributed to the states that have 30 percent or more eligible homes using heating oil this winter (Alaska, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont). The remaining \$490 million was divided among all 50 states based on the regular block grant allocation percents. The administration had previously released the remaining LIHEAP funds to the states on Sept. 17, thus zeroing out LIHEAP funding before the passage of H.R. 2638.

State Concerns

State concerns continually center around the funding level of LIHEAP. States hold that LIHEAP is a highly efficient federal block grant program that assists our most vulnerable low-income households. Without LIHEAP funding, many of those households must choose between paying energy bills, putting food on the table or purchasing necessary medications. State officials have urged the federal government to help those in need all over the country by fully funding the LIHEAP program, releasing the contingency funding in a timely manner, considering further expansions, and assisting those in both cold and warm weather states.

NCSL Position

NCSL has had a longstanding policy on LIHEAP, which is up for renewal at this year's Legislative Summit in Philadelphia. The policy supports the LIHEAP program, and asserts that all states should be included in the allocation funding; that states should have the flexibility to use the program and funding as best for each state and maintain oversight; that the households that are assisted have the lowest incomes or have infants, elderly, or disabled members; and that the assistance should not count as income so as to hinder a household's ability to receive other public assistance benefits. NCSL also supports full funding for the program.

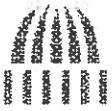
FOR FURTHER INFORMATION, PLEASE CONTACT:

Amanda Naughton, Policy Specialist
State-Federal Relations
Energy
amanda.naughton@ncsl.org
202.624.3572

Sheri Steisel, Senior Committee Director
Federal Affairs Counsel
Human Services & Welfare
sheri.steisel@ncsl.org
202.624.8693

Tamra Spielvogel, Committee Director
State-Federal Relations
Energy
tamra.spielvogel@ncsl.org
202.624.8690





NCSL

Federal Issue Brief

STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP) REAUTHORIZATION

Issue Description

The Balanced Budget Act of 1997 (BBA 1997) established the State Children's Health Insurance Program (SCHIP), a block grant to states, that provides resources to states to provide comprehensive health care coverage to low-income children across the country and is widely accepted as a popular, effective complement to the Medicaid program. States provide children with health insurance that meets specific standards for benefits and cost-sharing through separate SCHIP programs, or through their Medicaid programs, or through a combination of both. The program was authorized for 10 years and each year's appropriations were included in the statute. The program's authorization and appropriations expired on September 30, 2008, after contentious deliberations in Congress, the enactment of a compromise reauthorization bill and ultimately a veto by President Bush. Congress did not have sufficient votes to override the veto. Authority to continue and fund the program through March 31, 2009 was then enacted.

New funding for SCHIP must be offset by reductions in other programs or tax increases. Recently, the Congressional Budget Office (CBO) reported to Congress that the bill they enacted would now cost an additional \$3 billion over 5 years. The increase, attributable primarily to increased health care costs, has raised concerns about how much the bill will cost next year, particularly in light of the current economic downturn, which is likely to increase the number of parents who will want to enroll their children in SCHIP. In addition to the funding issues, there were a number of policy concerns that are likely to be debated anew. Among the critical issues: (1) improving outreach to and enrollment of children who are eligible, but not enrolled; (2) state flexibility or the modification of state flexibility on income eligibility levels; (2) coverage of adults; (3) modification of the distribution formula for the block grant; (4) establishing quality standards; and (6) establishing a mechanism for reducing "crowd out."

State Concerns

SCHIP must be reauthorized or extended early in the new Administration. State legislators are concerned about continuity of care and funding issues given the very short time frame for action.

NCSL Position

NCSL strongly supports the State Children's Health Insurance Program and urges Congress to: (1) Provide stable funding and more predictability in funding during the authorization period; (2) Be equitable across the states, recognizing and addressing the different circumstances among the states and the varying needs of their constituents; (3) Support a strong role for state legislatures in program oversight and retain state flexibility with regard to public notice and the solicitation of public input regarding program design and benefits; administration and implementation; (4) consider improvements and revisions to the component parts and the data sources for the state allocation formula that would result in state allocations that would more accurately reflect state need and would limit the reliance on the redistribution of funds that exist in current law; (5) provide additional program flexibility to permit states to leverage public and private dollars through premium assistance and other innovative mechanisms; and (6) to continue to provide flexibility to states regarding program eligibility and to consider factors other than percentage of the federal poverty level (FPL) when setting eligibility parameters.

State Activity

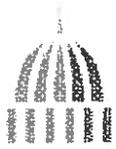
States continue to operate SCHIP under the temporary extension, but will have to develop a contingency plan to address continuity of care and funding issues early next year.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Joy Johnson Wilson, Federal Affairs Counsel
State-Federal Relations
Health
joy.wilson@ncsl.org
(202) 624-8689

Rachel Morgan, R.N., Senior Policy Specialist
State-Federal Relations
Health
rachel.morgan@ncsl.org
(202) 624-3569





NCSL

Federal Issue Brief

WELFARE REFORM

Issue Description

State legislators are responsible for writing, financing and implementing laws governing the Temporary Assistance to Needy Families (TANF) program in their states, for overseeing the programs in their states, and for appropriating TANF and Maintenance of Effort (MOE) funds. State legislatures have transformed the nation's welfare system to better serve local needs and different populations. States used the flexibility they gained in the passage of welfare reform in 1996 to reduce cash assistance caseloads by half and increase the self-sufficiency of families previously trapped in the cycle of dependency. The Deficit Reduction Act of 2005 and subsequent regulations issued by HHS to implement the law represents an intrusion into the successful state/federal partnership that achieved so much since the passage of the original law. Final Regulations issued in February 2008 as well as a Notice of Proposed Rulemaking eliminating the caseload reduction credit for state funds spent over the required level (excess Maintenance of Effort or excess MOE) issued in August 2008 severely limit state flexibility. Unfortunately, the 2005 reauthorization of TANF rules and regulations, promulgated by the U.S. Department of Health and Human Services (HHS) implementing the Deficit Reduction Act changes, have limited state flexibility, constrained state policy choices and left states facing financial penalties for not meeting federal work participation rates. Both the TANF program and the Child Care Development Block Grant must be reauthorized in 2010.

State Concerns

NCSL believes that the Final Rule as well as the proposed regulation will hamper the ability of states to use the flexibility of the TANF program to accomplish state goals in serving low-income families. States have adopted a variety of goals for their TANF programs within the broad federal structure, including moving families into jobs and off welfare and toward self-sufficiency and working with youth and low-wage workers to help them avoid welfare. States have used a variety of approaches in pursuing these goals, including strong work-first efforts, comprehensive assessments and services for hard-to-employ parents, stronger sanctions and time limits, post-secondary education to prepare parents for higher wage jobs, and extended financial support for families making the transition into the workforce. States have also used TANF funds to support other essential services for family well-being, including child care for low-income working families, child welfare, parent education and home visiting, pre-school education and after-school programs for youth.

The TANF program is no longer just about the provision of cash assistance payments; it is about helping people become and stay self-sufficient. In their TANF programs, states serve working poor families who depend on the economic supports that states fund above their MOE spending levels to help them successfully transition into the workforce. These services include training, state earned income tax credit programs, and other services to support work that are certainly needed in this difficult economic period. Given the current strain on state budgets, caseload reduction credit for excess MOE represents an important justification for states to continue funding these programs and services.

NCSL Position

NCSL supports withdrawal of the excess MOE regulation. Congress did not eliminate caseload reduction credit for Excess MOE in reauthorization, and HHS is wrong to attempt to accomplish this through the rulemaking process.



HHS should also delay the date of implementation of the Final Regulations as well, or at least delay the implementation of penalties. The Final Regulations represent dramatic changes for state programs, and implementing them, especially in a time of diminished state resources, strains the delivery of state services at the same time that other factors add to the burden. The difficult economy makes it hard to place recipients who aren't working into jobs, and increases the need for assistance with child care for those with jobs. The difficulties facing states is demonstrated by the fact that six states have applied for contingency funding, and more are expected to do so. Certainly federal TANF penalties, if imposed, would be a dramatic hit to state budgets.

There are also issues stemming from reauthorization that remain to be resolved. Another issue is serving recipients with disabilities, something state policymakers have consistently identified as a major challenge in the TANF program. Unfortunately, neither TANF reauthorization nor the subsequent rules made it possible for states to count disabled individuals as meeting the work rates if they participated in allowable activities for less than the required hours. Another issue is how to count drug and alcohol abuse treatment toward the work requirement. Drug and alcohol abuse treatment can currently only be counted in the Job Search and Job Readiness category, and thus are limited to six weeks. Finally, it is generally accepted that the that the current two parent work rate of 90 percent, as compared 50 percent for all families, is too high, but this was not fixed in the reauthorization accomplished in the DRA.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Sheri Steisel, Senior Committee Director
Human Services and Welfare
Federal Affairs Counsel
sheri.steisel@ncsl.org
(202) 624-8693

Lee Posey, Committee Director
State-Federal Relations
Human Services and Welfare
lee.posey@ncsl.org
(202) 624-88196



NCSL

Federal Issue Brief

THE REAL ID

Issue Description

The REAL ID Act of 2005 requires states to adopt federal standards for driver's licenses and identification cards. Residents of states that fail to comply will not be able to use their driver's licenses or identification card for federal purposes such as boarding commercial aircraft, entering a federal building or nuclear power plant, or other purposes as determined by the secretary of the Department of Homeland Security (DHS).

States were required to certify compliance to DHS by May 11, 2008, or request an extension until Dec. 31, 2009. All 56 U.S. jurisdictions have received an initial extension. To merit a second extension through May 11, 2011, states must demonstrate material compliance with REAL ID—meeting many or all of 18 defined benchmarks—and by Dec. 1, 2014, must begin issuing REAL IDs to applicants born after Dec. 1, 1964. The re-issuance process for all driver's license and identification card holders is to be completed by Dec. 1, 2017. States that choose not to comply or seek the second extension need not take action. After Dec. 31, 2009, however, their driver's licenses and identification cards will not be recognized for federal purposes.

State Concerns

State concerns include the process by which the standards were developed, the lack of money, and privacy protections surrounding the use of five national data and the process.

- *Process:* A negotiating rulemaking process, as established in The Intelligence Reform Act of 2004 (P.L. 108-458) would have created a forum in which a number of unresolved issues could have been addressed, possibly to include a funding mechanism because the outcome would be the product of a true state-federal partnership.
- *Money:* DHS estimated the cost to states of implementation at just under \$4 billion over 10 years. To date, \$180 million has been appropriated, with only \$100 million of that for state implementation.
- *Privacy:* The REAL ID requires states to verify electronically the validity of identification documents presented by every individual applying for a REAL ID-compliant credential. This process will require states to have access to at least five national databases. While we recognize that some, but not all, of these databases exist, their availability and reliability on a national level have yet to be tested. In addition, for several of these systems the method by which states will connect to these systems and the governance structure for information sharing has yet to be resolved, causing much consternation.

NCSL Position

NCSL supports the repeal of the REAL ID.

State Activity

State efforts to secure driver's licenses and identification cards began well before the Sept. 11, 2001, terrorist attacks and have continued in the wake of REAL ID. Many state lawmakers, however, now are focusing on responses to the REAL ID Act itself. Since the act was passed in 2005, legislators in 48 states and the District of Columbia have proposed approximately 207 related bills or resolutions. Despite DHS efforts to appeal to states, most state REAL ID measures have contested the act. Since 2005, legislators in 42 states have considered legislation that either asserted the state's opposition to REAL ID or urged Congress to amend or repeal the act. As of October 2008, anti-REAL ID measures had passed in 24 states, with close to a dozen expressly forbidding implementation of the REAL ID.

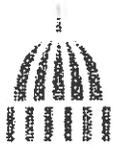
Not all responses have been negative. Since 2005, legislators in 19 states have proposed measures that would bring their states closer to compliance with REAL ID. Indiana, Michigan, Nevada, Ohio and Wisconsin have passed REAL ID compliance-related laws.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Molly Ramsdell, Senior Policy Director
State-Federal Relations
Budgets and Revenue
molly.ramsdell@ncsl.org
(202) 624-3584

Jeff Hurley, Policy Associate
State-Federal Relations
Budgets and Revenue
jeff.hurley@ncsl.org
(202) 624-7753





NCSL

Federal Issue Brief

RESPONSIBLE HOUSING

Issue Description

Adequate and affordable housing are necessary ingredients for community, education, workforce, and economic development. State legislators support the integration and coordination of public and private resources to make effective, affordable housing services available as a means preventing homelessness, encouraging self-sufficiency, promoting economic opportunity or homeownership. However, the recent problems in the subprime mortgage market have led to near-crisis level shortages of adequate and affordable housing options.

State Concerns

America's population and housing needs and preferences have become more diverse. States recognize that adequate and affordable housing can take many forms, including apartment dwellings, condominiums, cooperatives, single-family homes and manufactured housing. State officials are concerned about meeting the housing needs of their citizens. These needs center around issues related to distressed communities, urban sprawl, smart growth, housing counseling, financing and working with the U.S. Department of Housing and Urban Development with service delivery efforts.

NCSL Position

The National Conference of State Legislatures is encouraged by efforts of the Congress to review and reduce regulatory burdens at the federal level. NCSL also encourages efforts to promote a greater state role in administering federal housing programs subject to sufficient funding and flexibility.

NCSL urges the new Congress and administration to address America's housing needs as follows:

- *Housing Choices:* Federal housing policy must provide ample flexibility that allows state legislators the ability to fully utilize the entire range of possibilities as they craft affordable housing policy to meet the needs of their constituency.
- *Distressed Communities, Urban Sprawl and Smart Growth:* NCSL calls upon the Congress and the administration to work with states and our cities in the development and redevelopment of infill sites in many of our older cities and inner suburbs. Many infill sites are brownfields, abandoned industrial sites with some kind of contaminant that could be a barrier to redevelopment. To make these brownfields available for housing Congress needs to give states flexibility to immunize project providers from future federal cleanup liability and provide necessary funding to assist states in the clean-up of these sites.

NCSL does not take a position as to whether a state or locality should consider or adopt any smart growth initiatives. However, NCSL opposes any federal mandate requiring states and/or local communities to adopt such long-term comprehensive plans.

- *Housing Counseling:* NCSL endorses efforts by both the federal government and the private sector to make the dream of homeownership a reality for more Americans, and applauds federal housing



counseling efforts. However, it is imperative that these efforts respond to a need and not simply become a federal mandate, should build upon and not replace state and local counseling programs, should provide complete flexibility for states, should recognize the variety of housing options available, and should include adequate outreach to those populations of greatest need.

- *Financing:* NCSL encourages the federal government to consult state legislators and other state officials as voucher program reforms are designed to ensure that they will meet state needs, provide the flexibility we desire, avoid cost shifts to states, and continue with ample federal funding for program and administrative costs. Additionally, we urge the Congress to sustain funding levels sufficient to maintain existing vouchers and already committed project base Section 8 subsidies. NCSL also supports effective federal programs and adequate funding to address the affordable housing and community development needs of rural America.

State Activity

To address the housing needs of their citizens, some states and localities have considered smart growth plans to ease the impacts of urban sprawl. Several localities have chosen to limit urban sprawl by preserving already affordable homes and apartments inside their boundaries.

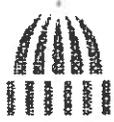
States have also developed an array of innovative housing affordability policies and are responding to the homeownership problem by issuing mortgage revenue bonds and establishing housing trust funds to expand homeownership opportunities for moderate-income families.

Additionally, NCSL track state legislation related to emergency mortgage assistance funds, foreclosure consultants, and the foreclosure process. A summary of state activity can be found at: http://www.ncsl.org/programs/banking/foreclosures_intro.htm#Legis.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Diana Hinton Noel, Committee Director
State-Federal Relations
Labor and Economic Development
diana.hinton@ncsl.org
(202) 624-7779

Robert Strange, Policy Associate
State-Federal Relations
Education, Labor and Economic Development
robert.strange@ncsl.org
(202) 624-8698



NCSL

Federal Issue Brief

ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006

Issue Description

Title I of the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”) is the Sex Offender Registration and Notification Act (“SORNA”). This law preempts laws in all 50 states by establishing a new set of minimum standards for sex offender notification and registration for adult and juvenile offenders convicted under *state* law. States have until July 2009 to complete the technology and state code changes required by SORNA or face losing 10 percent of their Byrne law enforcement assistance grant funding. The Adam Walsh Act also created a new agency within the Justice Department to administer SORNA, the SMART Office. The SMART office recently issued final guidelines further interpreting SORNA and enhancing the already onerous state requirements of the law. SORNA requires states to revise their legal definitions of crimes qualifying for registration to comport with federal requirements (crime classifications and definitions differ widely in each state’s criminal code) and change their sex offender website criteria and design. This will detrimentally alter the manner in which states treat juveniles who are convicted of these crimes. Before SORNA’s passage, every state in the country had sex offender registry requirements, policies and procedures in place for the treatment of juveniles. The final guidelines implementing the minimum sex offender registration standards being imposed on states were prepared without any federally funded analysis as to what extent each jurisdiction currently has policies and procedures that comply with SORNA. Nor did they look at the amount and kinds of adjustments to state policy and practice that will be required in order to comply to avoid a 10 percent reduction in Byrne law enforcement assistance grants.

State Concerns

States are concerned that the inflexibility of SORNA and its guidelines will impose rigid standards on states and will have far-reaching policy implications. For example, many states have rehabilitation programs in place for certain types of juvenile offenders in lieu of registration that will not be permitted to continue under SORNA. Additionally, there have been no appropriated funds for state implementation of the federal requirements. Byrne funding has been cut by two-thirds this year so states are weighing the feasibility of moving forward with compliance.

NCSL Position

NCSL opposed passage of the Adam Walsh Act because it significantly preempted state criminal laws. NCSL submitted comments on the guidelines during the notice and comment period, which were largely ignored. NCSL now seeks amendment of the Adam Walsh Act to incorporate greater flexibility in the implementation of SORNA.

State Activity

States legislatures have convened task forces and special working groups to analyze this issue. NCSL’s members have testified and presented the preemption and funding issues to members of Congress and to the SMART office director.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Susan Parnas Frederick, Federal Affairs Counsel
State-Federal Relations
Law and Criminal Justice
susan.frederick@ncsl.org
(202) 624-3566

Emily Taylor, Policy Associate
State-Federal Relations
Law and Criminal Justice
emily.taylor@ncsl.org
(202) 624-3586





Federal Issue Brief

EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM

Issue Description

The Edward Byrne Memorial Justice Assistance Grant (Byrne/JAG) Program is the largest justice assistance grant to states. It funds state and local government efforts in a broad range of activities, such as drug treatment and enforcement, criminal reentry initiatives, crime prevention, and corrections activities. It is vital criminal justice funding for states because its flexible grant purposes permits states to innovate in a wide variety of criminal justice programs, based on shifting community needs. Forty percent of Byrne/JAG money is sent directly to local law enforcement in counties and municipalities, and 60 percent of Byrne/JAG funds are distributed through state governments. Grants may be used to provide personnel, equipment, training, technical assistance, and information systems for more widespread apprehension, prosecution, adjudication, detention, and rehabilitation of offenders who violate state and local laws. Grants also may be used to provide assistance (other than compensation) to victims. The Department of Justice is responsible for distributing JAG funds. In the Consolidated Appropriations Act, 2008 (PL 110-161) the Byrne/JAG program was cut 67 percent from \$520 million in FY 07 to \$170 million in FY 08. The result of this large funding shortfall is felt in the states in different ways. For example, North Carolina anticipates its current 180 Criminal Justice programs to be cut to 60 or less. New York anticipates a loss of \$17 million in law enforcement funding. Illinois' local law enforcement funding was cut from \$19 million in FY 07 to \$7 million in FY 08.

State Concerns

State budgets are facing shortfalls for FY 08 and cannot fill the gap left by the federal cut. This drastic cut in funding will result in the dissolution or zeroing out of many law enforcement and criminal justice programs. Programs that are shut down due to lack of funding cannot simply be restarted when the funding returns. There are informants, ties to the community and personnel that will be lost with the funding shortfall. As a result, programs must be rebuilt from scratch. Byrne/JAG allocations are formula-based on population and crime statistics. It differs from the COPS program because funds are not tied to traditional law enforcement purposes. Byrne/JAG allows for the most flexibility and innovation in law enforcement, unlike any other program.

NCSL Position

NCSL strongly supports the reauthorization and restoration of the Byrne/JAG program. On July 30, 2008, S. 231 was signed by the president and became Public Law No: 110-294. This law reauthorized Byrne/JAG and allocated \$1.095 billion annually (FY 2006 levels) through 2012. Although the actual funding will still be at the discretion of the appropriations committees in both chambers, the reauthorization prevents the program from being abolished. However, this law will not become effective until FY 2009 and still leaves a funding gap for FY 2008. NCSL was part of an intensive effort to restore the funding for FY 08 Byrne/JAG funds. The Senate version of the FY 08 Wartime Supplemental Appropriations Act included a correction of the funding gap for FY 08. However, this provision was removed in the final version that the president signed.

State Activity

States have been extremely effective lobbyists for this funding source demonstrating to Congress the dynamic uses for Byrne/JAG funds. A snapshot of the reach of Byrne/JAG was taken on March 7, 2008, when drug task forces in 41 states engaged in a coordinated operation called Operation Byrne Blitz. On that single day, 4,220 people were arrested on drug-related charges and, 20,851 pounds of marijuana, 2,886 marijuana plants, 1,749 pounds of cocaine, 120 pounds of meth, 6,973 pharmaceutical pills, 13,244 ecstasy pills and a variety of other drugs were seized. More than 1000 meth labs, 666 firearms and more than \$13.4 million were also seized, and 228 children endangered by their environment were referred to the appropriate child protection agency.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Susan Parnas Frederick, Federal Affairs Counsel
State-Federal Relations
Law and Criminal Justice
susan.frederick@ncsl.org
(202) 624-3566

Emily Taylor, Policy Associate
State-Federal Relations
Law and Criminal Justice
emily.taylor@ncsl.org
(202) 624-3586





Federal Issue Brief

IMMIGRATION REFORM

Issue Description

Immigration reform is a top priority for state legislators. While immigration policy is a federal responsibility, there has been an unprecedented level of activity in state legislatures on this issue, especially in the absence of a federal solution. State legislators deeply care about immigration reform and in a bipartisan fashion call on the federal government to create legislation that will enhance our border security while also addressing the inequities in our current system and assist states with the impact of immigrants.

State Concerns

Although immigration policy falls under the jurisdiction of the federal government, the impact of these policies are felt directly by the states. States are often left to pay for the programs required by federal law and the services mandated by the courts with limited federal reimbursements. The arrival of immigrants into an area requires programs and policies specifically directed towards the needs of immigrants while encouraging economic, social and civil integration within the community. The weight of these needs falls heavily on states, especially on our education, health and law enforcement systems.

NCSL Position

Three years ago, NCSL created the Executive Committee Task Force on Immigration and the States to examine both the state and federal roles in immigration reform, consider NCSL policy and examine state impacts. It is NCSL's position that federal immigration policy must strike a balance among core principles of our democracy: preserving the safety and security of our nation, encouraging the economic strength of our states and communities, and recognizing our history as a nation of immigrants. NCSL supports comprehensive immigration reform that enhances our border security and addresses the inequities in our current immigration system. To be effective, balanced and fair, comprehensive reform should not contain unfunded mandates or preempt areas of existing state authority. It should require true collaboration between states and the federal government. Finally, comprehensive reform must address the impact of immigration on the states.

Border enforcement is critical and NCSL supports full funding, especially for personnel and improvements in technology and infrastructure. State lawmakers have also called for renewed cooperation to counteract human trafficking and drug-smuggling.

A critical component of NCSL support is State Impact Grants, a reliable, guaranteed funding source to ameliorate the costs states and localities bear in health and education to immigrant populations, including temporary and guest workers. Included in all major immigration reform proposals, it ensured state legislative appropriation of these federal funds, providing accountability for application of these funds to vital services. Proposed by both Senators Clinton and Cornyn, State Impact Grants have bipartisan support.

Immigration reform legislation must unequivocally state that the role of state and local law enforcement is limited to criminal, not civil, immigration laws. Federal action must retain the existing federal authority and responsibility for enforcing immigration law and must not preempt state law. The existing memorandum of understanding (MOU) process, which allows state involvement in enforcement of our nation's immigration



law by state option, should be maintained and the Department of Homeland Security must reimburse states for training costs associated with establishing the MOU.

Immigration reform legislation must contain full funding for the State Criminal Alien Assistance Program. The burden of incarcerating unauthorized immigrants who have committed crimes, been convicted and are serving their time in state and local jails should be fully borne by the federal government. SCAAP currently reimburses state and local governments for approximately 25 percent of the total costs incurred. NCSL supported final passage of comprehensive immigration reform that includes a temporary worker program and an earned legalization program for illegal immigrants that is not amnesty but a way for people who want to remain in this country to accept a reasonable punishment and work towards citizenship.

State Activity

States are grappling with immigration challenges as well. While 2007 is typically looked upon as record year for state immigration-related legislation, 2008 has rivaled the number and types of measures introduced in 45 state houses in session. As of June 30, 2008, 1,267 bills related to immigrants and immigration were introduced in state legislatures across the country with at least 175 of those becoming law in 39 states. In all 2007, state legislatures introduced an unprecedented 1,562 bills related to immigrants and immigration. States are looking at creative solutions to law enforcement and work-site enforcement as well as considering the needs and contributions of legal immigrants to the United States and encouraging immigrant integration. NCSL's Immigrant Policy Project provides legislative research and analysis on immigration policy issues, such as the provision of benefits, health care, education and housing, and integration assistance. The project releases regular reports on trends of state immigrant and immigration-related legislation. States continue to employ a range of enforcement and integration approaches. For example, one state created a pilot guest worker program to expedite the approval of foreign workers under the federal H-2A visa program and another state revisited employment-related legislation passed last year. One state makes legal immigrant children and pregnant women eligible for SCHIP and another aims to address the needs of the Asian Pacific American community, including English language instruction, health access and economic development. One state expanded the definition of smuggling of human beings by including the use of so-called "drop houses." Several states commissioned studies to investigate the economic and fiscal impacts of immigration, including state remedies to recover money owed to the state by the federal government. Three states passed legislation addressing multiple issues, such as employment, law enforcement, public benefits, legal services and identification/licensing.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Sheri Steisel, Senior Committee Director
Human Services and Welfare
Federal Affairs Counsel
sheri.steisel@ncsl.org
(202) 624-8693

Susan Parnas Frederick, Committee Director
Law and Criminal Justice
Federal Affairs Counsel
susan.frederick@ncsl.org
(202) 624-3566

Emily Taylor, Policy Associate
State-Federal Relations
Law and Criminal Justice
emily.taylor@ncsl.org
(202) 624-3586



Federal Issue Brief

EMPLOYMENT SECURITY SYSTEM FUNDING

Issue Description

Under the framework of the system outlined in the Federal Unemployment Tax Act (FUTA), state revenues finance unemployment benefits, while the federal government levies a payroll tax upon employers, to provide funds dedicated solely for administration of both the federal and the state systems. The amount being collected is more than adequate to fund the various state systems, but the amount returned to the states has been shrinking because these funds are included in the federal unified budget and therefore are subject to the appropriations process every year.

In recent years, states have received an average of 50 cents on every dollar collected from employers to administer the system. The remainder, nearly \$4 billion in FY 2006 serves as a "paper" offset to deficits or as an enhancement to federal budget surpluses. In each case, funds collected to run the Employment Security program are misapplied. Economic assumptions did not anticipate the increases in unemployment claims that the Congressional Budget Office now projects as a result of the current economic slowdown.

State Activity and Concerns

Nationally, unemployment insurance claims levels and the exhaustion of benefits rate have been on the rise and states are struggling to respond with less federal administrative funding than previous years, especially those states with high unemployment rates. Many states have resorted to drastic measures to keep job service offices open. Some have initiated a surtax on employer payroll taxes to replace the funds not appropriated by Congress. Others have used state general funds to replace federal administrative funds. Some have done both--in essence taxing employers three times for the same purpose. In the 2008 legislative session, at least one state had to appropriate general funds to support the administration of the program.

NCSL Position

The National Conference of State Legislatures supports congressional efforts to modernize state unemployment systems by using \$7 billion in revenue to provide reimbursements to states who modernize their systems by using alternative base periods to determine eligibility. To date, 19 states and the District of Columbia have enacted legislation to use alternative base periods. It is imperative that Congress continue to collaborate with states to strengthen their unemployment systems and enact unemployment insurance legislation that would provide adequate resources for administering the program and supplement, not supplant, current state efforts.

Program flexibility also has been reduced by restrictions on Reed Act funds, which can only be used for administering the unemployment compensation law. These funds should be distributed to the states pursuant to the original intent of the Reed Act with maximum flexibility to also support the Employment Security System.

NCSL therefore urges the following reforms:

- Move the dedicated FUTA trust fund from the discretionary side to the mandatory side of the federal budget.
- Provide adequate funds for state administrative functions.
- Use the "temporary" 0.2 percent surcharge for benefit improvements for unemployed workers.
- Adhere to the provisions of the Reed Act that guarantee surplus funds be returned to the states.
- Continue the state legislative role in the appropriation of administrative funds.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Diana Hinton Noel, Committee Director
State-Federal Relations
Labor and Economic Development
diana.hinton@ncsl.org
(202) 624-7779

Robert Strange, Policy Associate
State-Federal Relations
Education, Labor and Economic Development
robert.strange@ncsl.org
(202) 624-8698





Federal Issue Brief

A TRANSPORTATION SYSTEM FOR THE 21ST CENTURY

Issue Description

The Surface Transportation Program as embodied and enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2004 (SAFETEA-LU) has lost its way and does not meet the complex needs of the U.S. transportation system. The scheduled 2009 reauthorization is an opportunity to reorganize and refocus the current program to meet pressing transportation infrastructure requirements.

State Concerns

States need a stable and substantial federal transportation program to supplement robust, but distressed state efforts. Currently, state and local governments generate 78 percent of all transportation funding in the United States, but state transportation revenues are flat or declining due to heavy reliance on the now anemic state gas tax. Revenue losses have reduced both maintenance of existing facilities and construction of new projects. A decrease in driving, coupled with increased use of more fuel-efficient vehicles has further reduced fuel tax collections, while construction costs have skyrocketed.

NCSL Position

A new national vision for surface transportation is needed to guide our nation's transportation system beyond the Interstate Highway era into the 21st century and the needs and challenges that lie ahead. This next authorization should focus federal funds on national priorities involving the interstate mobility of people and goods. NCSL anticipates that a rejuvenated national vision and purpose for the program will work toward eliminating the donor-donoree funding debates that have characterized past authorizations and will inspire all Americans, all sectors of the economy, and all states – through their congressional delegations – to contribute to that national goal.

First and foremost, Congress must work with state legislators to establish, in the next authorization, a robust and cooperative state-federal system to set plans and priorities for federal investment. All funding and financing options must be available to state legislatures for state and federal-aid programs and in doing so, Congress should heed the Tenth Amendment and not intervene in or interfere with state-specific transportation priorities. In particular:

- *Infrastructure Investments:* NCSL calls on Congress to increase significantly federal investments for highway and rail infrastructure and provide states added flexibility to improve intermodal connectors and surface transportation systems near the nation's ports.
- *Financing Alternatives:* NCSL urges the creation of pilot alternative funding programs. Options include: a vehicle miles traveled (VMT) system, freight surcharges, container taxes, and customs fees.
- *Gas Tax:* NCSL supports an increase in the federal gas tax, in the short term, to provide sufficient funding for the next authorization until a new national funding stream can be put in place. Transit agencies, including commuter rail operations, should be exempt from the federal fuel or energy taxes.
- *Tolling:* NCSL urges the removal of all current federal restrictions on states' authority to toll so that states can optimize resources for capacity expansion, operations, and maintenance while ensuring free flow of goods and people. Tolling, value-pricing, and public-private partnerships (PPPs) should remain state provinces and are not appropriate federal funding mechanisms.



- *Environmental Protection:* NCSL urges the federal government to allow the current environmental rules under SAFETEA-LU to remain in effect through the next authorization and be thoroughly evaluated so as to inform mid-course corrections in any technical corrections bill or for more substantial reform in the subsequent authorization.
- *Planning:* NCSL supports a negotiated rule-making led by the U.S. Department of Transportation, or another collaborative process congressionally mandated and facilitated by the Transportation Research Board or the American Association of State Highway and Transportation Officials, in which NCSL and state legislatures are fully represented to determine the necessary level of and standards for uniformity among states in data collection efforts.
- *Performance Measures:* NCSL supports a pilot program to gauge the success of using performance standards in the project selection and completion process.
- *Safety:* Federal transportation safety programs should provide funding to promote comprehensive safety programs in the states. Necessary modifications should be made in federal safety grants programs to permit the maximum number of states to qualify, with the level of annual appropriations being adequate to fund grants to all states that qualify.
- *Research:* NCSL supports federal research that promotes fuel efficiency, alternative fuels, high-mileage vehicles, safety, and technology. Findings and best practices identified through federal research should be shared fully with states in an unbiased, nonpartisan, and scientific manner.

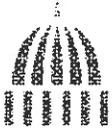
State Activity

To fill the gaps discussed above, states have turned to toll roads, public private partnerships, innovative financing, and congestion pricing. Many states have implemented efficiency and accountability programs to stretch scarce dollars and others have applied operations and management efforts to better utilize existing infrastructure. Vehicle fees, sales tax, severance tax, development impact fees and special districts assessments are among the revenue sources states and local governments continue to increase to meet needs. Looking forward, a number of states are considering a mileage fee to eventually replace the gas tax. These state and local efforts will be enhanced by a strong federal partner, making a commitment to national priorities, in coordination with state, regional and local needs.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Molly Ramsdell, Senior Policy Director
State-Federal Relations
Transportation
molly.ramsdell@ncsl.org
(202) 624-3584

Paul Snow, Policy Associate
State-Federal Relations
Transportation
paul.snow@ncsl.org
(202) 624-8683



Federal Issue Brief

NCSL

STATE REGULATION IN FINANCIAL SERVICES

Issue Description

The sovereignty of states in financial services regulation has never been more in jeopardy. With the enactment of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999, which brought down the firewalls between banking and other financial services and commercial interests, the continuing consolidation and merger of financial services institutions, technological advances such as the Internet and online financial services, the recent U.S. Supreme Court decision in **Watters v. Wachovia** and the competition from foreign markets, some of America's largest financial institutions are advocating a uniform national system of regulation and the preemption of some state laws and regulation which seek to protect the financial well-being of the consumer.

The current financial crisis has had an impact on our national and state economies, with subprime mortgages and lack of credit affecting Wall Street to Main Street. The federal government's intervention through the Emergency Economic Stabilization Act, backing of AIG and Bear Stearns along with the conservatorship of Fannie Mae and Freddie Mac, have changed the dynamic in how financial regulatory bodies, including state agencies, operate. Due to the current environment, a wave of sentiment has been expressed that more oversight is needed to stem the tide of unfettered regulatory practices. In particular, state regulatory institutions have been unfairly criticized and targeted for federal intervention in part due to the failure of federal regulatory agencies.

State Concerns

The role of states in financial services regulation is in jeopardy. Financial services modernization, the consolidation and merger of financial services, the technological advances, the desire of our large national financial services institutions for a uniform system of regulation and most importantly, the threat of overreach by the federal government to the current financial crisis are all impacting the ability of states to ensure the financial well being of consumers and guarantee the solvency of our financial institutions.

Any preemption of the states' ability to regulate banking, insurance and securities may well lead to a financial services industry that is national in scope with little concern for consumer protections or the financial needs of local small businesses or distressed communities.

NCSL Position

The National Conference of State Legislatures has not opposed financial service modernization. State legislators recognize the need for our financial institutions to be able to compete in global markets. However, throughout the congressional debate on financial services modernization, NCSL has made clear its support for functional regulation of the financial services industry and supported provisions that would eliminate the automatic deference to the OCC given by federal court in cases challenging state financial services laws and regulations.

NCSL has consistently and strongly advocated for state sovereignty in financial service regulation and has opposed any federal preemption of state legislative or regulatory authority in financial services. NCSL believes that a high burden of proof that federal action is necessary before any preemption of state financial



services law and regulations is warranted. Specifically, NCSL opposes any federal attempts to further erode the dual-banking system, any proposal to establish either a federal or a dual system of regulation of insurance, preemption of state securities laws and regulations, any effort by the Administration and Congress to erode the dual-chartering system for credit unions and opposes the establishment of a new federal regulatory system for the mortgage origination industry.

State Activity

States are currently taking several measures of action to ensure consumer protection and help stabilize the financial services sector. Long before the subprime crisis became a national focus, in 2004, the states through the Conference of State Bank Supervisors and the American Association of Mortgage Regulators developed the Nationwide Mortgage Licensing System to improve and coordinate mortgage supervision. The state system has been incorporated into Title V (Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act) of the Housing and Economic Recovery Act of 2008. NCSL is working with the states to enact the necessary legislation to implement the licensing system by the August 2009 deadline set in the federal legislation.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Neal Osten, Federal Affairs Counsel
State-Federal Relations
Committee on Communications, Financial Services and
Interstate Commerce
Neal.Osten@ncsl.org
(202) 624-8660

Jeff Hurley, Policy Associate
State-Federal Relations
Committee on Communications, Financial Services and
Interstate Commerce
Jeff.Hurley@ncsl.org
(202) 624-7753



Federal Issue Brief

PREEMPTION OF STATE REGULATION OF INSURANCE

Issue Description

Since the passage of the McCarran-Ferguson Act in 1945, states have been the exclusive regulators of the business of insurance. States also are responsible for the management of guarantee funds, which are the only protection for policyholders of insurance. The safety and soundness of insurance companies operating in the United States is a prime objective of insurance regulation. State insurance regulation has been successful and effective, and is responsible for our nation's insurance industry being the most financially sound in the world.

The enactment of the Gramm Leach Bliley Financial Services Act (GLBA) in 1999 was the first successful assault by the federal government on the states' abilities to regulate insurance. While GLBA purported to reaffirm the provisions of the McCarran-Ferguson Act, in reality it challenged the states' insurance authority in three areas, bank sales of insurance, the registration and licensing of insurance agents and brokers and the demutualization of mutual insurance companies. Since the passage of GLBA the Office of the Comptroller of the Currency (OCC), the regulator of national banks, has used the new law as a means to challenge numerous state insurance laws which govern the sales of insurance in banks. The passage of GLBA has spawned a new effort by some within the insurance industry as well as national banks in insurance to seek one national regulator.

The passage of the GLBA has thus prompted several lawmakers in Congress to suggest the need for federal intervention in the regulation of insurance, specifically suggesting an optional federal charter similar to the dual-banking system. Earlier this year the Department of Treasury issued the "Blueprint for a Modernized Financial Regulatory Structure," which recommended the establishment of an optional federal charter similar to the current dual-chartering system for banking. The blueprint additionally advised the creation of a federal Office of Insurance Oversight program within the Treasury to establish a federal presence in insurance for international and regulatory issues.

Furthermore, with the current economic crisis prompting suggestions for an increase in federal oversight of all financial services, some are calling for creation of a federal insurance regulatory agency. However, state regulators stress that AIG's difficulties were caused by their financial services unit, which was regulated by the Federal Office of Thrift Supervision, not by any state insurance department. The insurance commitments of AIG have never been in jeopardy.

State Concerns

For more than 150 years, states have proven that they can successfully and effectively protect consumers and ensure that promises made by insurers are kept. A federal insurance regulator would eliminate or diminish state insurance regulation irreparably, undermine the state system of consumer protection and financial surveillance, threaten a host of other unintended consequences, and inevitably cause a loss of jobs, taxes, fees and other critical state revenues and resources. State legislatures are uniquely positioned to set policies that accurately reflect local values and concerns, and the nation as a whole benefits from regulation tailored to serve diverse economic needs.

NCSL Position

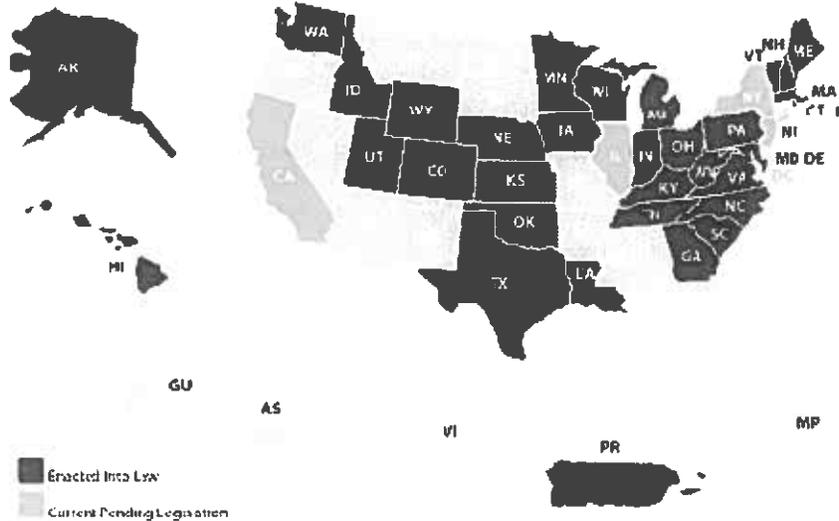
NCSL is opposed to any preemption to state regulation of the business of insurance, including governmental intervention through an optional federal charter. State regulation ensures that rates are fair, adequate and not excessive; that policy language is clear and includes what it should; that insurers are financially sound; that claims are paid; that consumers are informed, and that their complaints are investigated and resolved. NCSL is willing to work with Congress to establish a shared state-federal framework to achieve insurance regulatory modernization that focuses on areas where policymakers have reached consensus and that preserve state flexibility and authority to meet the goals of modernization. However, NCSL will oppose any provision of federal legislation that relies on wholesale preemption of state authority.



State Activity

NCSL was instrumental in the efforts to establish the Interstate Insurance Product Regulation Compact ("Compact") to enhance state businesses' ability to compete in a global insurance marketplace and avert a needless federal insurance bureaucracy. Developed along with the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL), the Compact currently has 33 states that have joined the Interstate Insurance Product Regulation Commission (IIPRC), which develops uniform nation product standards for consumers of life insurance, annuities, disability income and long-term care insurance products.

Interstate Insurance Product Regulation Compact Map



State Members

Alaska
 Colorado
 Georgia
 Hawaii
 Idaho
 Indiana
 Iowa
 Kansas
 Kentucky
 Louisiana
 Massachusetts

Maryland
 Maine
 Michigan
 Minnesota
 North Carolina
 Nebraska
 New Hampshire
 Ohio
 Oklahoma
 Pennsylvania
 Puerto Rico

Rhode Island
 South Carolina
 Tennessee
 Texas
 Utah
 Vermont
 Virginia
 Washington
 West Virginia
 Wisconsin
 Wyoming

FOR FURTHER INFORMATION, PLEASE CONTACT:

Neal Osten, Federal Affairs Counsel
 State-Federal Relations
 Committee on Communications, Financial Services and
 Interstate Commerce
Neal.Osten@ncsl.org
 (202) 624-8660

Jeff Hurley, Policy Associate
 State-Federal Relations
 Committee on Communications, Financial Services and
 Interstate Commerce
Jeff.Hurley@ncsl.org
 (202) 624-7753



NCSL

Federal Issue Brief

LEGISLATIVE BUSINESS EXPENSES OF STATE LEGISLATORS

Issue Description

The Internal Revenue Service (IRS) proposed a new rule that will preempt state definitions of a “legislative day,” “committee,” and “legislator” for the purposes of legislator per diem tax deductions. If this proposed rule is finalized, state definitions will be defined by the IRS for federal tax deduction purposes and may prohibit the deduction of certain types of sessions, meetings or events. The regulation seeks to impose uniform standards on when this per diem would be allowed. It preempts state laws and policies currently in place in every state that provide for instances in which the per diem may be claimed. The regulation contains proposed amendments to 26 CFR part 1 and 26 CFR part 301, relating to business expenses of state legislators while away from home.

State Concerns

The National Conference of State Legislatures is concerned about the proposed regulation because it excludes state specific legislative events where valid legislative business is conducted pursuant to state law but does not fall under the proposed provisions. These state specific legislative events would no longer be eligible for federal tax deductions. Furthermore, states would be placed in the position of maintaining two separate standards of tax procedure for these events, one for state tax law and one for federal tax law. This places increased administrative procedure and increases costs on state legislatures.

Congress defined a “legislative day” broadly in section 162(h)(2) of the Internal Revenue Code to be any day during any taxable year on which the legislature was in session. This definition further refined a legislative session day to include any day the legislature was not in session for a period of four consecutive days or less. Congress ended its limitations there and provided no more specificity to this term. Therefore, the language leaves it to the states to further define what constitutes a legislative day within these federal parameters.

Florida, New York, Oregon, Pennsylvania, Utah, and Wisconsin have “hybrid” legislative committees composed of a combination of legislators, members of the public, members of the executive and judicial branches, private sector participants and even members from academia. These committees are clearly constituted for the sole purpose of conducting legislative business, whether to hold hearings on the state budget, education concerns or some other subject of vital importance to a particular state. In other words, these committees are often formed and convened to tackle complex and often difficult state issues that require the expertise of state legislators and the general public. The legislative members of these committees should not be excluded from claiming their per diem for days spent conducting legislative business by participating in these committees.

NCSL Position

NCSL policy supports the current 162(h) of the Internal Revenue Code, which is silent as to the definition of a “legislative day.” NCSL maintains that definitions of “legislative day,” “committee” and “legislator” should be defined by state law, not by federal statute or regulation. NCSL opposes the promulgation of this regulation and submitted formal comments to the record.

State Activity

Several states submitted formal written comments to the IRS in response to this regulation. Many other states contacted NCSL and responded to NCSL surveys providing information on state practices regarding this regulation.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Susan Parnas Frederick, Federal Affairs Counsel
State-Federal Relations
Law and Criminal Justice
susan.frederick@ncsl.org
(202) 624-3566

Emily Taylor, Policy Associate
State-Federal Relations
Law and Criminal Justice
emily.taylor@ncsl.org
(202) 624-3586





Federal Issue Brief

ELECTION REFORM

Issue Description

In 2002, the Help America Vote Act (HAVA) was signed into law. It imposed several state minimum standards in the area of federal election administration such as the elimination of lever and punchcard voting machines, mandatory provisional voting, mandatory statewide registration databases, and mandatory use of voting machines that are accessible to the disabled, have audit capabilities, and can alert the voter to over-or under-voting. NCSL had significant input into the provisions of HAVA, was consulted by congressional staff every step of the way and subsequently supported the passage of HAVA. The law also provided \$3.2 billion in federal funds to states for implementation. States have received all but approximately \$668 million of this funding. Since the passage of HAVA, legislation has been introduced to further restrict how states administer elections. Perhaps the most notable of these efforts were bills aimed at requiring mandatory voter ID and voter verified paper audit trails for all federal elections. NCSL has opposed these bills, believing that any further election administration policies are best determined by the individual states. None of these bills has passed due to broad state and local opposition.

State Concerns

NCSL is concerned that the federal government will attempt to micromanage state elections processes in the absence of the appropriate research and without taking state concerns into account, thereby making them overly burdensome, expensive and counter-productive.

NCSL Position

NCSL believes that Congress and the administration should look to the states as the laboratories of democracy for best practices and alternatives and not impose one-size-fits-all solutions that may work for some, but not all of the states. NCSL also calls upon Congress and the administration to fund HAVA fully.

State Activity

States have actively worked on elections administration issues since the passage of HAVA. For more information on the types of laws and activities states have taken in this area, please visit our election reform database at the following link: <http://www.ncsl.org/programs/legismgt/elect/taskfc/database.htm>.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Susan Parnas Frederick, Federal Affairs Counsel
State-Federal Relations
Law and Criminal Justice
susan.frederick@ncsl.org
(202) 624-3566

Emily Taylor, Policy Associate
State-Federal Relations
Law and Criminal Justice
emily.taylor@ncsl.org
(202) 624-3586





Federal Issue Brief

CLEAN AIR INTERSTATE RULE: IMPLICATIONS OF COURT DECISION FOR STATES

Issue Description

On July 11, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Clean Air Interstate Rule (CAIR) issued by the U.S. Environmental Protection Agency (EPA). This rule established a cap and trade program to address the effect of an upwind state's emissions on a downwind state's ability to meet air quality standards for ozone and fine particulate matter. A three-judge panel unanimously vacated the entire rule and remanded both CAIR and its associated federal implementation plan (FIP) to EPA for reconsideration citing "more than several fatal flaws in the rule" (*State of North Carolina v. EPA*).

In the absence of CAIR, the court ruled that the "nitrogen oxides (NO_x) SIP Call trading program will continue because EPA terminated the program only as part of the CAIR rulemaking. . . . The continuation of the NO_x SIP Call should mitigate any disruption that might result from our vacating CAIR at least with regard to NO_x. In addition, downwind states retain their statutory right to petition for immediate relief from unlawful interstate pollution under section 126, 42 U.S.C. § 7426," the court said.

CAIR would have required 28 states in the Eastern U.S. and the District of Columbia to revise their state implementation plans to achieve further reductions of sulfur dioxide (SO₂) and/or nitrogen oxides in order to address continuing nonattainment of the ozone and PM 2.5 NAAQS. One of the options available to the states was to achieve the reductions through regional emission cap and trade programs.

On September 24, the United States filed a petition for rehearing in the Clean Air Interstate Rule case before a full federal appeals court to reconsider the decision. According to the petition, EPA claims that the decision to vacate CAIR and its emission trading program contradicts a prior court decision upholding a similar trading system under the NO_x SIP Call (*Michigan v. EPA, D.C. Cir., 213 F. 3d 663, 2000*). In addition, the agency notes in its petition that no party in the CAIR lawsuit challenged EPA's authority to establish the emissions trading program.

On October 21, the court made an unusual request for additional briefs in the case when it ordered the North Carolina attorney general and a coalition of power companies to better explain their intentions in filing the original suit against EPA's regulation. In addition, the court asked the litigants whether the court should stay its mandate and allow CAIR to remain in affect while EPA works on a new rule.

State Concerns

The implications of the court's decision to vacate the CAIR regulation for states could be multi-faceted. Many of the CAIR states could face the challenge of reinstating their NO_x SIP Call program which some had sunsetted in anticipation of CAIR taking effect. In addition, states may face new hurdles in their attempt to come into compliance with increasingly stringent air quality standards absent the emission reductions expected from implementing the CAIR program. In particular, states may need to revisit the development of state implementation plans which could require new legislative action. Additionally, industry may no longer be under a legal compulsion to continue the usages of emissions reduction technology because they are no longer required by law, regulation or permit to do so.

On the Horizon

While recent actions by the court indicate a potential reprieve for the rule, the uncertainty associated with the court's initial ruling has raised the prospects for congressional action. Representative Rick Boucher (Virginia), chairman of the House Energy and Air Quality Subcommittee, has indicated that CAIR would be among his first priorities in 2009. Towards the end of the 110th Congress, draft proposals providing alternative options for a legislative fix to the situation were circulated by both the White House and Democrats on the House Energy and



Commerce Committee. A legislative effort to codify all or part of the CAIR regulation could potentially serve as an avenue for Congress to require stricter emission caps than required under CAIR; advance multi-pollutant legislation covering emissions from a variety of pollutants; or revisit the Clean Air Act in general, making the first round of updates since 1990.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Tamra Spielvogel, Committee Director
State-Federal Relations
Energy and Environment
Tamra.Spielvogel@ncsl.org
(202) 624-8690

Amanda Naughton, Policy Specialist
State Federal Relations
Energy and Environment
Amanda.Naughton@ncsl.org
(202) 624-3572



Federal Issue Brief

CLIMATE CHANGE

Issue Description

Concerns over the rise in the earth's temperature and the levels of greenhouse gas emissions have become a focal point in most major countries.

Over the past few years, there have been numerous bills introduced in both chambers of Congress to address climate change, and most have set out to deal with climate change through a cap-and-trade model. To date, however, nothing has passed both houses although the votes are coming closer. The 110th Congress recessed at the beginning of October without climate change legislation passing. On October 7, Chairman of the U.S. House of Representatives Committee on Energy and Commerce John Dingell (Michigan) and Chairman of the Energy and Air Quality Subcommittee Rick Boucher (Virginia) released a discussion draft bill on climate change, thus setting up the climate change conversation for the 111th Congress. The bill would cap 88 percent of greenhouse gas emissions by creating an economy-wide cap-and-trade program designed to lower current emissions levels mid-century by 80 percent. The authors recognize that parts of their plan will need work, including allotment of emissions allowances, and therefore included four options for allocations and multiple cap-and-trade alternatives. Under the bill, the Environmental Protection Agency (EPA) would handle the regulations for small and mid-sized emitters, or those who emit less than 25,000 tons of greenhouse gases per year.

The bill would preempt existing or prospective state and regional efforts by banning the development or enforcement of emissions caps by states and regional agreements. As stated in Section 733: "no state, local or regional authority may adopt or enforce a program that caps the amount of greenhouse gases that may be emitted or sold, and that uses tradable emission allowances for the purpose of meeting the cap." To access the discussion draft and related materials, please visit <http://energycommerce.house.gov/>.

Additionally, Chairman of the Senate Environment and Public Works Committee, Senator Barbara Boxer (California), is expected to introduce legislation through her committee once Congress returns in 2009. Senator Boxer has opposed state pre-emption in the past, and is expected to continue her opposition in part due to California's passage of AB 32 and involvement in the Western Regional Climate Initiative.

A group of moderate Senate Democrats has also been working together since the summer to consider what needs to be included in a comprehensive climate change bill. The "Gang of 16" have highlighted four key topic areas that would need to be considered in the drafting of a cap-and-trade climate change bill: cost containment, international competition, offsets and technology. The group has not yet started drafting such language, but plans to do so after the elections and will also reach out to Republicans. Benefits for farmers who plant trees, erect methane digesters or practice no-till farming are also on the list for the "Gang of 16," as is providing additional funds for low-income families who need help paying electric bills, and the promotion of "clean coal" technologies. As of now, the group has not dealt with the state-federal relationship and therefore has not yet taken a stand on the issue of state program preemption.

President-elect Obama has said that he will not preempt state programs dedicated to reducing greenhouse gas emissions, and will support California's waiver request to the Environmental Protection Agency (EPA) to regulate such emissions from automobiles, which the EPA denied in December 2007, and California and 14 other states are contesting in court. He has also vowed to engage America in the international conversation in a leadership role. The deadline for the development of an international plan to combat climate change after the Kyoto Protocol ends is December 2009.



State Concerns

The largest concern for states currently is how a federal program will work with respect to the state-federal partnership. Forty states have already signed on to the voluntary Climate Registry (www.theclimateregistry.org), and there are currently three major regional climate agreements in the country. Between these three agreements, more than 20 states and four Canadian Provinces have either agreed to lower greenhouse gas emissions or to observe, with the chance of joining at a later date. Also, over half of the states in the country have renewable energy portfolio standards (RPS). States are concerned about how a federal climate change program will impact programs that they already have initiated and are operating under. Questions of preemption are being discussed on Capitol Hill in three primary areas: how could a federal program be implemented alongside current state programs; would the continuation of state programs that exceed the federal set guidelines or compliment the goals of a federal cap-and-trade program be allowed; and should federal actions replace state programs entirely? States that have enacted, developed or implemented programs at risk of being preempted by federal legislation are watching the discussion in Washington closely, though not all states are opposed to the imposition of a federal program that would provide certainty and continuity throughout the country.

NCSL Position

Currently, NCSL does not have a policy on Climate Change, although the debate continues. In July 2008, the NCSL Action Policy, *States' Rights to Adopt Auto Emissions Standards*, was adopted at the Boston Annual Meeting in August 2007, expired. That policy supported the right of California to "adopt emissions standards for cars and trucks that are stricter than federal emission standards and for other states which have non-attainment areas to adopt identical standards." The policy also "urge[d] the EPA to act immediately to grant California the waiver" (as discussed above). In addition, the NCSL policy on *State Legislative Authority in Climate Change Legislation* also expired in July 2008. That policy called on Congress to ensure state legislative authority in any federal climate change legislation and affirm the active role played by state legislatures in both fiscal and substantive aspects of state policymaking. These components along with other key federalism issues remain the focus of conversations within NCSL during ongoing efforts to adopt climate change policy.

State Activity

Along with The Climate Registry, the three major regional climate agreements, and the states that have enacted renewable energy portfolio standards (RPS), there are:

- 22 states with active climate legislative commissions or executive advisory groups.
- 20 states that have set greenhouse gas emissions targets or goals.
- 14 states that have adopted or are in the process of adopting California's automobile standards.

Also, in October 2008, the National Conference of State Legislatures and the Center for Integrative Environmental Research (CIER) at the University of Maryland published a series of reports on 12 states called the *State Economic and Environmental Costs of Climate Change*. To view the overview of the study and the 12 state reports, please visit <http://www.ncsl.org:80/programs/enviro/ClimatePubs.htm>.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Amanda Naughton, Policy Specialist
State-Federal Relations
Energy and Environment
amanda.naughton@ncsl.org
(202)624.3572

Tamra Spielvogel, Committee Director
State-Federal Relations
Energy and Environment
tamra.spielvogel@ncsl.org
(202) 624.8690



Federal Issue Brief



NCSL

STATE REVOLVING FUNDS

Issue Description

The establishment of State Revolving Funds (SRF), under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) is just one example of an effective delegation of authority from federal to state governments while providing funds to meet federal mandates. The funds provide seed money to states for low- or no-interest loans to communities, individuals and others for high-priority water-quality activities. Although Congress continues to appropriate funds to the State Revolving Funds, the authorization for the Clean Water SRF expired in 1994 and the authorization for the Drinking Water SRF expired in 2003.

State Concerns

Resources available to address the necessary maintenance and upgrades to the existing waste water and drinking water systems have not kept pace with need. The Environmental Protection Agency has identified a \$535 billion gap in needed infrastructure funding over 20 years. The American Society of Civil Engineers (ASCE) graded the condition of the nation's wastewater infrastructure as a D-, noting that, "Older systems are plagued by chronic overflows during major rain storms and heavy snowmelt and, intentionally or not, are bringing about the discharge of raw sewage into the U.S. surface waters." In light of the mounting evidence that our identified water infrastructure needs far exceed current funding levels, states have been concerned by a disturbing trend that has reduced federal funding for the State Revolving Funds in recent years. While efforts have been made to reverse the trend, the Clean Water SRF has previously seen the program's funding cut nearly in half in just two years. Support for the Clean Water SRF and Drinking Water SRF is a critical component of the state-federal partnership for maintaining water quality and protecting public health. In addition, funding efforts to replace, rebuild and maintain waste water and drinking water systems are job-producing projects that make economic good sense. The National Association of Clean Water Agencies (NACWA) has estimated that each \$1 billion invested in clean water infrastructure supports the creation of more than 47,000 jobs. These projects also provide states and local communities the opportunity to strengthen the security of our existing water systems as well as manage the growing demands of population growth and development.

NCSL Position

NCSL has long supported Clean Water and Drinking Water SRFs and urges Congress and the Administration to:

- Reauthorize the Clean Water SRF and Drinking Water SRF:
- Increase funding for the Drinking Water SRF and the Clean Water SRF:
- Provide states with the authority to prioritize activities based on state public health needs:
- Remove the limitation on use of loan money for administration of the state revolving fund programs:
- Provide states with more flexibility in determining the most beneficial and cost-effective use of the SRFs:
- Allow water systems to use federal drinking water funds to acquire land for infrastructure construction.

State Activity

Collectively, state programs provide oversight, implementation assistance, and enforcement for approximately 169,000 public water systems nationwide. The CWSRF program has provided \$63 billion to 20,711 projects since its inception 20 years ago, while the DWSRF program has provided \$12.6 billion in assistance to 5,555 projects over the last 10 years. In 2007 alone, the CWSRF funded \$5.3 billion in high priority projects.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Tamra Spielvogel, Committee Director
State-Federal Relations, Energy & Environment
tamra.spielvogel@ncsl.org
(202) 624-8690

Amanda Naughton, Policy Specialist
State-Federal Relations, Energy and Environment
amanda.naughton@ncsl.org
(202)624.3572





Federal Issue Brief

WATER RESOURCES: CLEAN WATER ACT SET-ASIDE PROPOSAL

Issue Description

On Sept. 10, 2008, the Environmental Protection Agency (EPA) published a final rule for the NPDES Voluntary Permit Fee Incentive for Clean Water Act Section 106 Grants program in the Federal Register (EPA-HQ-OW-2006-0765; FRL-8712-7). State-administered National Pollutant Discharge Elimination System (NPDES) permit programs are currently funded through a combination of federal funds, state funds and user fees. According to the EPA the rule would provide financial incentives to states to implement adequate fee programs when administering an authorized NPDES permit program. The goal of the rule is to encourage states to implement adequate NPDES fee programs that shift part of the financial burden to those who benefit from NPDES permits. The rule takes effect for the FY 2009 grant process and will only be made available if Section 106 funding (the funding source for the set-aside used proposal) is greater than the FY 2008 level. While the EPA made a number of changes from the draft rule to the final rule, questions remain over the statutory authority of this proposal and its implications for Clean Water Act funding for the states.

State Concerns

The proposal to institute an incentive program for states to fund their National Pollutant Discharge Elimination System (NPDES) permit programs through user fees was first put forth by the Bush Administration in its FY 2007 budget request for the Environmental Protection Agency (EPA). The Senate FY 2007 Interior, Environment, and Related Agencies appropriations bill reported out of Committee included a legislative rider requiring the rule to be implemented by Dec. 31, 2006, however, the language was obsolete before the EPA released the proposed rule. The Senate legislation was never signed into law nor was it ever considered by the full Senate.

NCSL submitted comments on the proposed rule (Docket ID NO. EPA-HQ-OW-2006-0765) in a March 2, 2007, letter signed by State Representative Warren Chisum of Texas, Chair of the NCSL Agriculture, Environment and Energy Committee. NCSL expressed concern that the proposed rule would serve to compromise the state-federal partnership established in the CWA. At issue were the implications of the proposed set-aside on funding for the federally mandated program, which is primarily implemented by the states who are responsible for permitting, monitoring and enforcing state water quality management programs under the CWA. These programs are funded through a combination of federal funds, state funds and user fees. The rule proposed to set aside a portion of the federal funds, Section 106 grants, to establish an incentive program that would be accessible by few if any states. NCSL expressed concern that the underlying design of the permit fee incentive program was intended to shift the cost of this federally mandated program to the states while placing environmental progress second to program administration. While recognizing that the federal government cannot bear the entire burden of the NPDES permit program NCSL questioned EPA's authority to ask the states to fully fund a federally-mandated program through a single "acceptable" mechanism-user fees. In addition, NCSL is concerned that the rule exceeds the EPA's authority to allocate funds for a purpose not authorized by Congress under the act. Section 106(b) of the federal CWA gave EPA the authority to allocate funds to states for the prevention, reduction and elimination of water pollution, not for creating a set-aside for the purpose of promoting user fees.

Members of Congress have also opposed the rule. Their objections have raised many of the same questions and concerns highlighted by NCSL and other state organizations. Before the publication of the proposed rule, Senators Hillary Rodham Clinton (New York) and James Inhofe (Oklahoma) sent a letter to Director Rob Portman of the Office of Management and Budget. The Dec. 20, 2006, letter raised concerns over the funding implications of the proposal as well as EPA's authority to act on the issue. Following the publishing of the proposed rule in the Federal Register there were two more letters on the rule sent by Senators to EPA Administrator Stephen Johnson. Senator Inhofe was joined by Senators Richard Durbin (Illinois) and Ron Wyden (Oregon) in sending a Feb. 26, 2007, letter requesting "that the EPA reconsider promulgating a rule proposing changes in the manner that Clean



Water Act (CWA) Section 106 funding is allocated to the states.” In addition, a March 5, 2007, letter from Senators Inhofe, Clinton, Durbin and Wyden, Johnny Isakson (Georgia), John Warner (Virginia), Gordon Smith (Oregon), Ken Salazar (Colorado) and John Kyl (Arizona) again raised the issue of statutory authority and the potential funding implications of a single "acceptable" mechanism on both the states that administer the program and the communities and businesses that would face higher fees.

NCSL Position

NCSL opposes the implementation of set-aside programs such as the National Pollutant Discharge and Elimination Systems (NPDES) fee rule which can serve to increase the administrative burden on states and limit state funding and flexibility under the Clean Water Act. While the CWA is a federal mandate, EPA regulations should respect the primacy of states in implementing the NPDES program to control water pollution under the CWA. NCSL urges Congress and the Administration to prevent EPA from moving ahead with implementation of the NPDES fee rule and instead move to overturn the regulation. In addition, NCSL urges Congress to ensure that it is made clear that further set-asides by EPA of Clean Water Act Section 106 funds are contrary to Congressional intent. NCSL has long supported the importance of the state-federal partnership to protect and improve our national water quality. Both the overall value and the needs of these programs exceed current funding levels and should not be undermined by regulations that exceed statutory authority and weaken the funding balance of the program.

State Activity

As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The EPA oversees the NPDES program and approves applications from states to administer and enforce the NPDES program in that state. In most cases, the NPDES permit program is administered by authorized states. There are only five states that do not administer their own NPDES program: Alaska, Idaho, Massachusetts, New Mexico and New Hampshire.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Tamra Spielvogel, Committee Director
State-Federal Relations
Energy and Environment
tamra.spielvogel@ncsl.org
(202) 624-8690

Amanda Naughton, Policy Specialist
State-Federal Relations
Energy and Environment
amanda.naughton@ncsl.org
(202) 624.3572



Federal Issue Brief

WIRELESS CONSUMER PROTECTIONS

Issue Description

Wireless communications and broadband technology are the economic forces that are ensuring the continued financial health and stability of our country and our states. There is hardly an industry or trade that does not depend in some way on communications services and the infrastructure that provides vital information at the push of a button or the command of the voice.

Since 1993, for the most part the economic regulation of the wireless industry has been the domain of the Federal Communications Commission. States, however, continue to have authority to monitor wireless providers with regard to consumer protection issues. As a developing industry, there have been complaints by customers to the state officials and the FCC regarding billing issues, early termination fees and advertising issues. While legislation has been introduced in many states to regulate such consumer issues, legislatures have been reluctant to act.

While the wireless industry through self-regulation has been successful in significantly reducing the number of consumer complaints, NCSL continues to support the ability of state government to protect the interests of wireless consumers. However, in carrying out their consumer protection functions state legislatures have acknowledged the interstate nature of the wireless industry. Specific, targeted requirements (such as type size or billing formats) that vary from state to state may be well meaning. On the other hand, they may hamper the seamless provision of these services, resulting in confusion and increased costs for all customers.

State Concerns

The ability of wireless to travel beyond state boundaries tests customary approaches to customer service and consumer protection standards at the state and local level. States have expressed concerns in the disclosure of rates and terms, map service areas, trial periods, service termination practices and consumer service access. As a result, the majority of the wireless industry has taken significant strides in addressing these concerns, in part by adopting a Wireless Consumer Code.

State legislatures acknowledge the need to ensure that customers of wireless services are protected from unscrupulous activities by those providers who fail to abide by the Wireless Consumer Code. Some states have enacted the Wireless Consumer Code into their state statutes. However, as state policymakers, legislators and regulators, recognize the interstate nature of the wireless service industries, we also recognize the need for a national framework to protect consumers that is enforceable by state agencies.

NCSL Position

NCSL urges state and federal policy makers to work together to ensure that industry targeted consumer protections can be applied within a national framework that ensures the continued ability of the state attorneys general to enforce such consumer protections. A federal-state partnership is the best option to providing American wireless consumers with more competition, lower prices, service plan choice and broadband access.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Neal Osten, Federal Affairs Counsel
State-Federal Relations
Communications, Financial Services and Interstate
Commerce
neal.osten@ncsl.org
202-624-8660

Christopher Coleman, Policy Associate
State-Federal Relations
Communications, Financial Services and Interstate
Commerce
christopher.coleman@ncsl.org
(202) 624-8673





Federal Issue Brief

ECONOMIC RECOVERY

Issue Description

Unlike the federal government, states cannot use deficit finance to help stabilize an economic downturn. To meet balanced budget requirements when revenues decline during an economic slump, states must raise taxes and/or cut spending by deferring projects and reducing or eliminating services. By June 2008, 31 states reported that they collectively addressed a \$40 billion shortfall in their FY 2009 budgets, more than triple the amount reported by states in FY 2008. State budget-balancing actions can have the pro-cyclical effect of deepening and prolonging the slump.

- State tax increases offset the stimulus provided by federal tax reductions.
- State layoffs and cancellation of capital projects hinder economic growth.
- State cuts in public services may counteract federal efforts to provide assistance to the unemployed and those most affected by an economic downturn.

State Concerns

NCSL believes it is critical that federal fiscal proposals to revitalize the economy must recognize and account for the critical link between states and the national economy. Therefore, NCSL believes there is a need for federal policies that encourage job growth and retention, spur investment, and provide temporary relief for states as they carry out various state-federal partnerships.

NCSL Position

NCSL urges Congress and the administration to consider the following:

- **Federal Medical Assistance Percentage (FMAP):** Provide a temporary increase in FMAP to assist people who lose health care coverage during the economic downturn and complement support—an extension of unemployment benefits—provided in the previously passed supplemental spending bill. In addition, states that received a scheduled reduction in FMAP at the beginning of FY 2009 should be held harmless at the state's FY 2008 FMAP level for purposes of determining the state's FMAP level that was provided in the stimulus package.
- **Infrastructure Projects:** Provide increased funding for broad, ready-to-go transportation, clean water and drinking water projects. The economy needs government assistance to stimulate job creation. Every \$1 billion invested in infrastructure translates into tens of thousands of jobs for America's working families.
- **Employment Benefits:** Provide for a temporary extension of unemployment benefits to eligible people who have exhausted their state benefits. Make available adequate administrative funding for states.
- **Food Stamp Program:** Provide a temporary increase in food stamp benefits to help the increasing number of families struggling with rising food costs. The U.S. Department of Agriculture reports that, from July 2007 to July 2008, the cost of food at home under the Thrifty Plan—the basis for the food



stamp benefits—jumped 10 percent. This translates into a total cost of as much as \$598.70 per month for a family of four. (An additional 2 million people received food stamp benefits since June 2007.)

- **Discretionary Grants to the States:** Provide states discretionary grants with the flexibility to address fiscal concerns through one-time state grant assistance. Discretionary grant funds also help eliminate shortfalls in state-federal partnerships.
- **Child Support Enforcement Payments:** Rescind the provision in the Deficit Reduction Act (P.L. 109-171) that prohibits states from using incentive payments to draw down federal funds to help states collect child support payments and provide immediate assistance to working families. The child support program also is incredibly cost effective—for every \$1 spent in government funds, \$4.58 is collected on behalf of working families.
- **Sales Tax Fairness and Simplification:** Grant states that have complied with the Streamlined Sales and Use Tax Agreement the authority to require collections of sales tax on remote sales and provide equity for all retailers. Sales tax simplification would reduce the current \$6.8 billion cost for businesses to collect sales tax and provide as much as \$30 billion in fiscal relief to the states at no expense to the federal government.
- **Federal Tax Investments:** Pursue any federal personal and corporate income tax relief through tax credits, such as accelerating the scheduled increase in the child tax credit and other changes in federal tax liability, rather than through exclusions or deductions.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Molly Ramsdell, Senior Policy Director
State-Federal Relations
Budgets and Revenue
molly.ramsdell@ncsl.org
(202) 624-3584

Jeff Hurley, Policy Associate
State-Federal Relations
Budgets and Revenue
jeff.hurley@ncsl.org
(202) 624-7753



Federal Issue Brief

SALES TAX FAIRNESS AND SIMPLIFICATION: CLOSE A MASSIVE TAX LOOPHOLE END DISCRIMINATION OF MAIN STREET SELLERS

Issue Description

Forty-five states plus the District of Columbia use sales taxes as an integral part of their revenue systems. Presently, revenues from sales tax account for over one third of state budgets. Changes in the nation's economy and in the way consumers make purchases are eroding sales tax revenues. For example, the Business Research Center at the University of Tennessee estimates that state and local governments may have lost as much as \$30 billion in 2008 because they were not able to collect taxes on out-of-state sales, of which it is estimated that \$17 billion would be from sales over the Internet. Those losses clearly exacerbate the severe budget gaps states are currently facing and affect legislatures' ability to provide essential services such as education, emergency preparedness, homeland security, health care, transportation and corrections.

The National Conference of State Legislatures' interest in streamlining sales taxes originated with two U.S. Supreme Court decisions—the 1967 *Bellas Hess* case and the 1992 *Quill v. North Dakota* case—which acknowledged that consumers owe the sales tax when they purchase goods through catalogues or over the Internet, but ruled that states cannot force retailers to collect the tax. The *Quill* case, though, offered critical clues about what states could do to overcome the court's objections. Most importantly, the court placed the problem with the complexity of many state sales tax systems and the burden that imposes on a out-of-state retailer in determining the tax owed. The Court further implied that this was an issue that the Administration and the Congress should address.

The Streamlined Sales and Use Tax Agreement is a significant attempt to modernize sales and use tax systems and to save them as viable components in state revenue mixes. The Agreement was developed by legislators, tax administrators and private sector representatives from 35 states. We believe the Agreement substantially simplifies state and local sales tax systems, removes the burdens to interstate commerce that were of concern to the Supreme Court, and protects state sovereignty. In addition, the agreement “levels the playing field” between local and out-of-state merchants and benefits all retailers by reducing their administrative costs, estimate by a joint government and private sector study in 2003 to be over \$6 billion a year.

Participation in the Agreement, of course, is voluntary. The Agreement serves as the basis for Congress and the Administration to grant authority to states to require all sellers, regardless of location, to collect sales and use taxes. The Streamlined Sales and Use Tax Interstate Agreement provides the states with a blueprint to create a simplified sales and use tax collection system that when implemented, allows justification for Congress and the Administration to overturn the *Bellas Hess* and *Quill* decisions.

State Concerns

As was stated above, the University of Tennessee estimates a revenue loss to state and local governments of over \$30 billion a year in uncollected sales taxes for remote sales. As states are facing massive budget deficits, states need the assistance of the Administration and Congress to close a loophole in the tax collection system. States through the leadership of the National Conference of State Legislatures and the National Governors Association have crafted the Streamlined Sales and Use Tax Agreement to modernize and simplify the collection and administration of state sales taxes. While 22 states have complied to the Agreement, participation by remote sellers is only voluntary, for the new system to close the loophole on uncollected sales taxes, the Administration and the Congress must work to overturn the *Bellas Hess* and *Quill* decisions.

NCSL Position



Starting in 1999, NCSL with NGA led the way for states to simplify and modernize the states' sales and use tax collection systems. We have succeeded. NCSL along with the other organizations representing state policymakers support action by the Administration and Congress to overturn the Quill decision by enacting the federal Sales Tax Fairness and Simplification Act, sponsored by Senator Mike Enzi of Wyoming and Congressman William Delahunt of Massachusetts.

State Activity

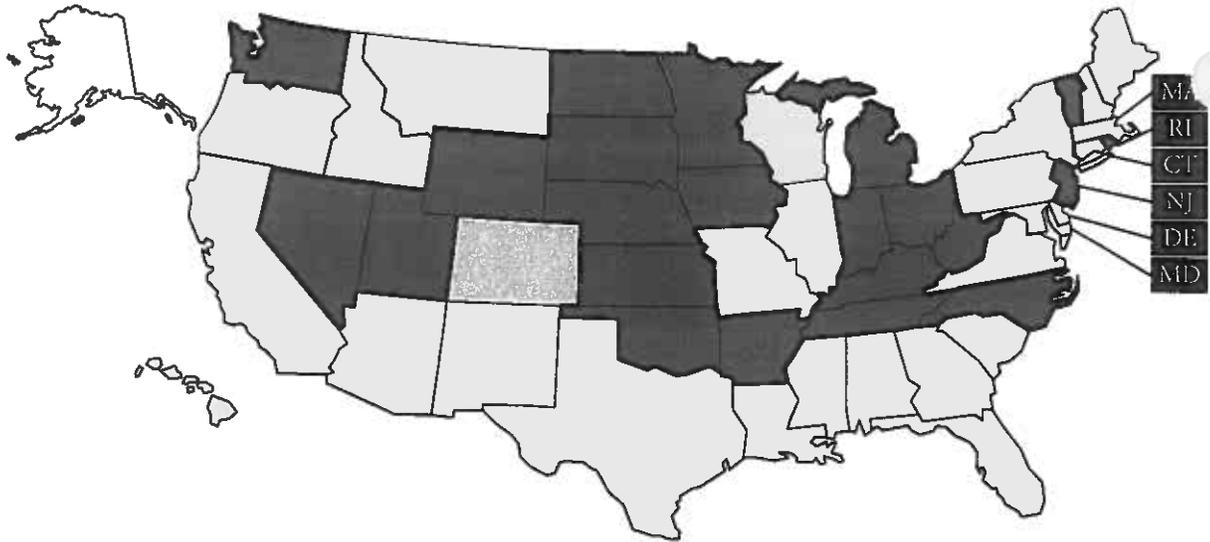
Beginning in 2001, 35 states enacted legislation to send state legislators, tax administrators, representatives of the private sector and local government officials to multistate meetings over the course of a year to develop and finalize the Streamlined Sales and Use Tax Agreement. Forty-two states eventually became a part of the Streamlined Sales Tax Implementing States. The Agreement was ratified by the states in 2002 and it became operational in October 2005. To date 22 states have complied with the Agreement, over 1100 remote sellers have volunteered to collect under the new system and these 22 states have received over \$300 million in previously uncollected revenues. The remaining 20 states are working towards compliance to the Agreement.

Streamlined Sales Tax Implementing States

- Alabama
- Arkansas
- District of Columbia
- Florida
- Illinois
- Indiana
- Iowa
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Missouri
- Nebraska
- Nevada
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota

- Ohio
- Oklahoma
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas

- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming



States in Compliance with the Agreement States Working on Implementation No Participation No Sales Tax

FOR FURTHER INFORMATION, PLEASE CONTACT:

Neal Osten
 Federal Affairs Counsel
 Communications, Financial Services
 & Interstate Commerce
neal.osten@ncsl.org
 (202) 624-8660

Christopher Coleman
 Policy Associate
 Communications, Financial Services
 & Interstate Commerce
Christopher.coleman@ncsl.org
 (202) 624-8673



Federal Issue Brief

UNFUNDED MANDATES

Issue Description

The presence of federal mandates and other federally-imposed costs on states continues to create a serious fiscal challenge for state governments. While Congress enacted the Unfunded Mandates Reform Act (UMRA) in 1995 to increase the federal government's accountability for imposing requirements on the states without federal funds to pay for them, the act has its limitations. As a result the federal government continues to effectively shift costs--at least \$131 billion over the past five years--to state governments, through legislation and regulatory activity, thereby intensifying pressures on state budgets.

The Government Accountability Office's May 2004 analysis of UMRA, concluded that "...there are multiple ways that both statutes and final rules containing what affected parties perceive as 'unfunded mandates' can be enacted or published without being identified as federal mandates with costs or expenditures at or above the thresholds established in UMRA." In addition, the report found that, "The findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected nonfederal parties."

State Concerns

The experience of state and local governments with UMRA warrants further review. There remain gaps in the fiscal protections provided to state and local governments. The law must be refined to provide broader protections to states and localities against the imposition of costly and administratively cumbersome mandates.

NCSL Position

UMRA must be refined to provide broader protections to states and localities against the imposition of costly and administratively cumbersome mandates. Specifically, NCSL encourages the federal government to enact reforms to:

- Expand the definition of "mandate" to include new conditions of grant aid for existing federal programs, including costs not previously identified, including mandated results.
- Expand the definition of "mandate" to include those that fail to exceed the statutory threshold only because they do not affect all states.
- Make improvements to Title II, including enhanced requirements for federal agencies to consult with state and local governments and the creation of an office within the Office of Management and Budget that is analogous to the State and Local Government Cost Estimates Unit at the Congressional Budget Office.
- Revise the definition of mandate to include direct costs to capture and more accurately reflect the true costs to state governments of particular federal actions.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Molly Ramsdell, Senior Committee Director
State-Federal Relations
Budget and Revenue
molly.ramsdell@ncsl.org
(202) 624-3584

Jeff Hurley, Policy Associate
State-Federal Relations
Budget and Revenue
jeff.hurley@ncsl.org
(202) 624-7753





Federal Issue Brief

FREE TRADE & FEDERALISM: THE DOHA ROUND

Issue Description

The Doha Round of World Trade Organization (WTO) negotiations began in November 2001, as countries opened negotiations to liberalize agricultural, manufacturing, and services markets. The intent of the round, according to its proponents, was to make trade rules fairer for developing countries. Opponents charged that the round would expand a system of trade rules that interfered excessively with countries' domestic policy space. In recent years, progress in the Doha Round has stalled on several occasions, yet the major players have refused to abandon negotiations.

State Concerns

States have seen the benefits that free and open access to overseas markets as negotiated in past agreements gives to American businesses and their products. However, the world economy has profoundly changed in the last 35 years while the way the United States makes trade policy has not. The 1974 Trade Act that gave the president Trade Promotion Authority ("Fast-track," or TPA) gives states very little policy input on trade, despite the fact that economic decisions regarding trade have powerful consequences for cities and states.

As a result, future U.S. trade decisions made in the context of the Doha Round risk to put a low priority on traditional American values of constitutional federalism. States are committed and prepared to treat foreign firms that do business within their borders in a nondiscriminatory fashion, as provided for in the U.S. Constitution. What the states are not prepared to accept, however, are challenges to their sovereignty and authority based on arbitrary and unreasonable international standards.

NCSL Position

The National Conference of State Legislatures (NCSL) believes reservations can be made to trade and investment agreements that limit preemption of state law and that preserve the authority of state legislatures. The following measures, among others, are necessary to ensure that international trade agreements do not adversely impact state budgets or unnecessarily constrain state regulatory authority:

- NCSL is concerned about the proposed inclusion of the traditional state domains, such as higher education, in the context of the Doha Round. The WTO gambling suit illustrates the dangers of committing service sectors without appropriate federal-state consultation.
- Current negotiations to define and implement broad new disciplines on the domestic regulation of services risk deregulating to the point of violating U.S. constitutional principles. U.S. negotiators should approach these negotiations determined to defend the legitimacy and appropriateness of our sub-national regulatory regimes.
- If the new president seeks a renewal of TPA to complete the Doha Round, NCSL will only support such a grant of authority if it (a) includes a mandate not to grant foreign companies greater procedural or substantive rights than those afforded U.S. citizens and (b) commits the federal government to protecting and defending state authority when it is exercised in conformity with accepted U.S. constitutional principles.
- Trade agreement implementing language must include provisions that deny any new private right of action in U.S. courts or before international dispute resolution panels based on international trade or investment agreements.

State Activity

In the last few years, Maine, New Hampshire, Utah, Vermont, and Washington have created commissions to focus on trade matters. Their attention along with the development of NCSL's Trade Policy Leadership Seminar for state officials has helped improve legislators' awareness of the issues discussed above and raise their visibility to outside entities.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Diana Hinton Noel, Committee Director
State-Federal Relations
Labor & Economic Development
diana.hinton@ncsl.org
(202) 624-7779

Paul Snow, Policy Associate
State-Federal Relations
Trade & Transportation
paul.snow@ncsl.org
(202) 624-8683

