

WASHINGTON WATCH

10 TOP ISSUES FOR STATES

State lawmakers have to keep an eye on Congress this session defending against unfunded mandates and preemption.

By William Wyatt

Washington's budget deficit reduction plans end up costing states money. Concerns about cost shifts and preemption will be the predominant themes for state legislatures when Congress reconvenes this month.

"Congress seems to be exporting the federal deficit to the states," says West Virginia Delegate John Doyle, chair of the NCSL Standing Committee on Budgets and Revenue.



DELEGATE
JOHN DOYLE
WEST VIRGINIA

"States can ill afford to cover the cost of Washington's refusal to make difficult budget decisions," he maintains.

States again will have their work cut out for them during the 2006 congressional session defending against unfunded mandates, cost shifts and preemption of state authority and countering the "federal deficit export phenomenon." Here are the top 10 issues they'll be watching.

1

UNFUNDED MANDATES

At the current rate, Congress will spend more than \$300 billion of state money over the next 10 years through unfunded mandates and cost shifts. This estimate is conservative. Doubling it is neither unrealistic nor improbable.

The Unfunded Mandate Reform Act of

1995 (UMRA) was enacted when reducing the federal deficit and balancing the budget was a federal priority. The law was designed to reduce the number of congressional proposals that would pass costs to states.

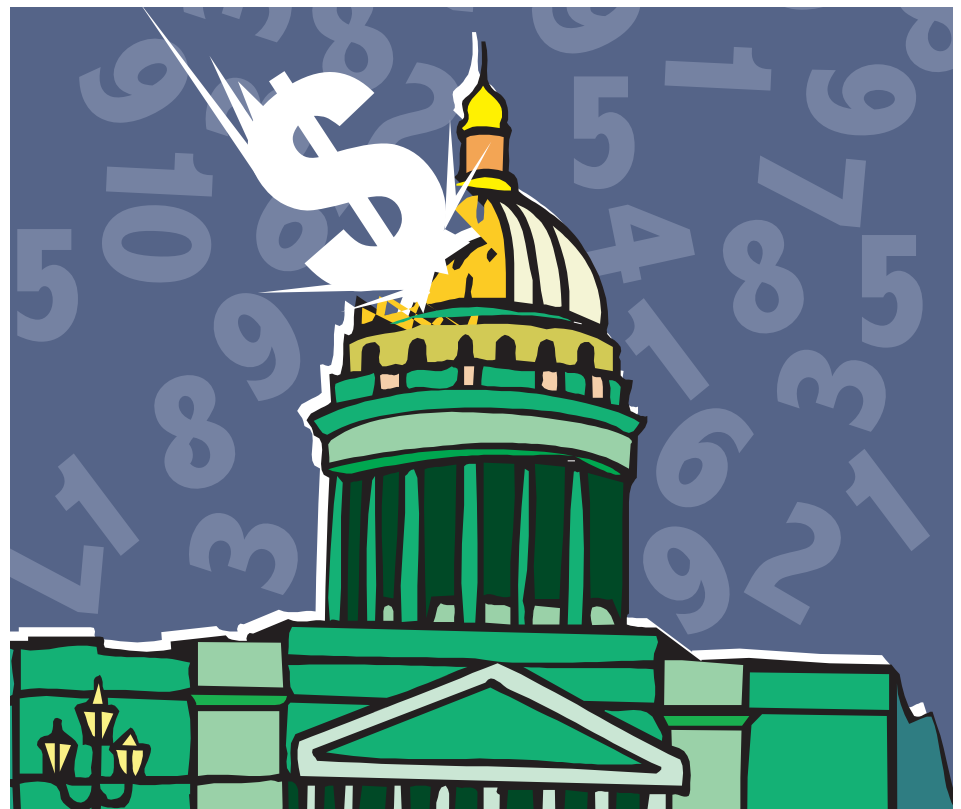
Now that budget priorities have changed and the federal budget deficit is on the rise, so too are attempts inside the beltway to shift the costs of many programs to states.

For FY 2004 and 2005 collectively, federal programs cost state and local governments at least \$51 billion. Because UMRA has limited applicability, costly federal programs like the No Child Left Behind Act, the Individuals with Disabilities Education Act

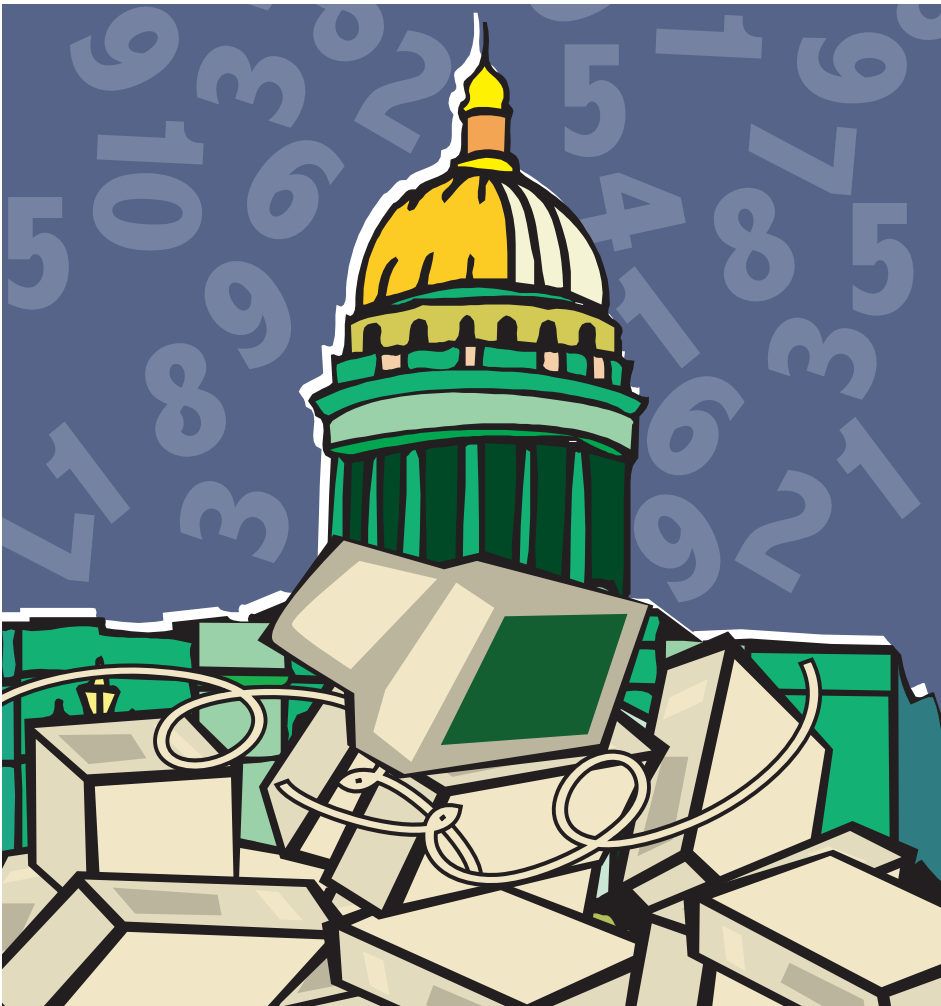
(IDEA) and the Medicare prescription drug program all contain sizeable cost shifts that fly under the UMRA radar screen.

"Many programs are designed to be state-federal partnerships," Delegate Doyle says. "The problem is these partnerships are out of balance. UMRA has been an effective tool to control cost shifts in the past and with a little work, it can be so again."

State lawmakers will seek to alter UMRA this year, changing the definition of an unfunded mandate. Just including conditions of grant aid, as found in No Child Left Behind, for instance, would make UMRA a far more effective tool for state legislatures.



William Wyatt is a writer with NCSL's Communications division.



2

STREAMLINED SALES TAX

Eighteen states have changed their sales and use tax codes to comply with the Streamlined Sales and Use Tax Agreement that went into effect in October. The strictly voluntary agreement is designed to create simplicity and uniformity for online, television and catalog retailers to collect sales taxes for states in which they do not have a physical presence.

“The process of streamlining the nation’s sales tax codes has been akin to taming a



SENATOR
**STEVE
RAUSCHENBERGER**
ILLINOIS

dangerous wild animal,” says Illinois Senator Steve Rauschenberger, NCSL president. “You never knew what to expect next.”

Rauschenberger says the cooperation and collaboration among member states will be worth it. “It will allow them to recoup valuable resources that can be put toward programs such as education, tax relief, or public safety or other pressing state needs.”

Without congressional action, however, states could lose an estimated \$60 billion between 2003 and 2008 from online sales. Therefore, NCSL and governors will seek federal legislation to recognize the sales tax agreement and grant the authority to require the collection of their sales taxes by out-of-state retailers to the 18 states and any others that later conform their tax codes.

3

TELECOMMUNICATIONS REFORM

It should come as no surprise that the information superhighway has sped past gov-

ernment regulation of the telecommunications industry. Voice-over Internet Protocol or VoIP, cable and satellite Internet, wireless broadband Internet, cell phones and various other new technologies have changed the face of the telecommunications industry.

Many of these new technologies are capable of delivering telecommunications services but do not fit within the definitions of the traditional regulatory framework. As a result, similar services can be delivered via networks that are regulated and taxed differently or sometimes not at all, creating a competitive inequity among telecommunications service providers.

As Congress considers how these new technologies should fit into the overall scheme of telecommunications regulation, state lawmakers will pay particular attention to how federal lawmakers handle several issues, especially those dealing with taxes and fees. States want a say in any move Congress makes to establish competitive neutrality on transaction taxes and fees or to simplify and modernize them. States want to maintain sovereignty over establishing state tax policy.

4

REAL ID

Driver’s license security has been a growing concern since the terrorist attacks of Sept. 11, 2001. Despite states’ efforts to secure their licensing process, Congress enacted, and the president signed, a hastily assembled driver’s license security measure—the REAL ID Act—in early 2005.

State legislators, governors and local officials consider this a most egregious preemption of state authority. Many believe that REAL ID, in its current form, cannot be put into effect.

“The law handcuffs state officials with unworkable, unproven, costly mandates that compel states to enforce federal immigration policy rather than advance the paramount objective of making state-issued identity documents more secure and verifiable,” says New York Senator Mike Balboni.

State lawmakers, governors and motor vehicle administrators will collaborate with federal regulators to design an implementation plan that can succeed—a very tough challenge. States will also seek federal funding to offset the estimated \$9 billion to \$13 billion in costs.



SENATOR
MIKE BALBONI
NEW YORK

5 E-WASTE

Disposing of old cell phones, aging computers, bulky computer monitors and other electronics equipment is turning into a mountain of a problem. Many of these high-tech items contain hazardous contaminants such as lead, mercury, cadmium, chromium and fire retardants that make disposal a public health challenge.

As more than 250 million computers and 650 million cell phones head to the scrap heap in the next five years, some state and local governments have created e-waste recycling and disposal programs. Arkansas, California, Maine, Maryland and Virginia have all enacted initiatives aimed at keeping electronic waste out of landfills by creating or encouraging reuse or recycling programs.

With more than 2 million tons of e-waste generated each year, federal policymakers have already begun to weigh in on the issue. Many state lawmakers welcome the federal government's efforts—but do so with caution. Disagreements about how to control this waste abound. State lawmakers will seek solutions that respect state authority, avoid cost shifts and establish a workable regulatory framework.

6 HUMAN SERVICES

The devastating hurricanes that cut across the Southeast have created a host of unforeseen human services issues for all levels of government. Congress has responded by appropriating billions of dollars for relief and easing eligibility rules and requirements for services such as food stamps, Medicaid, housing and other essential services.

Helping the victims of the 2005 hurricanes raised the level of awareness of these essential programs. A discussion on the broader issue of poverty in the United States is just beginning.

Federal budget deficit reduction efforts threaten the state-federal partnership that traditionally categorizes human services programs. The historic welfare reform act of 1996 expired in 2002 and reauthorization of the block grant program continues to languish. The food stamp program is due for reauthorization in 2007.

State legislators are eager to work with their congressional counterparts to formulate a comprehensive human services plan that gives states flexibility to innovate, adequate funding and a level of certainty for future planning.

7 FEDERAL TAX REFORM

The president's Advisory Panel on Federal Tax Reform reported its findings in November 2005. The president will use the report as a starting point for fashioning a tax reform proposal expected in early 2006.

Because of the linkage between state and federal tax bases and because of the federal deduction for state and local income taxes and property and sales taxes, any proposal will raise conformity and fairness issues for state legislators. Protection of each state's taxing authority, ensuring that federal tax changes are not applied retroactively, preserving deductibility, and constantly reminding federal policymakers of linkage issues will keep state legislators engaged in any federal tax reform debate.

8 MEDICAID REFORM

Medicaid is the fastest growing budget line in most states. What began as a welfare program to improve access to health care for a relatively small population has become a critical component of the health care system in the United States. As Medicaid celebrates its 40th year, state lawmakers have elevated reform of the program to the top of their congressional wish list.

State legislators developed a series of principles to guide their efforts to reform the state-federal partnership at the NCSL Annual Meeting last summer. Stabilizing Medicaid funding, providing predictability in program administration, coordinating the Medicaid and Medicare programs, increasing public/private partnerships and establishing a viable long-term care system will be the chief goals of state legislators.

In 2005, however, Congress considered reform only as a tool for deficit reduction. Medicaid reform is a stand-alone issue with the three-pronged goal of system improvement, administration efficiency, and benefit access preservation for vulnerable populations.

9 IMMIGRATION

Federal immigration reform is no longer a back-burner issue. Talk-show hosts rant about the lack of enforcement. Newspapers highlight citizen initiatives to stem the flow of illegal border crossings. Politicians debate the costs of providing services to legal and illegal immigrants.

Several congressional proposals focus on establishing a temporary guest worker program, enhanced border security and repair to the broken immigration document system. The possible "legalization" of undocumented immigrants will create critical human services, health care, law enforcement, civic integration, labor, public health and identity verification issues for states and localities. As they did 20 years ago when immigration was a hot issue, state legislators will work to avoid cost shifts, protect sovereignty, create a workable reimbursement system to cover unavoidable costs and ensure that the federal government provides the tools they need to protect borders, verify identity and address the economic questions this issue raises.

10 ENERGY PRICES

Most Americans saw the price of gasoline peak at more than \$3.00 per gallon shortly after Hurricane Katrina disabled many oil refineries along the Gulf Coast. In response, Congress introduced several measures in an attempt to stabilize gasoline and other energy prices. Many of the proposed measures would preempt state authority on a number of fronts, including the federalization of the domestic refinery licensing process and changing the Clean Air Act's New Source Review program, fuel blends program and ozone attainment standards.

Mired in the committee process, the congressional proposals have failed to gain momentum as gas prices have fallen. Energy prices continue to garner headlines amid news of oil companies' record profits and are likely to be an issue during 2006.