

Have you spotted this trend?

BY TRENDS RESEARCH AND RESPONSE GROUP OF THE COUNCIL OF STATE GOVERNMENTS

Policy analysts with the Trends Research and Response Group of The Council of State Governments track developments in various areas that will impact the decisions policy-makers will have to make on emerging trends.

This month, several policy analysts look at the latest develop-

ments in transportation, health, education, tax policy and the environment.

While some of the issues haven't garnered a lot of newspaper headlines, their significance for policy-makers will grow in coming months as state officials deal with their consequences.

Transportation – Roadside memorials draw states' attention

Across the United States, on interstates, highways and rural roads, the growing frequency of roadside memorials is challenging states to balance safety concerns with grieving families' attempts to memorialize lost loved ones.

Many state officials are concerned that some memorials could distract drivers or obstruct their view. In addition, many worry about the potential safety hazards that arise when people stop to visit or photograph the memorials, which are often just feet from dangerous stretches of highway.

But no federal law regulates roadside memorials, and state and local governments are left to deal with the issue, which has resulted in a hodgepodge of rules and regulations. Some states allow standard state-issued signs. A few have banned roadside memorials, while others leave regulations to local governments or the transportation department.

Colorado, Massachusetts and Wisconsin are the only states that explicitly ban roadside memorials. However, due to recent outcry from victims' families, Wisconsin is considering revising its policy.

Missouri also prohibits roadside memorials but encourages victims' families to participate in an adopt-a-highway program in honor of the victim. West Virginia and Idaho allow roadside memorials, but permit their state transportation departments to remove them without notice if they are deemed a safety hazard.

Texas and Florida allow only state-issued signs that bear the victim's name and say "Drive Safely." California, for a \$1,000 fee, allows roadside memorials for victims of crashes involving drugs or alcohol. For a \$200 fee, New Mexico issues a sign that remains in place for one year. New York leaves the regulation of roadside memorials up to individual municipalities.


Several states have taken up the issue recently, with varied results. An Indiana bill introduced earlier this year, which failed, would have created uniform signs to commemorate victims. State highway workers would have been responsible for removing any memorial not placed by the department. Indiana's DOT is now working on a policy that would encourage families to select a state-issued sign for their memorials.

Virginia lawmakers approved legislation to create standardized road signs, but the program has not been implemented because of lack of funding. The markers were to be of simple design with a message

such as "drive safely in memory of" and the victim's name, which would be removed after two years.

Alaska had a similar program in which the state erected standard-issue signs in memory of victims, but legislation passed this year reversed the ban on personalized memorials.

Wyoming issued a new policy this year prohibiting privately constructed memorials. Issued through its Department of Transportation, Wyoming permits standard-issue signs for crash victims that are posted for five years.

Many victims' advocates and their families say states are trying to impose government regulations upon grief. As a result, roadside memorials appear to be evolving into an issue of freedom of speech versus states' responsibility to effectively regulate public safety. 

— *Barry Hopkins, chief infrastructure policy analyst, bhopkins@csg.org*



Tax Policy – States move to counter federal tax changes

Changes to the federal tax code over the last three years are spurring calls for states to decouple from certain federal provisions. Decoupling means changing a part of a state code so that it no longer conforms to the current federal code, or in some cases, not acting to conform to a new federal provision. Decoupling enables states to retain some revenue that would otherwise be lost because of federal changes' effect on state tax codes. At issue is whether conforming to the federal changes will cost the states more in lost revenue over time than the \$20 billion in direct aid they get from the Jobs Growth and Tax Relief and Reconciliation Act of 2003.

Three federal laws are involved: the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Worker Assistance Act of 2002, and the Jobs and Growth Tax Relief Reconciliation Act of 2003. Congress and the Bush administration passed these bills with the idea that providing tax relief to individuals and businesses would stimulate the economy. But these federal laws also affect state tax codes, and in turn, state revenues.


The Economic Growth and Tax Relief Reconciliation Act of 2001 phases out

the federal estate tax by 2010. As of Jan. 1, 2005, it also repeals a credit that states use for estate tax purposes. Experts say this act could effectively repeal many states' estate taxes – unless states adjust their codes.

The Job Creation and Worker Assistance Act of 2002 enables businesses to accelerate the depreciation of certain assets acquired between 2001 and 2004. Critics suggest that the federal credit that enables businesses to depreciate their assets faster – and thus reduce corporate taxes – will also reduce state tax revenue, because state depreciation schedules generally conform to federal depreciation schedules.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 increases the amount of the bonus depreciation credit that was created in 2002 and extends use of the credit by one year. It also increases the amount that small businesses can deduct for certain new investments and increases the standard deduction for married couples. Again, if a state's code conforms to these provisions, they could reduce state revenue. In addition, states that base their marriage deduction amounts on the federal amount would see their taxes reduced accordingly.

The projected losses in state tax revenue because of these federal laws vary, and ultimately depend on how states react to the federal laws. According to the Center on Budget and Policy Priorities:

- As of May 2002, at least six states had decoupled from some of the federal estate tax provisions enacted in 2001. At least four states introduced legislation to decouple from the estate tax changes.
- As of early June, a majority of states had decoupled from the bonus depreciation provisions in the federal laws. Thirteen states had not decoupled, and four had partially decoupled.
- As of early June, the increase in the amount of deductions for new investments by small businesses that is contained in the 2003 federal law will carry over to 45 states, unless they change their tax codes.
- Ten states that conformed to the federal standard deduction for married couples as of June will see their state deductions increase in conjunction with the federal amount if they don't change their state code. 

— Bill Voit, senior projects director, bvoit@csg.org

Health – Maine case clears way for innovative prescription drug laws

A U. S. Supreme Court ruling handed down on May 19 could clear the way for states considering legislation aimed at reining in the rising cost of prescription drugs.

Maine made history in 2000 by becoming the first state to enact a comprehensive drug price control law, which established the Maine Rx Program. However, pursuing this innovative idea also meant wading through uncharted legal waters that took the case all the way to the U.S. Supreme Court in *PhRMA v. Walsh*.

The Pharmaceutical Research and Manufacturers of America, a trade association known as PhRMA, challenged the program, claiming that it is pre-empted by the Medicaid Act and violates the U.S.

Constitution's commerce clause.

In a 6-3 decision the Supreme Court lifted a U.S. District Court injunction that had delayed the program's implementation.

While the Court ruled in favor of the state, it pointed out that the ultimate authority rests with Secretary of Health and Human Services Tommy Thompson, who approves all state Medicaid plans.

In a statement released just after the ruling, Maine Gov. John Baldacci announced, "This ruling underscores the fact that states can lead the way when it comes to health care reform and innovation. Maine is being recognized throughout the nation as a leader in the effort to ensure access to more affordable prescription medication."

On June 13, less than a month after the

injunction was lifted, the state Legislature passed Maine Rx Plus, a revised version of the original plan.

The revised Maine law is unique in that it uses the state's Medicaid population to pressure drug makers to reduce the costs of prescription drugs for uninsured residents. Maine Rx Plus targets those who do not qualify for Medicaid but often have great difficulty affording prescription drugs.

The new program includes an income eligibility limit of 350 percent of the federal poverty level – \$31,400 for an individual, \$42,420 for a couple and \$64,400 for a family of four. A hardship clause allows anyone to participate if their drug costs are at least 5 percent or medical expenses are at least 15 percent of their household income.



In a state with approximately 325,000 uninsured residents, an estimated 275,000 people, including many senior citizens, will be eligible to purchase certain drugs at the same price as participants in MaineCare, the state's Medicaid program.


The plan directs the state commissioner

of human services to use the state's Medicaid buying power to negotiate rebates, which are then passed along to eligible consumers. Enrollees will be able to buy preferred drugs at a discount of between 15 percent and 60 percent once the program is underway in 2004.

The foundation of the state's leveraging power is the law's provision that drug makers who refuse to pay the rebate for Maine Rx Plus enrollees will be subject to a "prior authorization" procedure from the state before their drugs can be prescribed for Medicaid recipients.

According to a report released by the U.S. Public Interest Research Group in July, uninsured residents pay an average of 72 percent more than the federal government for prescription drugs. The Court's ruling enables Maine, and no doubt many other states, to move forward in extending these government discounts to a broader group of citizens.

With 28 states joining in filing an *amicus* brief supporting the Maine law, the Court's ruling may be a signal to action for those waiting in the wings. Since the ruling, Hawaii and Illinois have enacted similar laws, and six other states have bills pending. In addition, similar bills were introduced in 18 other states this year, but were unsuccessful.

With the Court's ruling, the choppy legal waters surrounding this issue have been calmed and more states are likely to apply this model. 

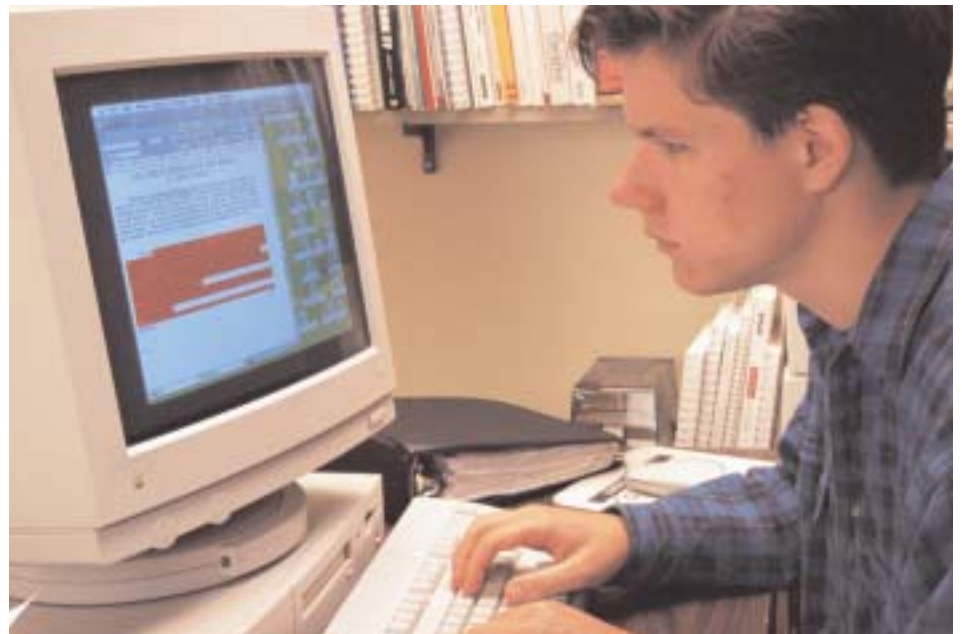
— Sally Sue Brown, health policy analyst, sbrown@csg.org

Education – E-Learning gains ground

In Florida, it is being used to help address the class-size reduction ballot passed last November. In rural states like Alaska and South Dakota, it reduces the vast expanse of miles between students and instructors. And for home-schoolers, it offers expanded curricula.

What is this emerging trend in education? It is the advent of cyber schools and the proliferation of virtual education for the nation's K-12 schoolchildren.

Nationally, 16 states have either established virtual high schools or plan to do so this school year, according to *Education Week's* special report, *Technology Counts 2003*. According to the report, 16 state departments of education currently run statewide virtual schools, and three others – Arizona, Texas and Wisconsin – are in the pilot phase of e-learning.




In addition, 24 states allow for the creation of cyber charter schools. Only 18 states have neither virtual schools nor cyber charter schools. And Iowa, one of those 18, plans to have a fully operational online school by this fall.

Over the past few years, states have started to embrace the idea of incorporating online instruction into the standard curriculum, and some have crafted policies to guide schools in how they should use online instruction. Alabama, for example, requires online teachers to receive special training, according to *Education Week*. And five states now require at least one in-person meeting between students in online courses and their teachers.

This spring, Florida legislators passed a bill that changes the way that the state's online school will be financed; that change is being touted as a milestone for virtual education. The Florida Virtual School will become part of the regular per-pupil funding system, with funding based on how many students actually pass the school's online course, according to the magazine. If students do not pass, the school will not be paid. The funding change is part of a broader education bill chiefly designed to guide implementation of a voter-approved ballot measure that requires Florida to reduce class sizes.

In May, The U.S. Department of Education called for input from a wide

array of education stakeholders in crafting a new National Education Technology Plan. "The plan will center on how to help students as they grow up being exposed to various technologies," said Secretary of Education Rod Paige. "As technology continues to be an important part of children's lives outside of school, it is shaping their expectations of what school will be like. The National Education Technology Plan intends to explore this trend and the implications for creating digital age educational opportunities to match the expectations of digital age students." 

— Charlotte C. Postlewaite, chief education policy analyst, cpostlewaite@csg.org

Environment – States getting clearer picture of air quality trouble spots

Stronger federal air quality standards for two pollutants will force state policy-makers to address how local communities will comply.

The Clean Air Act requires the United States Environmental Protection Agency (EPA) to review six major air pollutants every five years. In recent months, two air pollutants have been under review by EPA and the states: ground-level ozone and particulate matter.

Ground-level ozone is a colorless, toxic gas formed at ground-level usually on hot summer days. Cars, factories, lawnmowers and other sources emit volatile organic compounds and oxides of nitrogen that then react in the presence of sunlight to form ground-level ozone, which can cause asthma attacks and damages crops.

In July 2003, governors submitted to EPA recommendations of areas in their states that are failing to meet the new eight-hour monitoring standard for ground-level ozone pollution. Federal officials will use these state recommendations to designate non-attainment areas by April 15, 2004. Once non-attainment areas are designated, states will have three years to take corrective action. This new standard will replace the current one-hour monitoring standard, which has been deemed inadequate to protect human health.

States have discovered that areas once in compliance with the one-hour monitoring standard will no longer comply with the new eight-hour monitoring standard. Early

EPA estimates, based on 1999-2001 monitoring data, indicate that 280 counties, representing approximately 111 million people, will not comply with the new eight-hour monitoring standard.


In Ohio, for example, 33 out of 88 counties do not meet the eight-hour standard, prompting state officials to consider expanding tail pipe emissions testing into counties that do not have it. Indiana has 21 counties in non-attainment and 10 Kentucky counties are in non-attainment.

In July, Michigan's congressional delegation, along with the Southeastern Michigan Council of Governments, sent a letter to EPA requesting that states be allowed to determine how they will comply with the new ozone standard. These state officials are concerned that EPA compliance requirements may be costly and burdensome for the counties that are in non-attainment. They would like to ensure that there is flexibility in implementing ozone-control measures. Of particular concern to Michigan is the possibility of vehicle emissions testing. The officials noted that new vehicle emissions technologies may make the need for tailpipe testing obsolete.

Besides tailpipe emissions testing, a range of actions may be required to control emissions related to ozone formation, such as the use of cleaner fuels and vapor controls on gasoline pump nozzles, stricter controls on industrial emissions and limiting lawn mowing on ozone-alert days. Also

at risk are millions of dollars the federal government provides to states for road construction. The federal government can withhold funding if states do not control ground-level ozone according to the standard.

Also, in 2003 EPA is requiring states to develop a list of recommended non-attainment areas for airborne particulate matter. Particulate matter can be small solid particles or very fine liquid droplets found in air. EPA implemented a standard for the larger solid particulate matter at 10 microns in diameter (PM 10) and wants to implement a standard, developed in 1997, for the liquid particulate matter at 2.5 microns in diameter (PM 2.5). PM 2.5 particles pose a significant health threat because they can be inhaled deep into the respiratory system and accumulate in the lungs. Studies indicate a linkage between PM 2.5 and an increase in premature deaths and serious respiratory and cardiovascular conditions.

By February 15, 2004, states and tribes will have to submit their recommendations of PM 2.5 non-attainment areas to EPA, which has until December 15, 2004 to determine what areas are in non-attainment of the standard. After EPA's final determination, states must submit by December 2007 a detailed plan for meeting the stricter standard. As with ozone, federal road construction dollars are connected to how well a state controls PM 2.5 emissions. 

— Scott Richards, chief environmental policy analyst, srichards@csg.org