



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

# **NCSL Deficit Reduction Talking Points**

*September 7, 2011*

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August 31, 2011

The Honorable John Boehner  
Speaker of the House  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Harry Reid  
Majority Leader  
U.S. Senate  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Minority Leader  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
Washington, D.C. 20510

**Stephen Morris**  
*Senate President  
Kansas Senate  
President, NCSL*

**Michael P. Adams**  
*Director, Strategic Planning  
Virginia Senate  
Staff Chair, NCSL*

**William Pound**  
*Executive Director*

**RE: NCSL Deficit Reduction Priorities**

Dear Speaker Boehner, Representative Pelosi, Senator Reid and Senator McConnell:

The National Conference of State Legislatures (NCSL) recognizes the importance of the Joint Select Committee on Deficit Reduction in achieving at least \$1.2 trillion in deficit reduction savings. As states continue to face fiscal challenges in balancing their budgets, it is essential that the federal government does not export deficit savings to state and local governments. We urge the joint committee's examination of all possible avenues for deficit reduction, including discretionary spending, entitlement reform and revenue-related options. Our core deficit reduction concerns are as follows.

- **UNFUNDED FEDERAL MANDATES.** Impose no new unfunded federal mandates; expand the definition of an unfunded mandate to include new conditions of grant aid; broaden application of UMRA; and conduct UMRA analysis of the joint committee's recommendations.
- **MEDICAID.** Provide relief from maintenance of effort requirements; establish countercyclical trigger for enhanced Medicaid federal match in economic downturns/recessions; enhance program flexibility; and clarify that beneficiaries and providers have no private right of action to enforce rights granted under the Medicaid program.
- **ECONOMIC INVESTMENTS.** Infrastructure programs, such as those for surface transportation and environmental state revolving fund programs, should be continued at

funding levels sufficient to continue the economic benefits they provide. Additionally, as stated in the Bowles-Simpson deficit reduction recommendations, programs serving low-income populations should be held harmless from spending reductions.

- **PREEMPTION.** State authority should be upheld in areas such as medical malpractice and tort law and public employee exclusive participation in state retirement and pension systems.
- **STREAMLINED SALES TAX.** Enact the Main Street Fairness Act which will authorize the collection of state and local sales and use taxes from remote sellers.
- **PUBLIC SAFETY.** Designate proceeds from auction of the spectrum to establish a nationwide interoperable communications system for state and local government first responders.

We look forward to working with you on these and other issues to meet our shared fiscal responsibilities.

Respectfully,



Senator Stephen R. Morris  
Senate President, Kansas  
President, NCSL



Terie Norelli  
House Democratic Leader, New Hampshire  
President-Elect, NCSL  
Co-Chair, NCSL Deficit Reduction Task Force



Rosie Berger  
Member, Wyoming House of Representatives  
Co-Chair, NCSL Deficit Reduction Task Force

Cc: The members of the Joint Select Committee on Deficit Reduction

## UNFUNDED FEDERAL MANDATES

- **Impose no new unfunded federal mandates.** Despite seeing a slight increase in revenues in some states in 2011, most states continue to face significant budget gaps and uncertain economic futures. Any additional cost shifts to states will only amplify the difficulty for states to provide essential governmental priorities. NCSL urges federal policymakers to avoid passing costly and cumbersome mandates to states and to continue to meet its fiscal commitments to states regarding federally mandated activities. At the very least, deficit reduction should not extract disproportionate savings from state governments.
- **Expand the definition of an unfunded mandate to include new conditions of grant aid.** Under the Unfunded Mandates Reform Act (UMRA) of 1995, the term “federal intergovernmental mandate” does not include new conditions of federal assistance or a duty arising from participation in a voluntary federal program. Changing grant requirements for long-standing state-federal programs to include **new** requirements creates a cost shift to states. While these programs are typically considered “voluntary,” in many cases these are state-federal programs that have existed for decades and are the foundations of the state-federal fiscal partnership.
- **Broaden application of UMRA.** The law as currently constituted does not have the necessary reach to protect states from unfunded and underfunded mandates. States need broader protections to ensure the federal government does not impose costly and administratively burdensome mandates. An expanded definition of UMRA should include: all open-ended entitlements such as Medicaid, child support and foster care; proposals that would put a cap on or enforce a ceiling on the cost of federal participation in any entitlement or mandatory spending program; proposals that would reduce state revenues; proposals that fail to exceed the statutory threshold only because they do not affect all states; and new conditions of federal funding for existing federal grants and programs.
- **Conduct UMRA analysis of the joint select committee’s recommendations.** The contents of legislation that will be offered by the joint committee will likely have exclusions, such as appropriations and/or mandatory entitlements, which could fall outside the purview of UMRA. Congress should ensure the committee’s recommendations require CBO to determine the state impact of the bill.

For more information on unfunded federal mandates, please contact Michael Bird ([michael.bird@ncsl.org](mailto:michael.bird@ncsl.org); 202-624-8686) or Jeff Hurley ([jeff.hurley@ncsl.org](mailto:jeff.hurley@ncsl.org); 202-624-7753).

## MEDICAID

- **Provide Relief from Maintenance of Effort Requirements** – The enhanced Medicaid match authorized under the American Recovery and Reinvestment Act (ARRA) conditioned state participation on the state agreeing to maintain Medicaid eligibility at 2009 levels (maintenance of effort or MOE). The enhanced match was phased-out effective June 30, 2011. The Affordable Care Act (ACA) extended the ARRA MOE provision for adults until January 1, 2014 and to January 1, 2019 for children. In addition, the ACA extends the MOE provision to the Children’s Health Insurance Program (CHIP) and conditions a state’s Medicaid participation on the state continuing CHIP, previously a state option. These provisions place a tremendous strain on state budgets. We ask that states be given relief from these requirements.
- **Countercyclical Assistance** – It has long been established that state Medicaid rolls increase during economic downturns. The current Medicaid matching formula is not designed or able to adjust in a timely fashion to assist states during economic downturns, natural disasters or other emergencies. It is important, particularly as states pick up additional responsibilities under Medicaid, that a countercyclical provision be added to the Medicaid statute. The administration has proposed to pair a “blended federal Medicaid matching rate (FMAP) proposal” with countercyclical assistance. We have not seen the details on this proposal and have some concerns about the blended FMAP proposal, but are extremely interested in pursuing efforts to establish a countercyclical program.
- **Private Right of Action** - NCSL opposes efforts to provide avenues for Medicaid beneficiaries and providers to take legal action against states as they make decisions about how to operate and administer their Medicaid programs.

For more information on Medicaid, please contact Joy Wilson ([joy.wilson@ncsl.org](mailto:joy.wilson@ncsl.org); 202-624-8689) or Rachel Morgan ([rachel.morgan@ncsl.org](mailto:rachel.morgan@ncsl.org); 202-624-3569).

## ECONOMIC INVESTMENTS

### *INFRASTRUCTURE - SURFACE TRANSPORTATION*

Congress and the administration must clearly articulate a new national vision for surface transportation. Congress should consider **economic productivity** as one of several federal objectives of the new reauthorization. Other objectives should be:

- *Interstate commerce and freight mobility,*
  - *Interstate movement of people,*
  - *National defense and homeland security,*
  - *Safety,*
  - *Environmental and air quality preservation and improvements, and*
  - *Research and innovation.*
- Congress must provide states a sustained, reliable source of transportation funding through the Highway Trust Fund (HTF). It is critical the HTF retain spending firewalls. This will ensure that user fees will be deposited in the HTF and used on surface transportation and will not be subject to non-transportation federal discretionary spending.
  - Congress must provide states enhanced programming flexibility to meet a multitude of national transportation goals. States should have maximum flexibility in deciding how to generate and leverage transportation revenues and how to use state and federal dollars.
  - All funding and financing options must be available to state legislatures for state and federal-aid programs. Tolling, value-pricing and public-private partnerships (PPPs) should remain state prerogatives and are not appropriate federal funding and financing mechanisms.
  - Federal guidelines should be designed to accommodate private sector support. The level of private sector participation is best determined by state and local authorities, and private participation should not be a prerequisite for receiving federal funds. Statutory or regulatory barriers to state and locally-granted revenues should be removed. States should continue to have flexibility in creating legislative and programmatic frameworks for PPPs, and full authority to select and engage in PPP projects.
  - NCSL opposes the use of federal sanctions or redirection penalties to enforce federal safety standards.

For more information on transportation please contact Molly Ramsdell ([molly.ramsdell@ncsl.org](mailto:molly.ramsdell@ncsl.org); 202-624-3584) or Helen Narvasa ([helen.narvasa@ncsl.org](mailto:helen.narvasa@ncsl.org); 202-624-8678).

## *INFRASTRUCTURE – STATE REVOLVING FUNDS (SRFs)*

- The federal government provides each state with two grants to capitalize both of its revolving loan funds of which the states must match 20 percent. States then use the funds to provide loans to communities in need of assistance to comply with the Federal Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) as well as infrastructure upgrades and source water protection.
- The SRFs are an integral tool used for providing clean, drinkable, swimmable water to the public at large. In these times of tight federal and state budgets, we ask for more flexibility in administering the funds.
- The SRFs are tremendously successful programs that have provided states the opportunity to secure and update our nation’s drinking water and wastewater infrastructure to protect the public health and manage the growing demands of population growth and development. They help meet identified public health infrastructure needs, are a sound capital investment, assist with job creation and retention and have various economic benefits.
- While the nation’s state legislators have long supported these programs and perennially consider them among the most successful of the many state-federal partnerships there are tools available to make them even more effective.
- We recommend that Congress consider enacting the following program modifications to ensure the continued effectiveness of the SRF programs even in the event of funding cuts:
  - Temporarily suspend 20 percent match for the overall clean water SRF and drinking water SRF grants.
  - Remove additional 100 percent match requirement from the 10 percent drinking water SRF set-aside.
    - States have the option to put aside 10% of the grant for state administration, technical assistance, capacity building and operator training but can only do so if in addition to the overall match requirement of 20% they match 100% of these dollars making it difficult for states to take advantage of the set-aside.
  - Allow for states to meet any remaining match requirements through a “soft match” alternative mechanism.
- Provide states more flexibility by removing the requirement of 30 percent additional subsidization, in the form of forgiveness of principal, negative interest loans or grants, as required in the fiscal year 2010 appropriations; allow additional subsidization up to 30 percent of the fund at the state's discretion for both the Clean Water SRF and the Drinking Water SRF.

For more information on state revolving funds, please contact Tamra Spielvogel ([tamra.spielvogel@ncsl.org](mailto:tamra.spielvogel@ncsl.org); 202-624-8690) or Max Behlke ([max.behlke@ncsl.org](mailto:max.behlke@ncsl.org); 202-624-3586).

## *HUMAN SERVICE PROGRAMS*

- Human Service programs are counter-cyclical, providing benefits when the economy is underperforming.
- During economic recessions and downturns such as those that have affected the United States of America since 2008, reduced economic activity and revenue loss puts states in an unfavorable position to “fill in funding gaps” should the federal government reduce or contemplate reducing its commitment to programs serving low-income populations. States have had to make sometimes severe reductions to numerous human and social service programs in order to meet constitutional and statutory balanced budget requirements. Reductions at the federal level could severely threaten the capacity of low-income individuals and families, whether employed or unemployed, to protect their own health, to eat regularly, to pay obligations and to be vibrant contributors to the economy.
- There are penalties on states for not meeting mandatory requirements in most state/federal human services programs. Simply cutting federal funds would cost shift to the states and leave them vulnerable to federal penalties for non-compliance with federal requirements. It is critical the federal government gives states relief from these penalties should the federal government reduce funding for human services programs.
- Examples of low-income state-federal programs: Medicaid, the Temporary Assistance for Needy Families Block Grant (TANF), the Child Care and Development Block Grant (mandatory and discretionary), the Women-Infants-Children Supplemental Nutrition program, Supplemental Nutrition Assistance Program (SNAP/Food Stamps), Low-Income Home Energy Assistance Program (LIHEAP), Child Support Enforcement, Social Services Block Grant, School Lunch and Breakfast, Foster Care, Adoption Assistance, Child Welfare, Head Start, Section 8 Housing, Children’s Health Insurance Program, Earned Income Tax Credit, Social Services Block Grant, Adoption Assistance, Supplemental Security Income, Family Preservation, Fatherhood Programs and state administration of many of these programs.
- The National Commission on Fiscal Responsibility and Reform (“The Moment of Truth”) recommended that “we must ensure that our nation has a robust, affordable, fair and sustainable safety net. Benefits should be focused on those who need them the most.” This was one of nine core principles that guided the commission’s recommendations for federal deficit reduction and debt management.

For more information on human service programs, please contact Sheri Steisel ([sheri.steisel@ncsl.org](mailto:sheri.steisel@ncsl.org); 202-624-8693) or Emily Wengrovius ([emily.wengrovius@ncsl.org](mailto:emily.wengrovius@ncsl.org); 202-624-8171).

## PREEMPTION

### *MEDICAL MALPRACTICE*

Nearly every deficit reduction commission report and deficit/debt ceiling negotiation has included discussion of nationalizing various aspects of medical malpractice, thereby preempting state experience and state law. This is driven in part by a Congressional Budget Office estimate that the federal government will realize savings of over \$40 billion by preempting states and establishing limits on non-economic and perhaps other damages resulting from malpractice suits.

- **Medical malpractice, product liability and other areas of tort reform are areas of law that have been traditionally and successfully regulated by the states.** Since the country's inception, states have addressed the myriad of substantive and regulatory issues regarding licensure, insurance, court procedures, victim compensation, civil liability, medical records and related matters.
- **The adoption of a one-size-fits-all approach to medical malpractice and tort reform would undermine state diversity and disregard factors unique to each state.** NCSL has longstanding Medical Malpractice and Tort Reform policies that were initially passed in 2006 and renewed in 2009. Our Medical Malpractice policy explicitly states that, "American federalism contemplates diversity among the states in establishing rules and respects the ability of the states to act in their own best interests in matters pertaining to civil liability due to negligence." That diversity has worked well even under the most trying and challenging circumstances.
- **NCSL, on a bipartisan basis, has concluded that federal medical malpractice and tort reform legislation is unnecessary.** NCSL's assessment of whether federal med mal and tort reform laws were necessary included a comprehensive discussion of whether circumstances had developed or were so unique that only federal action could provide an adequate and workable remedy. We examined recent state actions, policy options and experiences and discussed how various proposed or anticipated pieces of federal legislation fared against NCSL's core federalism goals. Those questions included: (1) whether preemption is needed to remediate serious conflicts imposing severe burdens on national economic activity; (2) whether preemption is needed to achieve a national objective; and (3) whether the states are unable to correct the problem.

For more information on medical malpractice, please contact Susan Frederick ([susan.frederick@ncsl.org](mailto:susan.frederick@ncsl.org); 202-624-3566) or Jennifer Arguinzoni ([jennifer.arguinzoni@ncsl.org](mailto:jennifer.arguinzoni@ncsl.org); 202-624-8691).

## *MANDATORY SOCIAL SECURITY*

- Mandatory coverage, whether for existing or new employees, impinges on the ability of state and local employers to create and maintain retirement systems that address the unique needs of state and local governments.
- Compliance with such a mandate would impose serious costs on state and local governments and would disrupt existing state retirement systems. Many of these systems either predate the creation of Social Security or were created during a time when state and local governments were prohibited from contributing to Social Security.
- Mandatory participation is little more than a short-term revenue raiser for the federal government and adds long-term liabilities to Social Security, further exacerbating that program's fiscal future.
- Mandatory coverage unfairly penalizes those state and local governments that have structured and funded benefits outside the Social Security system – and simultaneously destabilizes state and local programs that are effectively providing retirement security to a large number of Americans, including teachers, firefighters, police and law enforcement personnel and first responders.
- Imposition of mandatory coverage far exceeds the thresholds for intergovernmental mandates established in the Unfunded Mandates Reform Act and represents further federal intrusion into state fiscal decisions and balanced budget requirements. Our last cost estimate put the price tag for state and local government implementation of this recommendation at \$45 billion over five years.
- Every state in the nation would feel the impact of implementing this recommendation.

For more information on mandatory social security, please contact Sheri Steisel ([sheri.steisel@ncsl.org](mailto:sheri.steisel@ncsl.org); 202-624-8693), Diana Hinton ([diana.hinton@ncsl.org](mailto:diana.hinton@ncsl.org); 202-624-7779), Emily Wengrovius ([emily.wengrovius@ncsl.org](mailto:emily.wengrovius@ncsl.org); 202-624-8171) or Michael Reed ([michael.reed@ncsl.org](mailto:michael.reed@ncsl.org); 202-624-8187).

## STREAMLINED SALES TAX

**Objective:** To encourage members of Congress to co-sponsor/support a House and Senate version of legislation entitled, “**The Main Street Fairness Act**” (sponsored by Illinois Senator Dick Durbin), that authorizes states to collect sales and use taxes on out-of-state sales.

### Key points:

- The Streamlined Sales and Use Tax Agreement (SSUTA) 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.**
- It is expected that implementation of the SSUTA will reduce and overtime eliminate all cost of compliance burden on sellers to collect state and local sales taxes.
- It is estimated that by 2012, state and local governments will lose at least \$ 23.3 billion annually in uncollected sales taxes from out of state sales, with over \$11.3 billion alone from online sales. As electronic commerce continues to grow so will the loss to state and local revenues. (*Source: “State and Local Sales Tax Revenue Losses from E-Commerce: Estimates as of April 2009” By Dr. Donald Bruce and Dr. William Fox, Center for Business and Economic Research, the University of Tennessee*)
- **Twenty-four states**, representing over 30 per cent of the country’s population, have already been certified as being in compliance with the SSUTA, which simplifies state sales tax systems and removes the burdens and costs of the current system imposed all sellers. The Agreement is operational in the following states: Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.
- The SSUTA provides the states with a blueprint to create a simplified sales and use tax collection system that when implemented, allows justification for Congress to overturn the *Bellas Hess* and *Quill* Supreme Court decisions.
- This is not a new tax on Internet commerce, it merely provides states the mechanism to collect a tax on consumption already levied by the state but not collected. (*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.*)
- By passing the legislation, Congress would, in the words of Senator Roy Blunt of Missouri, be providing “**true fiscal relief for the states that does not cost the federal treasury a single cent.**”

Pertinent legislation currently pending in Congress includes S. 1452 and H.R. 2701.

For more information the streamlined sales tax, please contact Neal Osten ([neal.osten@ncsl.org](mailto:neal.osten@ncsl.org); 202-624-8660) or Max Behlke ([max.behlke@ncsl.org](mailto:max.behlke@ncsl.org); 202-624-3586).

## **PUBLIC SAFETY (First Responder Interoperable Communications; D-Block)**

The National Conference of State Legislatures supports the reallocation of the portion of 700 MHz spectrum known as the “D Block” to public safety. The reallocation would allow for the establishment of a nationwide interoperable broadband network for first responders. The sale of spectrum also will provide funding for federal deficit reduction.

- ***To communicate quickly.*** Commercial networks cannot guarantee first responders have priority access over other users.
- ***To reliably utilize modern technology that commercial customers take for granted.*** Most of us take for granted text messaging, sharing pictures and distributing videos via commercial wireless devices. First responders can only do this through commercial networks, which do not meet mission critical needs.
- ***To enhance public safety.*** Existing research and the variety of broadband applications for public safety use indicate that public safety needs at least 20 MHz of contiguous broadband spectrum. This can only be achieved by combining the D block with the 10 MHz already allocated to public safety.
- ***To ensure reliability in emergencies.*** In disaster situations, customers clog commercial systems. This usage blocks first responders from accessing the network. To protect life and property, first responders require what is referred to as “ruthless preemption” or the ability to kick commercial customers off the network. From a commercial provider standpoint, this is not an acceptable business practice. Therefore, efforts to provide priority to public safety on commercial networks will not meet public safety needs for assured access. Reallocating the D block would give public safety officials sufficient spectrum to utilize a variety of applications while also controlling access to the network during times of emergency.
- ***To move to a one device system.*** Public safety has been granted only small sections of spectrum over time, but never enough to consolidate communications into a single frequency band. This means that when multiple agencies respond to an event, they cannot communicate with each other because they each use radios that operate on different portions of the spectrum. Giving public safety the D block would help end the need to utilize multiple communications systems which adds significantly to the cost and complexity of emergency communications.
- ***To reduce communication costs.*** By providing a single section of contiguous broadband spectrum, public safety would utilize the most modern and reliable technologies for video and data communications, and could existing voice communications in other parts of the spectrum onto 700 MHz in the future. This would free up other areas of spectrum for potential commercial use while also reducing the costs to public safety of maintaining multiple communications systems.

For more information on public safety communications, please contact James Ward ([james.ward@ncsl.org](mailto:james.ward@ncsl.org); 202-624-8683).