Katrina Cleanup Costs Climb

Lawmakers’ calls for federal spending offsets are mounting

by Steve Stanek

As the costs of recovery from damages caused by Hurricane Katrina mount, so do calls for cuts in other discretionary spending by the federal government. But there is little indication most members of Congress are heeding the call.

“We get strange looks [from fellow Congressmen] for even suggesting that we offset this disaster relief spending with funding from low-priority programs,” said Matthew Specht, spokesman for Rep. Jeff Flake (R-AZ). “We’re a voice crying in the wilderness.”

$62 Billion and Climbing

Since Hurricane Katrina flooded New Orleans while raking across Louisiana, Mississippi, and Alabama on August 29, the federal government has approved more than $62 billion in relief funding. Some estimates have put total relief costs at upwards of $300 billion, nearly double the cost of the Iraq war.

Soon after levees protecting New Orleans broke, causing the below-sea-level city to flood, Congress approved $10.5 billion in relief. On September 8, by a 410-11 vote in the House and 97-0 vote in the Senate, Congress approved President George W. Bush’s request for another $51.8 billion in aid.

Flake was one of a handful of con-
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North Carolina Retailers Say New Cigarette Tax “Stinks”

by Jonathan Yeomans

Jasie Beasley had an immediate response when asked about North Carolina’s increase in the cigarette tax.

“I think it stinks,” said Beasley, who sells a lot of cartons of cigarettes as manager of Ali’s Discount Food Mart 1 off Carthage Road. “I’ve watched cigarette taxes go up consistently, but beer and wine taxes have stayed the same.”

Others, including smokers and farmers, reacted similarly when told the state budget adds 25 cents to the tax on a pack of cigarettes beginning October 1, making the tax 30 cents. It will rise to 35 cents on July 1, 2006.

Up from 5 Cents

One of the legacies of North Carolina’s long tradition as a tobacco state has been its low tax on cigarettes—it was the nation’s lowest, at 5 cents a pack. Even after the October 1 increase, it will remain on the low end, which is why smokers who travel through Robeson County from other states often stock up.

But they might soon be stocking up in South Carolina. That state inherits the crown of having the lowest tax in the country, just 7 cents per pack.

Advocates of the higher tax in North Carolina include Robeson County Health Director Bill Smith, who has fought for it in Raleigh. He says the higher tax will deter teens from smoking, but Smith doesn’t think the General Assembly went far enough. He would like to see a 75-cent tax, which the Centers for Disease Control say would decrease the number of teen smokers by 17 percent.

“At a quarter, you are barely making a difference,” he said.

Smith expects the tax to barely dent the number of adults smoking. He said teens tend to smoke name-brand cigarettes such as Camels, but adults are more willing to buy a cheaper brand.

“Each penny on the cigarette rate raises about $7 million for the state, meaning the 25-cent hike will generate $175 million in additional revenue . . .”

Goal Was Revenue, Not Health

Each penny on the cigarette rate raises about $7 million for the state, meaning the 25-cent hike will generate $175 million in additional revenue, money the state says it needs because of chronic budget problems. Advocates of a higher tax say tobacco costs the state more than $826 million a year in Medicaid expenses because of illnesses related to smoking.

Smith criticized the state’s motive, saying the tax hike wasn’t guided by health concerns but instead by a more practical matter. “It’s a step forward,” he said, “but all it came out to was a revenue issue.”

Beasley said the tax will hurt her store’s cigarette sales—but hinted she didn’t think sales would suffer much.

“People will shop around and try and find the best prices,” she said. “But people need it, so they’re going to buy it.

“It’s like gas. When they raised the price, people still bought it because they needed to go to work.”

Heavy Smokers Hurt Most

Beasley said she thought the tax was aimed at people most dependent on cigarettes.

“People that are addicted will buy them,” she said. “They will find the ways and means.”

But Smith would be pleased to hear what Beasley said next.

“I’ll cut back, and see how the things go the way they are going now. I’ll quit,” she said.

Sammy Ali, manager at Exxon Community Shop No. 4 off Lackey Street, recently moved from New York, where the cigarette tax is $1.50 per pack.

“I personally don’t care,” he said. “When I have to smoke, I have to smoke.”

Hits Poor People Hardest

Ali expects his store’s cigarette sales to drop by about 15 percent. He said the tax will hit poor smokers the hardest.

“In North Carolina, where minimum wage is so low, 30 cents is a lot for people to pay,” he said.

Several patrons of Community Stop No. 4 didn’t like the tax hike. One woman said she would quit smoking, but Ali doesn’t expect a cessation trend.

“People will cut down,” he said, “but they won’t quit.”

Nicholas Oxendine, manager of New Age Tobacco and a tobacco wholesaler, said he feared that instead of quitting, smokers would buy cigarettes in other states.

“I’ve already talked to about 10 customers who said they are going to buy in South Carolina,” he said.

Jonathan Yeomans (jyeomans@robesonian.com) is a staff writer at the Robesonian newspaper in Lumberton, North Carolina. This article originally appeared August 17. Reprinted by permission.
Multi-State Lawsuits Increase

State attorneys general have acknowledged a trend of increasing multi-state lawsuits. At a 2004 event hosted by the U.S. Chamber of Commerce, Michigan Attorney General Michael Cox reported his office receives a steady stream of “sign on requests” for multi-state suits from the National Association of Attorneys General (NAAG), the organization that coordinates enforcement of the tobacco settlement.

Incentive to Join

There’s an “implicit incentive to sign on” to multi-state lawsuits, Cox said, in case a suit wins money. Delaware Attorney General Jane Brady, speaking at a 2004 conference of the American Legislative Exchange Council, reported her office is regularly approached by trial lawyers pitching new ideas for state lawsuits.

Nearly two dozen attorneys general have sued pharmaceutical companies, for example, over the disparity between “average wholesale prices” that impact Medicaid and Medicare reimbursement costs and the prices charged to doctors and pharmacists.

Similarly, a group of eight attorneys general sued the nation’s five largest utility companies, demanding the utilities reduce carbon dioxide emissions. Once again pursuing a novel legal approach, the attorneys general claimed the non-toxic emissions contribute to global warming and thus constitute a public nuisance under federal common law. The case was rejected by a federal district court judge on July 15.

Activist Attorneys General

New York Attorney General Eliot Spitzer has targeted numerous companies and industries with investigations and lawsuits. In 2002, Spitzer announced an investigation of Merrill Lynch, which quickly yielded a $100 million, multi-state settlement. A new round of investigations of other investment firms followed, along with a $1.4 billion settlement and new, “voluntary” industry regulations.

Legal scholars and tort reformers have suggested a number of ways to curtail such activism. With its legal challenge to the tobacco Master Settlement Agreement, the Competitive Enterprise Institute has undertaken one such effort by citing the Compact Clause (Article I, Section 10) of the Constitution, which prohibits states from entering into any agreement or compact with another state.

Multi-State Agreements

The Compact Clause was meant to prevent states from collectively enroaching on federal power or ganging up on other states. The tobacco Master Settlement Agreement (MSA) established a national tobacco cartel that harmed consumers and small businesses by increasing cigarette prices and restricting competition, according to the lawsuit.

The Founding Fathers crafted a check on multi-state agreements by giving the federal government—Congress—the responsibility of determining whether such agreements are in the public interest. The MSA never was approved by Congress, which had debated and rejected a similar settlement agreement proposed in 1997.

The MSA calls for major tobacco companies to make annual payments to the states in perpetuity, with an estimated cost of $246 billion over 25 years. In addition, small tobacco companies that were never part of the settlement are nonetheless required to make separate payments to the states.

“The suit, filed August 2, alleges the [Master Settlement] agreement between 46 states and major tobacco companies is unconstitutional because it violates the Compact Clause of the Constitution: ‘No State shall, without the Consent of Congress enter into any Agreement or Compact with another State.’” (Article I, Section 10)

Consequences Extensive

Nearly seven years after the MSA was signed, the consequences of the attorney generals’ activism extend well beyond the tobacco industry.

The tobacco lawsuits and settlement of the 1990s have become a model for attorneys general to increase the power of their office, target industries, and unilaterally craft new tax and regulatory policies, Smith said.

For decades, smokers had repeatedly sued tobacco companies over the adverse health effects of cigarette smoking. But juries consistently rejected the argument that smokers were unaware of the health risks, which were well publicized throughout the 1960s, ’70s, and ’80s. It wasn’t until state attorneys general stepped in that things changed.

Tobacco continued at right
continued from left

States Imposed Retroactive Laws
In the early 1990s, a handful of trial lawyers and state attorneys general conceived a new strategy for suing tobacco companies.

Mississippi Attorney General Michael Moore, in partnership with prominent trial lawyers such as Richard Scruggs, received a new strategy for suing tobacco lawyers and state attorneys general: change a few words here and a few words there, which allowed the State of Florida to sue the tobacco companies, from raising those defenses in cases where the state seeks Medicaid reimbursement.

Florida took the lead in dispensing with that problem by retroactively changing the rules. The legislature in 1994 passed a law (the Medicaid Third-Party Liability Act) barring defendants, such as the tobacco companies, from raising those defenses in cases where the state seeks Medicaid reimbursement.

France Statute Provided Model
“I took a little-known statute called a Florida Medicaid recovery statute, changed a few words here and a few words there, which allowed the State of Florida to sue the tobacco companies without ever mentioning the words ‘tobacco’ or ‘cigarettes,’” boasted Florida trial lawyer Fred Levin in 1998. “It meant it was ‘cigarettes,’ boasting Florida trial lawyers.”

Forty-six states signed the multi-state Master Settlement Agreement. Total settlement payments were estimated at $246 billion over the first 25 years, with an additional estimated $13 billion awarded to the trial lawyers.

“Forty-six states signed the multi-state Master Settlement Agreement. Total settlement payments were estimated at $246 billion over the first 25 years, with an additional estimated $13 billion awarded to the trial lawyers.”

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Even attorneys general who had been publicly critical of the state lawsuits, such as Alabama’s William Pryor, were induced to sign the MSA. Tobacco companies would raise cigarette prices in all states to cover the settlement costs, which meant smokers in every state would be paying for it, even if a state refused to sign on.

Big Tobacco Got Protections
To safeguard the new revenue stream, states agreed to protect Big Tobacco from competitors by imposing a special set of taxes and regulations. When competitors, so-called “Nonparticipating Manufacturers” (NPMs), unexpectedly found ways to grow and gain market share, the states responded by changing the rules, forcing NPMs to make higher payments.

As Vermont Attorney General William Sorrell explained in a “privileged and confidential” missive to his colleagues in 2003, “all states have an interest in reducing sales by Nonparticipating Manufacturers in every state” in order to prevent NPMs from gaining market share and shrinking settlement payments to the states.

The tobacco model represents a radically new mode of governing, Katzman said. The American system of separation of powers reserves lawmaking power to the legislature and law enforcement powers to the executive branch, of which the attorney general is a part. When the state’s law enforcer uses prosecutorial powers to make new tax and regulatory policy, it’s often without a vote of the legislature or input from taxpayers.

Since the tobacco settlement, state attorneys general have used investigations and lawsuits to target other industries, including pharmaceutical companies, investment banks, insurers, utilities, and mutual funds.

Christine Hall-Reis (chall@cei.org) is director of communications at the Competitive Enterprise Institute.

INTERNET INFO
A copy of the Competitive Enterprise Institute’s constitutional challenge to the multi-state settlement with the tobacco industry is available online at http://www.cei.org/pdf/4735.pdf.

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Pensions
Continued from page 1

extend $850,000 from a Virginia investment firm that was seeking business from the state’s Teacher’s Retirement System (TRS). In his 17-page plea agreement, Cari said the attempted extortion was part of a scheme orchestrated by Stuart Levine, a former TRS board member who was indicted on August 3 with Cari and Steven Loren, former outside counsel to the pension fund.

Governor Denied Involvement
Cari’s plea agreement states Levine told him a “high-ranking Illinois public official (‘Public Official A’), acting through two close associates, was selecting consultants for the private equity funds that appeared before the State Pension Fund.” Levine allegedly cooperated with the two associates to steer sham consulting contracts with the investment firms to individuals who would funnel the money to various places, including Public Official A, according to Cari.

Several news organizations, including the Chicago Sun-Times, ABC-TV News in Chicago, and Chicago’s public radio station, WBEZ Radio, reported sources had confirmed Public Official A is Gov. Rod Blagojevich (D). They further reported the two close associates are Antion “Tony” Rezko and Christopher G. Kelly, both of whom have been top fundraisers and advisors to Blagojevich.

“People are personally offended by all this. I can tell, from talking to people in my area and around the state, people care about what’s happening. It looks like people are enriching themselves through the pension system.”

ILLINOIS STATE SEN. BILL BRADY

The governor’s press spokesmen did not return calls requesting comment. At a September 16 news conference on how the state plans to get heat to the poor, print, radio, and television reporters peppered Blagojevich with questions about the allegations. He adamantly denied any role in pension fund corruption.

“I have on my side the most powerful ally that exists, and that is the truth,” Blagojevich told reporters. “And the truth is that we do things legally. We do things ethically. And we do things right.”

Two Principals Pled Guilty
Cari’s plea came within minutes of Loren’s guilty plea to charges of impeding an Internal Revenue Service investigation related to the alleged kickback and extortion scheme. Cari and Loren are cooperating with federal investigators.

The guilty pleas of Cari and Loren came just two work days before the start of jury selection in the corruption trial of former Republican Gov. George Ryan, who faces a 22-count federal felony indictment for a variety of crimes he allegedly committed while governor from 1999 to 2003 and before then during his two terms as Illinois’ secretary of state. Seventy-three of Ryan’s former associates and state employees in his administration, including his chief of staff, have pleaded guilty or have been convicted of federal felonies, including bribery, kickbacks, and funneling money to various places, including Public Official A.

“I don’t know everything that’s going on, but as we speak it doesn’t look good.”

State Sen. Bill Brady (R-Bloomington), who also is running for the Republican nomination for governor, served on last year’s Governor’s Pension Commission, which issued a report with recommendations on how to improve the state’s pension system. Most of the recommendations were unheeded.

People are offended
“People are personally offended by all this,” Brady said. “I can tell, from talking to people in my area and around the state, people care about what’s happening. It looks like people are enriching themselves through the pension system.”

Jay Stewart, executive director of the Better Government Association in Chicago, said, “This has caught people’s attention because everyone in Illinois had a sense there was lots of petty corruption. The pension system puts a focus on pinstripe patronage. Instead of playing with $30,000 jobs, we’re talking $100 million contracts.”

“People are offended is that rather than being treated with care and regard for employees and taxpayers, these billions of dollars of pension funds were viewed as an opportunity for politics and power to trump policy.”

JAY STEWART
BETTER GOVERNMENT ASSOCIATION

Individuals Are Target
“Headline writers have called this an investigation of TRS. It is not! It is an investigation of persons who allegedly misused their position of trust and fiduciary duty to the system for their own purposes and for their own personal gain,” said TRS Board Vice President Molly Phalen and Board President Randy Dunn in a joint statement at meetings of the board August 11 and 12.

Pension system spokesmen did not return calls for comment.

Randall Samborn, a spokesman with the U.S. Attorney’s office in Chicago, said he could not comment on the scope of the investigation or whether the pension fund itself is a target.

Top Republican Aided Democrats
Illinois’ government employee pension system has been making headlines since 2003, when the Democrat-controlled General Assembly and Blagojevich sold $10.1 billion in pension obligation bonds to shore up the pension system’s woeful underfunding.

They accomplished that with the aid of Kjellander, who helped broker the bond deal even though state Republican lawmakers overwhelmingly opposed it. In the process, Kjellander earned $809,000 in fees and infuriated many lawmakers. In the process, Kjellander earned $809,000 in fees and infuriated many lawmakers.
Court Sides with Illinois Taxpayers over Tort Tax

by John W. Skorburg

In a big victory for Illinois taxpayers, a state circuit court has ruled it is illegal to use tort tax funds for purposes other than those specifically stated by law.

On August 15 a circuit court judge in Stephenson County, in the northwest corner of the state, determined three local taxing districts illegally diverted tort tax money for purposes not allowed by law. An estimated $1 million in local tax funds used in 2000 may have to be refunded, at least in part, to the taxpayer plaintiffs.

The three districts were the Freeport school and park districts and Highland Community College. In a companion suit, the court found the Pearl City school district acted without authority to divert tort tax funds for illegal purposes.

The ruling came in connection with a tax objection lawsuit filed by Freeport attorney Robert Slattery on behalf of taxpayers in Stephenson County.

2,000 Taxpayers Joined Suit

"It's the correct decision," Slattery said. "We had tremendous confidence since I filed the lawsuit. It was such a clear-cut abuse of the tort fund. Because of this decision, the taxing bodies may have to pay 15 percent of the more than $1 million that was illegally used to the estimated 2,000 taxpayers who joined the lawsuit."

The decision by 15th District Circuit Judge Val Gunnarson found, "The [Illinois] General Assembly specifically did not intend that the Tort Immunity levy be used to pay expenses which are more properly charged to general funds." Gunnarson's decision further stated, "Taxing districts have available to them levies for all of their usual functions, such as the maintenance of its buildings and grounds, transportation of students, and the payment of wages and salaries of personnel."

Diversions Evades Tax Cap

State law requires that general fund tax increases be approved by a vote of local taxpayers, while the local tort fund is deemed a mandatory expenditure and outside of the state's cap on property tax increases. Slattery explained taxing districts are allowed to impose a tort fund tax, which is primarily used for purchasing insurance. The taxing districts in question levied the tort fund tax and then used that money to pay salaries of employees.

"In Illinois, it is illegal to levy a tax for one purpose and to then divert the funds and spend them for another purpose," Slattery said.

More Legal Action


"However, these suits likely won't move forward until the appeals process is finished in this initial case," Slattery said.

"School districts throughout the state are using the tort fund to balance their budgets because they can secretly, without voter approval, impose a virtually unlimited tax." ROBERT SLATTERY ATTORNEY

Pension Investment Fees Get Close Look, Calls for Reform

Questionable fees amounting to millions of dollars that have been paid to middlemen for the placement of Illinois' government employee pension investments have resulted in subpoenas from federal investigators and calls to end the practice.

Coming under the most pressure has been Robert Kjellander, who has received $4.5 million from the politically powerful Carlyle Group for handling $500 million of Illinois pension fund investments. In addition to being treasurer for the national Republican Party and Republican National Committee for Illinois, Kjellander runs Springfield Consulting, a lobbying firm in Illinois' capital of Springfield.

Feds Subpoenaed Records

Federal investigators have subpoenaed records from Springfield Consulting and Carlyle Group, whose advisors and board members have included President George H.W. Bush, former defense secretary Frank Carlucci, and Bush confidant and political powerbroker James Baker. The firm's current chairman is Louis Gerstner, former chief executive at IBM.

The list of influential persons and firms that have received millions of dollars of pension business and finder's fees is long and includes both Democrats and Republicans.

No one has been charged with a crime related to the payment of fees, but the political backlash has been furious. Investigations continue.

Governor Proposes Reforms

On August 11, Carlyle officials appeared before the Teachers' Retirement System board to explain the payments to Kjellander. The Carlyle officials pledged at that meeting to stop paying him the fees.

One day later TRS Executive Director Jon Bauman proposed the board prohibit such payments to successful challenge the illegal use of the tort fund to pay salaries. [So far] the taxpayers have won the majority of the issues that were before the court.

Although the court found the Pearl City school district properly used its tort fund, "That decision will be appealed by the tax objections," Slattery said.

John W. Skorburg (skorburg@heartland.org) is a visiting lecturer in economics at the University of Illinois, Chicago and associate editor of Budget & Tax News.

According to Slattery, the case may be appealed as far as the Illinois Supreme Court because of its significant statewide ramifications.

"School districts throughout the state are using the tort fund to balance their budgets because they can secretly, without voter approval, impose a virtually unlimited tax," Slattery said. "This is a widespread practice throughout the State of Illinois. The Stephenson County cases are the first cases in the State of Illinois to successfully challenge the illegal use of the tort fund to pay salaries. [So far] the taxpayers have won the majority of the issues that were before the court."

"School districts through- out the state are using the tort fund to balance their budgets because they can secretly, without voter approval, impose a virtually unlimited tax."
November Ballot Initiatives Showdown Between California Taxers, Taxpayers

by Michael Shaw

Now California Gov. Arnold Schwarzenegger (R) has had to face in his movies has proved as tough to conquer as the real-life state budget he has to finance.

In March 2004, less than six months after taking office as the Golden State’s chief executive, Schwarzenegger was able to capitalize on his then-high popularity and convince California voters to pass Propositions 57 and 58. The former allowed the state to finance its debt at lower interest rates; the latter limited future state spending and required a balanced budget.

The measures slowed the flow of red ink the state had been gushing since the dot-com bust dried up windfall tax revenues, and it bought enough time for a more serious remedy to come along.

Spending Limit on Ballot

That time will arrive November 8 in the form of Proposition 76. The measure is part of the governor’s three-initiative reform package, for which he has called a special election. The other two are Proposition 74, which deals with teacher tenure, and Proposition 77, which would change the way the state draws its legislative districts.

The governor is not nearly as popular as he was a year ago, and teachers, nurses, firefighters, and police unions have organized well-financed and concerted opposition. The polarity of the issue is evident in the subtitles proponents and opponents have appended to Proposition 76. Supporters call it “The Live Within Our Means Act.” Opponents call it “The Cut School Funds Act.”

If passed, Proposition 76 would limit growth in future state budgets to an average of the three previous years’ revenue growth and would create a rainy-day fund during flush times. It would give governors new power in making midyear cuts should the economy start to turn really bad, a provision that particularly rankles the state’s teacher unions.

Prop 76 Affects Schools

Proposition 76 would weaken the teachers’ hard-fought Proposition 98, an initiative passed 17 years ago that guaranteed a minimum amount of school funding in all future state budgets from that time forward. The Alliance for a Better California (http://www.better-ca.com/prop76), the umbrella organization for opponents of Proposition 76, claims the state’s public schools would lose $4 billion a year, or $600 per student.

Not so, say proponents, whose umbrella Web site, http://www.joinarnold.com, says Proposition 76 will “stabilize K-12 education spending. The initiative would repeal the formula that allows school funding to drop below what was promised when Proposition 98 was enacted.”

California is a celebrity state, and education is a hot celebrity issue. Both Schwarzenegger, a Republican, and fellow Hollywood heavyweight Rob Reiner, a Democrat, successfully passed ballot initiatives on funding for pre- and after-school programs. The celebrities’ debate over Proposition 76 represents the battle over which star or group will own the mantle of education in the state.

“By a margin of 92 percent to 2 percent, Main Street shop owners favor passage of Proposition 76, according to a survey conducted by the 35,000-member National Federation of Independent Business/California...”

Small Businesses Support Bill

One group with no confusion whatsoever is the state’s small-business owners. By a margin of 92 percent to 2 percent, Main Street shop owners favor passage of Proposition 76, according to a survey conducted by the 35,000-member National Federation of Independent Business/California, part of America’s largest small-business advocacy organization. The NFIB/California survey was released August 8 and had 1,200 respondents.

In the past five years, California small-business owners have been buffeted by a state-government-created energy crisis, a doubling to quadrupling of workers’ compensation premiums, one of the highest unemployment insurance rates in the country, and a new family leave law. A universal health care proposal that would stick them with the tab was narrowly defeated.

When NFIB ranked the 26 largest-economy states in terms of business environment, California came in second to last. If Proposition 76 fails, small-business owners fear the state legislature will come after them first when it comes time to raise taxes.

Palm Beach

Continued from page 1

would not have expected. It could be the site where the subtropical equivalent of the Boston Tea Party ignites a tax revolt that some taxpayer advocates would like to see statewide.

Tax Protesters Demonstrate

When the big-spending Palm Beach County Commission met in West Palm Beach on September 8 to pass a budget for the fiscal year beginning October 1, anti-tax protesters staged a demonstration in the plaza outside. That rally may have marked the opening round of an effort to bring a Taxpayer’s Bill of Rights to the county and the state of Florida.

The trigger for the incipient tax revolt isn’t difficult to spot: Real estate prices have soared in the county. A new study by National City Corporation found home prices in the West Palm Beach metropolitan area were up much higher than they were just five years ago, but they’re 46 percent higher than they ought to be.

The housing “bubble” has been a boon to revenue-hungry local governments. Florida’s Truth in Millage (TRIM) law requires local officials to lower property tax rates to offset rising values—or else notify taxpayers of a pending tax increase. All over Florida, however, local governments awash in new revenue have found new ways to spend the money.

“A number of business leaders think the best way to stop this [spending by county commissioners] is to explore adopting a Taxpayer’s Bill of Rights for Palm Beach County or the state of Florida to limit the growth of property taxes from year to year.”

John R. Smith

BIZPAC

Counties Spend Windfall

Anti-tax leader John Hallman, a Palm Beach County resident and Florida director of the nonpartisan free-market think tank and lobbying group FreedomWorks, said, “Unfortunately, the county government has decided to spend the windfall instead of giving some relief to property owners. Now citizens are feeling the crunch. Their county government’s spending has increased much faster than the rate of inflation and population growth.

“These county commissioners need to show some restraint in spending, or else Florida and Palm Beach County will endure the long-term economic consequences that California has painfully experienced,” Hallman continued.

Hallman’s concerns are shared by John R. Smith, chairman of BIZPAC, a coalition of business leaders.

“For the third consecutive year, when county commissioners have learned they would have a windfall increase in property tax revenue, they have proceeded to adopt a higher budget that spends it,” Smith said. “A number of business leaders think the best way to stop this is to explore adopting a Taxpayer’s Bill of Rights for Palm Beach County or the state of Florida, to limit the growth of property taxes from year to year.”

Proposal Dismissed as ‘Insane’

Burt Aaronson, a member of the county commission’s high-spending faction, dismissed as “absolutely insane” the notion of imposing a formula limiting future tax hikes to no more than the rate of inflation and population growth.

Aaronson told the South Florida Sun-Sentinel: “They [tax protesters] can pack whatever chambers they want, and they can scream and rant all they want. This is one vote they’re never going to get on their side.”

Commented J. Robert McClure, president of Florida’s James Madison Institute, “Commissioner Aaronson’s testy response was directed at the protesters, but his tone suggests he may have underestimated the growing anti-tax sentiment among Florida residents in general and the residents of pricey Southeast Florida counties in particular.

“Although Palm Beach’s wealthiest residents may not even notice property tax hikes from one year to the next, there are thousands of middle-income working families who will,” McClure noted. “And as California’s ruling elite discovered when the late Howard Jarvis began his campaign to pass Proposition 13, it would be a mistake to ignore them.”

Robert F. Sanchez (bsanchez@jamesmadison.org) is director of public policy at the James Madison Institute, a nonpartisan policy center in Tallahassee, Florida.
Bill Would Divide Hawaii by Race, Dole Out Entitlements

by Steve Stanek

Legislation to divide Hawaii along racial lines and hand out race-based government benefits to as much as 20 percent of the state’s population is moving through Congress, having attracted almost no attention outside the state, despite its implications.

S. 147, the Native Hawaiian Reorganization Act, more commonly known as the “Akaka bill,” would “extend the federal policy of self-governance and self-determination to Native Hawaiians,” according to the official statement of the bill’s chief sponsor, Sen. Daniel Akaka (D) of Hawaii.

“My intent in drafting this bill is to provide Native Hawaiians with the opportunity to reorganize their governing entity for the purposes of a federally recognized government-to-government relationship with the United States,” Akaka says in his statement. “This is important because it provides parity in the way the federal government deals with the indigenous peoples who inhabited the lands which have become the United States.”

Critics of the bill say it would lead to the balkanization of Hawaii and other states, because it would set a precedent for virtually anyone with any amount of “native” blood in their lineage to claim special status.

Creates State Within State

The act would do three things, according to Akaka’s statement:

“It establishes the Office of Native Hawaiian Relations in the Department of the Interior to serve as a liaison between Native Hawaiians and the United States. It establishes the Native Hawaiian Interagency Coordinating Group to be composed of federal officials from agencies which administer Native Hawaiian programs. Both of these provisions are intended to increase coordination between the Native Hawaiians and the federal government. And third, the bill provides a process of reorganization of the Native Hawaiian governing entity.”

Billions of dollars are at stake, as are state lands and the laws of Hawaii and the federal government.

Court Ruling Spurred Bill

In 2000, the U.S. Supreme Court voted 7-2 to strike down a Hawaiian law requiring that trustees of the state’s Office of Hawaiian Affairs (OHA) be Native Hawaiians and elected only by other Native Hawaiians, according to the Wall Street Journal.

Sen. Daniel Akaka

“The Akaka bill would be devastating to Hawaii, but it is also dangerous for the rest of America. That’s because the bill breaks new legal ground with a theory of the Constitution that would speed up the balkanization of our nation.”

KEN CONKLIN
CANDIDATE, OFFICE OF HAWAIIAN AFFAIRS

“The Akaka bill would be devastating to Hawaii, but it is also dangerous for the rest of America. That’s because the bill breaks new legal ground with a theory of the Constitution that would speed up the balkanization of our nation.”

Ken Conklin

Ken Conklin, the state’s attorney general from 2001 to 2005, believes the bill would create a new government, of course). “If that suit is ultimately successful it would benefit the State of Hawaii treasury by billions and would pave the way for challenges to the federal entitlements,” he said. “If that suit is ultimately successful it would create an independent state within a state that would lie outside the Constitution and laws of the United States as well as those of the state of Hawaii. The Akaka bill would also authorize the transfer of a portion of Hawaii’s state-owned lands, natural resources and other assets to the new race-based government (at no cost to that new government, of course).”

“Hawaiians would also be unable to fight back, as the state does not allow for referendums,” Fund continued. “And, just as on American Indian land, a shopkeeper who is part Hawaiian could claim exemption from state taxes and other laws, giving him an advantage over his next-door, non-Native Hawaiian competitor.”

Fund noted the bill flies in the face of the state’s history.

“ar the islands became a state in 1959,” Fund wrote, “there was a broad consensus in Congress that Native Hawaiians would not be treated as a separate racial group, and that they would not be transformed into an ‘Indian tribe.’”

Oversets Previous Consensus

Supporters of the Akaka bill estimate 20 percent of Hawaii’s residents have some Native Hawaiian blood. Conklin notes no other state has an Indian tribe consisting of such a large portion of its people.

“Hawaii’s Republican governor, Linda Lingle, has publicly endorsed the bill and lobbied the Bush administration on its behalf. The Bush administration has remained neutral.

Some Native Hawaiians strongly oppose it. “All versions of the bill have been based on the proposition that Congress should protect unconstitutional race-based entitlements [such as subsidized housing, health care, and tuition] against court challenges by converting an entire racial group into a make-believe Indian tribe,” said Sandra Puana Burgess, a Native Hawaiian and one of 14 plaintiffs in Arakaki v. Lingle, a lawsuit she and her husband, H. William Burgess, have filed challenging the validity of the state’s Office of Hawaiian Affairs and Department of Hawaiian Home Lands programs.

Those two programs have doled out more than $1 billion to Native Hawaiians since 1990, according to the Burgesses. The lawsuit is pending in the Ninth Circuit Court of Appeals.

“If that suit is ultimately successful it would benefit the State of Hawaii treasury by billions and would pave the way for challenges to the federal entitlements,” said Mr. Burgess, an attorney who is handling the case. “By contrast, if the Akaka bill becomes law and ‘saves’ the entitlements, as the Akaka bill’s proponents claim it will, those billions will continue to flow.”

Bill Sets ‘Dangerous Precedent’

The Akaka bill would set a dangerous precedent for all states, said Ken Conklin, who finished fourth among 20 candidates for an at-large seat on the board of trustees for the Office of Hawaiian Affairs in 2000.

“The Akaka bill would be devastating to Hawaii, but it is also dangerous for the rest of America. That’s because the bill breaks new legal ground with a theory of the Constitution that would speed up the balkanization of our nation,” Conklin said.

“The theory is that any racial group whose members have at least one drop of ‘indigenous’ ancestry can create a government with its own set of laws and its own exclusive lands—for example, residents of America who have Mexican ancestry with at least one drop of Mayan or Aztec blood,” Conklin noted.

INTERNET INFO


Justice Antonin Scalia
Gov. Linda Lingle

Sen. Daniel Akaka

Steve Stanek (stanek@heartland.org) is managing editor of Budget & Tax News.
States Lead New Privatization Efforts, Report Says

by Geoffrey F. Segal

Several states have led the charge to introduce competition into their government activities in the past year, among them Florida, which has been a front-runner in this effort for years, according to the 19th Annual Privatization Report of Reason Foundation, released in August.

Information about Florida’s efforts is one of dozens of highlights in the nearly 150-page report.

“HB 1948, the Administrative Process Act, requires [Virginia] to periodically review regulations and eliminate overly burdensome and costly regulations, to minimize the economic impact on small businesses.”

Florida Presses On

The report notes some high-profile privatization projects in Florida recently have been criticized for less-than-perfect results. Despite the criticism, Florida has pressed forward with new initiatives.

In March the state finished a major contract turning over all foster care and adoption programs in Miami-Dade and Monroe counties to private administrators, in what is probably the largest child welfare privatization project in the nation. In a prepared statement, Florida’s OMB, Daniels has moved forward with new initiatives.

The 14-month $75 million contract makes Florida the first state in the nation to fully privatize its child welfare programs. DCF hopes the move will dramatically improve a foster care system often described as one of the worst in the United States.

Miami’s child welfare system has, through the years, spawned heartbreaking scandals, including the disappearance—police now say murder—of Rilya Wilson from the home of a department-approved caregiver, and the alleged killing last year of Angel Hope Herrera by her mother, herself a former foster child.

Indiana Continues Efforts

Daniels recently released a status report of his initiatives. After just six months in office, his administration’s efforts to improve efficiency and effectiveness have led to more than $150 million in savings, according to the report.

“Food service at the [Indiana] Department of Corrections was also put out to bid. The state was able to cut meal costs from $1.41 apiece to only 99 cents by contracting with Aramark to operate the food service, saving nearly $12 million a year.”

Gov. Mitch Daniels

Two victories emerge as most significant. First, HB 1948, the Administrative Process Act, requires the state to periodically review regulations and eliminate overly burdensome and costly regulations, to minimize the economic impact on small businesses. Both the National Federation of Independent Business and U.S. Small Business Administration have advocated similar legislation across the country.

Second, HB 1945 expands the definition of a qualifying project under the existing Public-Private Education Facilities and Infrastructure Act to include any undeveloped or unused (“surplus”) state-owned land, thereby allowing for expanded asset divestiture or public-private development projects throughout the state.

Private Roads Get Boost

Due is part to continued fiscal pressures and in part to encouragement from the U.S. Department of Transportation, more state legislatures took action on public-private partnership (PPP) laws regarding roads during the past year.

The only completely new law was enacted in Washington State. HB 1541, the Transportation Innovative Partnerships Act, repeals the 1995 law under which a number of franchises were issued but the projects were not built due to later amendments to the law that made them unattractive to the private sector.

The new law provides for both solicited and unsolicited proposals, as well as a mix of public and private capital, as in Texas and Virginia. The Washington legislature also enacted SB 6091, which...
allocated $1.5 million for a comprehensive tolling study, as called for by HB 1541.

**PPP Laws Revised**

Several state legislatures enacted revisions to existing highway PPP laws. In Georgia, SB 270 allows the state to issue RFPs for such projects, instead of dealing only with unsolicited proposals. In addition, in the case of the latter, it increases to 135 days (from 90 days) the time during which potential competitors can respond to an unsolicited proposal.

The Texas legislature took up revisions to its landmark HB 3588, enacted in 2003. The main point of contention has been the law’s provision allowing the conversion of existing free lanes or highways to tolled operation as part of tolled and/or PPP projects. That prospect set off a huge political backlash, inspiring amendments in both houses of the legislature.

The House version (HB 2702) at press time had passed both houses. It would require a popular vote for any such conversion from free to toll. The bill limits toll franchises to 50 years.

The Virginia legislature enacted the first revisions in 10 years to that state’s Public Private Transportation Act (PPTA). The revised version clarifies the point that any “responsible public entity,” not just the Virginia Department of Transportation, may authorize PPTA projects. Also, it permits both RFPs and unsolicited proposals to be used by such entities. In addition, if permitted by other federal and state laws, a private partner may toll existing free lanes under revised language that no longer requires expansion of capacity to accompany tolling.

**New York, California Also Act**

In New York, Gov. George Pataki (R) proposed legislation that would permit tolls and PPPs for existing and new transportation infrastructure. It would apply to both state and New York City entities, would permit the sale or lease of existing projects, and provides for RFPs and unsolicited proposals.

Finally, considerable interest has followed the progress of a bill to enable tolling and public-private partnerships in California, AB 850. The bill was introduced in February 2005, with bipartisan support and the backing of Gov. Arnold Schwarzenegger (R) as part of his Go California transportation package. At press time, the bill had cleared the transportation committees of both houses.

The Senate committee version would remove a 35-year limit on the length of franchise agreements, thereby permitting longer terms that can lead to significant equity investments in projects. California currently has no enabling legislation for tolls or highway PPPs, due to the repeal of the previous pilot program law, AB 680, at the end of 2002.

**Reason Foundation’s Annual Privatization Report**

Reason Foundation’s Annual Privatization Report is the world’s longest-running and most comprehensive report on privatization news, developments, and trends. APR covers more than privatization, encapsulating all of Reason’s policy work including transportation, education, and land use policy.

Gov. George Pataki (geoffrey.segal@reason.org) is a director of government reform at Reason Foundation.

**Colorado Updates Toll Laws**

Colorado also saw legislative action. The legislature passed two bills dealing with the proposed private Front Range Toll Road, which would parallel congested I-25 to the east of Denver International Airport.

The project has been proposed under a nineteenth century Colorado law, still on the books, under which some 80 pre-auto-era private toll roads were developed. But under that law, county governments regulate the toll rates, and there are seven of them along the Front Range’s planned route.

HB 1342 would modernize the law, including a shift to the state of control over toll rates. It passed both houses in May, and Gov. Bill Owens (R) has indicated he will sign it. He also said he will veto SB 230, which would have repealed the old law’s utility-like powers to acquire right of way.

**TABORs Receive New Attention**

This year’s Reason privatization report includes a section on TABORs—Taxpayers’ Bills of Rights—which limit taxes and spending. As the first state to fully enact a modern TABOR 13 years ago, Colorado is the poster child for successful implementation. Many experts say TABOR saved Colorado from massive deficits akin to what California experienced just after the dotcom bubble burst.

Twenty-six states have enacted some variant of a tax and expenditure limitation (TEL) to date. More than a dozen states incorporate voter approval or legislative “supermajority” mechanisms in their tax policies. And roughly two dozen states limit all or part of their budget increases to economic measurements such as inflation or personal income growth.

In 2005, a large number of states have begun considering the benefits of enacting the full array of protections embodied in TABOR.

**Overwhelming Citizen Support**

Three key themes are driving the move for TABOR:

- **Citizen Involvement.** Voters like the idea that they should be asked before government takes more of their money. In a poll of Virginia residents last year, the National Taxpayers Union found strong support (76 percent to 19 percent) for the idea that citizens should be given the right to vote directly on most tax increase proposals by the Virginia State Legislature.

- **Tax Relief for Families.** Under the leadership of State Rep. Frank Lasee (R-Green Bay), the idea of TABOR is moving forward in Wisconsin. Central to Lasee’s argument for a Wisconsin TABOR has been the increasing tax burdens on families at all income levels in the state. By one estimate, if a TABOR had been in place in Wisconsin in 1990-2001, Wisconsin families would have saved a total of $10,241 per household.

- **Economic Growth.** The TABOR era has been part of a great economic success story in Colorado. In “A Taxpayer’s Bill of Rights (TABOR) for Kansas,” Barry Poulson, senior fellow in economic policy at the Independence Institute and professor of economics at the University of Colorado, wrote in December 2004, “The contrast between Colorado and Kansas in that time is striking: While the two states experienced similar economic trends in the 1970s and 1980s, there was a major divergence in the ‘90s, when income per capita increased 70 percent in Colorado, while it only increased 53 percent in Kansas.”

The TABOR movement has even taken root in Washington, DC. The Heritage Foundation, Tax Foundation, and other groups are promoting the idea of a federal TABOR to rein in Washington’s spending excesses.

— Geoffrey F. Segal

**INTERNET INFO**

The 19th Annual Privatization Report may be viewed in its entirety online at http://www.reason.org/apr2005.

The report on Indiana Gov. Mitch Daniels’ privatization initiatives is available online at http://www.in.gov/gov/media/performance.html.

Steve Moore, at the time president of the Club for Growth, delivered the luncheon keynote address at a February 2003 fiscal policy reform conference hosted by the Phoenix, Arizona-based Goldwater Institute.
Grand Rapids School Board Privatizes Busing

Union, governor object; projected savings of $18 million over five years

When students in Grand Rapids, Michigan boarded their school buses for the start of this school year, they probably did not know it was the first of many rides that would save the school system an estimated $18 million over the next five years.

“The board said contracting with privately run Dean Transportation would mean long-term, substantial savings of $18 million and would free the district from paying rapidly escalating employee retirement expenses.”

The district had projected an $18 million budget deficit for the end of this year, which prompted the school board and superintendent to look for ways to steer Grand Rapids Public Schools (GRPS) off the path to insolvency.

In March, plans for privatization of various district services were introduced to stave off reductions in classroom-oriented expenses. School Board President David Allen said Superintendent Bert Bleke was “looking at cuts and changes that ran ‘from very radical to minor,’” according to the Grand Rapids Press.

In order to spare instructional services from the cuts, the board agreed privatization measures would have to be considered, especially in light of a projected 800-student drop in enrollment next school year.

Union Opposed Plan
The Michigan Education Association (MEA) opposed the privatization plan, claiming it would put students’ safety at risk and that the legislature has been underfunding the Grand Rapids district.

Grand Rapids Educational Support Professionals Association President Steve Spica, whose union is affiliated with the MEA and represents bus drivers and custodians, told the Press, “I’d rather see them run the district until we run out of money and then close the doors. That would send a message to the state.”

The Press reported that in response to sentiments like Spica’s, Ari Adler of Sen. Ken Sikkema’s (R-Wyoming) office announced any such “stunts” would not force structural change to Michigan’s school funding system, and that school districts should be encouraged to make responsible budget decisions when finances become tight.

Proposal Passed Narrowly
In April, the school board voted 5-4 to pass a privatization measure.

Preliminary budget plans had included eliminating 200 district jobs and privatizing 400 others, including custodians, central office staff, and teacher aides, with school closings phased in over the next few years. Bleke maintained that even employees who would be able to keep their jobs would likely be required to cut back in other areas, some having to pay portions of their health insurance or forgo scheduled pay raises.

The MEA expressed displeasure over the possibility of privatization efforts taking root in Grand Rapids. The district is the largest in the state for the MEA, according to an April 14 Grand Rapids Press news story.

MEA Communications Director Margaret Trimer-Hartley told the newspaper the privatization issue was “critical,” and said, “If a large and high-profile district like Grand Rapids privatizes, it could hurt members all over.”

Before the scheduled board vote, union members were given the opportunity to review the concession package, but only if it came close to saving the district $5 million, the Press reported.

Press research revealed union employees received full dental, vision, and health coverage through a union provider if they worked more than 16 hours a week. Their most recent contract included 10 to 20 paid vacation days, seven to 10 paid holidays, three personal days, and 10 sick days.

Drivers Offered Concessions
In April, the bus drivers offered concessions that included giving up vacation time, pay raises, and health insurance for their families, totaling $1.9 million in savings for the district. However, those savings were offered only for the remainder of the current year’s contract. The board said contracting with privately run Dean Transportation would mean long-term, substantial savings of $18 million and would free the district from paying rapidly escalating employee retirement expenses.

After the board vote, 225 GRPS bus drivers and mechanics learned their jobs will be outsourced to Dean next year. The transportation company says 140 district drivers, who will be able to join a union representing Dean drivers, have since applied with the company.

A concession plan that included wage freezes, health insurance contributions, less vacation and sick time, and modifications to job descriptions was offered by custodians and accepted by the school board. The district could not provide exact figures for the concession plan, but according to an MEA representative, projected savings total several million dollars.

Governor Speaks Against Plan
Michigan Gov. Jennifer Granholm (D), giving a speech at Grand Rapids’ Creston High School days after the board vote took place, declared, “Privatizing employees is not the way schools should be saving money,” according to the Muskegon Chronicle, saying she thought the state has “done better bringing work inside instead of contracting it out.” The report also indicated Bleke was not surprised by the comments, and asked if Granholm could generate a better solution.

Bleke, who will retire in June 2006, told the Press he is optimistic about the future of the district now that a major budget hurdle has been cleared. “I honestly think this is the best finish to the school year we’ve had in a long time,” he said.

Grand Rapids’ WOOD-TV reported that the lowest hourly wage for a GRPS bus driver was $14.38. Dean Transportation pays drivers $11.24 an hour.

According to Standard & Poor’s, over the past five years Grand Rapids Public Schools have lost 2,650 students. The district was spending as much as $10.634 per pupil, and only 47 percent of that sum was actually going “into the classroom.”

An earlier version of this article appeared in August 16th Michigan Education Report (Summer 2005 issue), published by the Mackinac Center for Public Policy. The full report may be viewed at http://www.educationreport.org/pubs/mercover.asp?ID=7232.
Katrina
Continued from page 1

gressmen to oppose that measure. “Congress has the responsibility to cut spending elsewhere if we are going to commit this amount of money.” Flake said in a statement after the vote.

Offset Bill Not Allowed
An amendment to the Katrina relief bill to do that was offered by Rep. Jeb Hensarling (R-TX), a member of the House Committee on Budget and the House Financial Services Committee and chairman of the Budget and Spending Task Force of the Republican Study Committee. The House leadership did not allow the amendment to be considered.

“We’re doing our best, but our battles are many and our victories are few,” said Mike Walz, Hensarling’s press secretary. The Hensarling amendment would have offset the $51.8 billion in hurricane relief with spending cuts across the board over the next five years, with exemptions for entitlement spending, defense, homeland security, and veterans funding.

“When so many lives have been shattered and relief is so critical, Congress cannot continue to fund projects like the $800,000 outhouse, $1.2 million for panda research, or the $1 million indoor rainforest in Iowa. The fundamental question is who should tighten their belt to pay for this damage, American families or the federal government?”

REP. JEB HENSARLING
TEXAS

In announcing his amendment September 8, Hensarling pointed to billions of dollars of dubious spending approved earlier this year by Congress. “When so many lives have been shattered and relief is so critical, Congress cannot continue to fund projects like the $800,000 outhouse, $1.2 million for panda research, or the $1 million indoor rainforest in Iowa,” Hensarling said. “The fundamental question is who should tighten their belt to pay for this damage, American families or the federal government?”

Deficit Fears Grow
Hensarling said the hurricane relief spending, absent offsetting budget cuts, would increase the federal deficit, currently estimated at $531 billion, and raise future taxpayers with the costs. It is a theme being taken up by Democratic leaders.

“When this administration took over, we had a surplus of—it doesn’t really matter how much it was—but some say over $6 trillion over 10 years,” said Senate Minority Leader Harry Reid (D-NV) as quoted in a September 12 article in the Chicago Tribune. “Now, we are in the red so far you can’t see the end of the red ink.”

Veronique de Rugy, research fellow at the American Enterprise Institute, said, “The government doesn’t care about fiscal responsibility. One of the things that struck me when I listened to the debate and then looked at the bill allocating $51.8 billion was that no one was talking about how to pay for this. There is no talk about cutting spending in other parts of the budget. It’s horrible. They’ve been behaving this way more than four years.”

Experts Say Cut Pork
De Rugy and Bruce Bartlett, senior fellows at the National Center for Policy Analyst, both suggested an easy cut would be to remove pork in the recently approved transportation bill.

“That bill has more than $20 billion of pork,” Bartlett said. “I’ve been sending emails saying our response should be to reopen the highway bill and cut spending out of that.”

Bartlett noted Bush started out saying he would veto the transportation bill if it came in at more than $256 billion. It came in at $295 billion and he signed it anyway.

“If we go back to the president’s own veto number, we have most of the $62 billion [in approved disaster relief] right there,” Bartlett said.

The pork-laden energy bill also has billions of dollars that could be cut, said Tom Schatz, president of Citizens Against Government Waste.

“Unfortunately, members of Congress used disasters as an excuse to spend money, not save money,” Schatz said. “Their idea is when we have a disaster, let’s spend more money. We support what Congressmen Flake and Hensarling and a few others are trying to do to offset this spending.”

News Media Paying Attention
Although he is discouraged about Congress’s spendthrift ways, Schatz is encouraged by the attention the issue is beginning to receive from establishment news organizations.

“We’re getting a good number of calls from the media about this,” Schatz said. “There has been a lot of waste and abuse of disaster relief in the past. A decent group of mainstream media is interested, because they know what’s gone on in the past. They’re looking for waste and abuse.”

Congress, President Ignore Complaints
Stephen Slivinski, director of budget studies at the Cato Institute, said, “Congress and the White House have not shown themselves interested in spending restraint under any circumstances. The fact that George Bush is the biggest spending president since Lyndon Johnson is not something that is to their credit.

“If I were speaking to a roomful of Congressmen, I’d say the first thing they should be talking about is how to afford all of this,” Slivinski said. “That discussion seems to be missing from the entire conversation. I would also say they should discuss how the money is being spent. One of the things the federal government has shown itself good at is throwing around a bunch of money, much of which is not well-targeted.”

On September 9 the Associated Press reported most of the $5 billion the federal government made available to small businesses that were hurt by the terrorist attacks of September 11, 2001 was wasted. Among the recipients of that disaster relief, according to the AP, “A South Dakota country radio station, a Virgin Islands perfume shop, a Utah dog boutique and more than 100 Dunkin’ Donuts and Subway sandwich shops.”

Steve Stanek (stanek@heartland.org) is managing editor of Budget & Tax News.
State, Local Pension Plans Are
“A Ticking Time Bomb Set to Explode”

Rising costs pose dire, imminently budget crisis, expert says

by Sandra Fabry

In July 2005, Alaska Gov. Frank Murkowski (R) signed legislation that will change the state’s public pension system from a nineteenth century defined benefit plan to a twenty-first century defined contribution plan. That move comes as a first step toward addressing a severe shortfall in the state’s pension fund.

Alaska is not the only state in the nation facing pressing state and local pension system needs. Florida, Colorado, Michigan, and others have undertaken similar reforms.

Daniel Clifton, executive director of the American Shareholders Association (ASA), spoke about the problems the public pension system is facing, implications for taxpayers, and possible remedies and steps taken by states to alleviate the problems.

Clifton: You are absolutely correct in your assessment. Both Social Security and private pensions are in desperate need of reform. But the state and local public pension systems are facing the most immediate and pressing issues. Simply put, the public pension system is a ticking time bomb that is set to explode.

The longer policymakers wait to reform the system, the more dire the problem becomes.

“Increasing retirement and health care costs with fewer workers is a recipe for economic disaster, as most states will have to raise taxes continuously to maintain the promises to retirees.”

Fabry: When you refer to “the problem,” what are you specifically talking about?

Clifton: Public pension systems, generally prefunded defined benefit plans, are taking up a greater percentage of the states’ budgets. Under a defined benefit plan, the employer (in this case, the government) promises a specified retirement benefit to the worker and saves and invests the funds in a common investment pool to finance those benefits. Prefunded means the employer and employee contributions pay for their own retirement, in which today’s workers finance today’s retirees.

However, state and local governments are running huge unfunded liabilities; they are financing retiree benefits with contributions from today’s workers. When the Baby Boomers start retiring in 2008, there will be fewer workers to pay for retiree benefits. Increasing retirement and health care costs with fewer workers is a recipe for economic disaster, as most states will have to raise taxes continuously to maintain the promises to retirees.

This is a real problem, and it needs to be addressed immediately.

Fabry: How are taxpayers affected by this?

Clifton: If public entities use defined benefit plans, they cannot maintain their financial position without major tax increases. During the 1990s boom, state pension plans were flush and were actually overfunded. The politicians then moved to increase benefits. In 1999, former California Gov. Gray Davis (D) boosted public employee pension benefits dramatically—allowing many to retire at age 50 or 55 with 90 percent of their salary for life—without almost any debate.

Moreover, the benefit enhancements were retroactive. Neither employees nor the state had been paying for these benefits during the workers’ lifetime. They were paid from existing plan assets, therefore increasing the unfunded liability.

While this plan was sold as a “cost-free” measure, the change actually cost California $10 billion in added liabilities over 20 years. Many states did this during the 1990s.

Those rapid pension asset gains should have been held without benefit increases to smooth over the down years that followed. Had this been the case, the

Clifton continued at right

Change

Continued from page 1

President George W. Bush on October 22, 2004. It included a provision allowing companies to repatriate their previously designated permanently invested foreign profits back into America at a 5.25 percent tax rate.

“The size of this repatriation shows how distorted our current tax regime is,” said Rep. Phil English (R-PA), a key sponsor of the legislation. “We think we should be looking at the corporate tax rate for a permanent fix. We need to lower the corporate tax burden so it’s more comparable to our trading partners. We also need to change the design of the corporate tax system.

This repatriation will lower the cost of capital, create jobs, and significantly provide seed corn for some of the most dynamic sectors of our emerging economy,” English said. “We have seen a subsidence of some of the investments we saw in the 1980s. As result, we have seen the U.S. economy not enjoy as much growth as it did in the 1980s. As a one-shot deal, this will provide a significant boost to capital at a lot of firms, the benefits of which will be felt for years to come.”

Among Highest Tax Rates

Prior to passage of the legislation, U.S. subsidiary firms operating in foreign countries paid taxes on their profits to the host country, and if the company decided to bring the profits back into the U.S., it had to pay the difference between the foreign tax and the 35 percent tax rate in the United States. Because the United States has one of the highest corporate tax rates in the world, this encouraged U.S. companies to invest in foreign countries instead of at home.

The Invest in USA Act allows companies to reinvest their foreign profits back into the United States at a 5.25 percent rate for one year. Many companies are using the one-time provision to repatriate their profits back into America, bolstering new investment, job creation, and shareholder wealth that otherwise would not have occurred.

According to the International Strategy and Investment Group, 91 companies listed on the Standard & Poor’s 500 have repatriated more than $210 billion that otherwise would have been invested in other countries.

The amount of repatriations already exceeds by 41 percent the official government forecast of $135 billion put forward by the Joint Committee on Taxation. Based on the number of technology companies that have yet to announce, $300 billion in repatriated profits is virtually certain and $350 billion is most likely to be reached;

$350 billion is 2.8 percent of U.S. Gross Domestic Product (GDP), which exceeds the three-year cumulative total of tax cuts in effect for the years 2003, 2004, and 2005.

Investment and Jobs

JP Morgan estimates the Invest in USA provision will increase GDP by an additional 1 percent over the next two years. JP Morgan further estimates $120 billion will be used for new investment, creating 500,000 new jobs over the next two years.

The remaining funds are being used to shore up balance sheets, specifically pensions—a good thing for workers and companies given the current problems with defined benefit pension plans.

Higher than expected repatriations are also boosting tax revenues. The ASA estimates the repatriation provision will bring in an additional $20 billion in corporate tax revenue over what was expected. That does not include anticipated revenue gains from income, investment, and capital gains taxes.

Rep. Kevin Brady (R-TX), another key sponsor of the legislation, said, “I’m not surprised it’s performing as well as it is. It’s doing just what we anticipated. It made no sense to strand those profits overseas instead of having them go to work here.”

Brady said he believes the success of the profit repatriation “opens the door to a stronger effort for reform of the corporate tax system. Phil English and I have talked about this and have agreed we would like to make this permanent at some point.”

Daniel Clifton (dclifton@americanshareholders.com) is executive director of the American Shareholders Association.

INTERNET INFO


Additional information on the repatriation of foreign profits may be found online at http://www.americanshareholders.com and www.house.gov/apps/list/press/pa03_english/de10805.html.
resulting stock market downturn would not have had a major impact on the pension system. Unfortunately, though, politicians continue to use the pension system as a slush fund to garner votes from public employees.

Fabry: How do you reform the existing system while maintaining promised benefits to workers?

Clifton: I believe the answer is in moving from the antiquated system of defined benefit plans to defined contribution plans for every worker.

“Those rapid pension asset gains should have been held without benefit increases to smooth over the down years which subsequently followed.”

Under a defined contribution system, the employer pays a specified amount into an investment account for the worker, and benefits equal what these accumulated invested funds can finance.

Under this system there are no unfunded liabilities, workers have greater control over their retirement income, and no one has to worry about politicians squandering their retirement funds as is currently happening under the existing system.

ASA research finds that two of every three pension dollars in the private sector are now in defined contribution plans. That was not the case 20 years ago, and the only private-sector companies still offering defined benefit plans are large, old, manufacturing firms.

Fabry: How would this fix the problem in state pension funds for both taxpayers and government employees?

Clifton: Within the context of an aging population, increased labor mobility, perverse incentives of the public pension system, and taxpayer frustration over continual contributions to the system, defined contribution plans are the natural alternative to meet these changing needs.

Under a defined contribution plan, workers are able to take the funds paid into their accounts wherever they go. Those who work for a few years in the public sector and then move on, as most now do, would not lose all of their employer pension contributions, as they do with typical defined benefit plans. At the same time, individuals don’t have to worry about politicians mishandling the funds, accumulating unfunded liabilities, or playing politics with the pension fund.

Our research also tells us that short- and medium-term workers would get higher benefits through defined contribution plans because defined benefit plans almost always distribute benefits away from them to the long-term workers. But with the funds under worker control consistently earning average returns over the long run, even the long-term workers may well earn higher benefits through a defined contribution plan than promised in a traditional defined benefit plan.

Under a defined contribution plan, expenses are fixed as a percentage of payroll each year, with no investment risk or danger of unfunded liabilities. Thus, the benefits to taxpayers include less government budget risk, as the government expenses become more certain. At the same time administrative costs are reduced and the government has better recruitment tools because they are now offering portable pensions.

Fabry: Have states moved to this new system?

Clifton: While state and local governments have not moved fast enough to reform their pension systems, I am encouraged that a shift toward defined contribution plans has been made. Nine of the past 10 changes to public pension systems have been from defined benefit to defined contribution.

In July, Alaska moved to a defined contribution system. Other states that have done so include Colorado, Florida, Ohio, Michigan, and Oregon. California Gov. Arnold Schwarzenegger (R) made this a central part of his reform platform at the beginning of this year.

Due to a quirk in the initiative language it has been put on hold for a year, but I think once California goes to defined contributions, the rest of the nation will follow.

I also believe South Carolina is looking at this option under the leadership of Gov. Mark Sanford (R). I read a press report where he was presented with the 30-year unfunded liability number for the pension system and realized something needed to be done ... and done quickly. It is my hope that other governments also realize the enormity of this problem, like Governor Sanford apparently has.

“Public employee unions ... continue to keep their head in the sand and want no changes to this antiquated system. At some point they have to realize they are holding onto a dinosaur.”

Fabry: What do you see as the major roadblocks stopping reform?

Clifton: Public employee unions. It is really that simple. I spoke at the pension administrator conference last August and told them, “The crisis is upon you. You can be part of the solution or part of the problem.” I offered to work with them in developing solutions. Instead, they continue to keep their head in the sand and want no changes to this antiquated system. At some point they have to realize they are holding onto a dinosaur.

When I testified in California in support of the governor’s plan, what I saw was shocking: The public employee unions presented widows of slain police officers and injured firefighters and lied to these people, telling them that under the plan they were going to lose their survivor and disability benefits. Yet, the plan was for retirement only and would never affect these kinds of benefits. The senators holding the hearing knew this was the case and still let the circus continue.

At that point I realized the public employee unions would stop at nothing. For them, it is not about the retirement security of public employees, but about the power of controlling their workers’ money as a slush fund for political gain. I was offended by the theatrics, to say the least.

But with all that said, the current system cannot continue. And it just is not sustainable for politicians to continue raising taxes on working families to pay retirement and health care costs for public employees, when these taxpayers are struggling to save for their own retirement and health care.

There will be a breaking point. Hopefully we can reform the system before we reach it.

Sandra Fabry (sfabry@atr.org) is state government affairs manager for Americans for Tax Reform.

INTERNET INFO


Additional information on public pension issues is available through PolicyBot™, The Heartland Institute’s free online research database. Point your Web browser to http://www.heartland.org, click on the PolicyBot™ button, and select topics/subtopic combination Employment/Pensions.
Nearly 14,000 Pork Projects in Federal Budget this Year

by Chris Edwards

“Pork” spending by Congress has exploded in recent years. The $2.96 trillion highway bill passed in July was bloated with 6,371 special projects inserted by members of Congress for their states and districts. Such projects are often of dubious value or for purposes that are the responsibility of local governments and the private sector. Pork is only one type of waste in the budget, but it undermines efforts to restrain federal spending in general.

Republicans Lead Pork Explosion

The number of federal pork projects increased from fewer than 2,000 annually in the mid-1990s to almost 14,000 in 2005, as measured by Citizens Against Government Waste. Other data indicate the number of federal “earmarks” increased from 4,155 in 1994 to 15,584 in 2005.

“Pork” and “earmarks” are similar concepts. Both generally refer to money set aside by legislators for specific projects in their home states—even from parking lots and bicycle paths to $50 million for an indoor rainforest in Iowa. The projects are usually inserted into bills by individual members, have not been requested by the president, and skirt normal procedures for competitive bidding or expert review.

Thus if the government intends to spend $100 million on bioterrorism research, it might go to laboratories in the districts of important politicians, instead of to labs chosen by federal scientists. Earmarking has soared in most parts of the budget, including defense, education, housing, scientific research, and transportation.

In the past, the Kings of Pork were mainly Democrats such as Sen. Robert Byrd of West Virginia and former Reps. Tom Bevill of Alabama and Jamie Whitten of Mississippi. Republicans, including Sen. Ted Stevens and Rep. Don Young of Alaska and Sens. Trent Lott and Thad Cochran of Mississippi. Republicans promised to cut wasteful spending when they were elected to the majority in 1994. But today few seem embarrassed by the record levels of pork.

State, Local Officials Lobby

The first three projects in the above list give taxpayer money to groups that should be funding their own activities, especially since many in the music industry are very wealthy. Regarding the Grammy's, Rep. Jeff Flake (R-AZ) asked in a February 14 statement issued by his office, “Why should taxpayers fund an organization comprised of millionaire singers, producers, and executives?”

The next three projects are examples of items state and local governments should fund locally. Instead, state and local officials are spending increasing amounts of time in Washington asking for handouts. Lobby firms actively solicit officials to hire them to shake the federal money tree for projects that otherwise would be funded locally.

The final three projects in the list ought to be left to the air industry and airport users. Seafood plants and film festivals also should be funded by the private interests they serve.

Pork Erodes Responsibility

Republican leaders have allowed an “every man for himself” ethos to permeate Congress. Instead of focusing on national concerns such as security, members have become preoccupied with grabbing money for hometown projects. While politicians express concern about the deficit, their staffers spend most of their time trying to secure pork, and they rarely look to find savings in the budget.

The problem starts at the top: Republican leaders have shown no personal restraint on the budget. House Speaker Dennis Hastert (R-IL) is a champion at bringing pork home to Illinois.

The Washington Post noted in a July 17, 2004 article that Hastert “makes a habit of helping Illinois-based corporations” such as Boeing, Caterpillar, and United Airlines. Hastert’s giveaways have included trying to get United Airlines a $1.6 billion loan guarantee and adding $250,000 to a defense bill for a candy company in his hometown to study chewing gum. The lack of principled GOP leadership has a corrosive effect on members who may be willing to support restraint but who will not put their necks on the line without sacrifice at the top. Why should rank-and-file Republicans restrain themselves when their leader is the porker-in-chief?

Hastert’s office did not respond to requests for comment.

The problem with pork is not just the particular money wasted, but also “the hidden cost of perpetuating a culture of fiscal irresponsibility. When politicians fund pork projects they sacrifice the authority to seek cuts in any other program,” noted Sen. Tom Coburn (R-OK) in Breach of Trust: How Washington

Budget Transparency Needed

Pork spending might be brought under control with greater budget transparency. The name of the politician requesting each project should be listed in legislation, and spending request letters sent by members to appropriators should be made available online.

More importantly, the pork explosion highlights the need for Congress to overhaul its budgeting structures to get a grip on the overspending that has created huge deficits.

Republican leaders should insist that party leaders stop undermining restraint by using their positions for parochial gain. They ought to stop rewarding leaders who call themselves conservatives just because they favor tax cuts. The real litmus test for fiscal conservatism is leadership on spending cuts and a willingness to forgo pork to set a good example for the rest of Congress.

Chris Edwards (cedwards@cato.org) is director of tax policy at the Cato Institute. A version of this article appeared in Cato’s August 2005 Tax & Budget Bulletin.

INTERNET INFO

Tax Revolt Leads to New City in Fulton County, Ga.

City leaders hope to privatise services, provide fairer use of tax money

by Steve Stanek

It is a move to gain more control over Fulton County tax dollars flowing out of their area, Sandy Springs, Georgia has decided to incorporate and is moving to privatize government services.

By an astounding 94 to 6 percent vote in June, the nearly 88,000 residents of Sandy Springs, an unincorporated area immediately north of Atlanta, approved incorporation. The city is to be formally chartered in December.

Thirty years of complaints about how the county was diverting tax money from Sandy Springs to the southern part of the county had gone unheeded. Even the county chairman admits that. There also were repeated complaints about the seven-member county commission, dominated by the southern part of the county, making land-use decisions against the wishes of Sandy Springs residents and businesses.

Taxes Weren’t Bringing Services

“The heart of the issue is the dollars are not being allocated in a way that serves the needs of the people. It’s stunning and quite irresponsible,” said Fulton County Chairman Karen Handel, who lives in the northern portion of the county but not in Sandy Springs. “Decisions are made off of emotion and politics and not from need.”

In 2004, after repeated tries, Georgia lawmakers passed and the governor signed legislation allowing Sandy Springs to vote to incorporate. The overwhelming vote in favor of incorporation showed how frustrated residents were with Fulton County government, said Tibby DiJulio, chairman of the Sandy Springs finance task force and a candidate for Sandy Springs’ first city council.

Local services to unincorporated areas have been provided by the county through a special tax district in those areas,” DiJulio said. “They were charging about $50 million for local services in Sandy Springs and giving us about $24 million of services. That wasn’t the worst part of it. We were being overzoned, under-repaired, with stoplights that don’t communicate, and insufficient police.”

Private Services Preferred

Ray Smith III, vice chairman of the Committee for Sandy Springs, which is helping to organize the city government, said he and other organizers plan to contract out as many services as possible, to keep the government operation lean.

Smith said the Sandy Springs committee is discussing services with private contractors and negotiating with the county for “a safety net” of police and fire protection until the first mayor and city council decide whether to contract with private firms, another local government entity, or the county. Those contracts cannot be entered into until after the council is seated in January, and probably would take several months to complete, he said.

“Georgia provides that a city must provide three services, but it doesn’t say what services,” Smith said. “We will probably have police, fire, and another service. I think ultimately we’ll use private entities. We hope we will be a model for other cities to follow.”

One model for Smith, DiJulio, and other Sandy Springs organizers has been Weston, Florida. That city of 65,000 started as a planned development and incorporated in 1996, also because of gripes about soaring taxes and poor services. Weston has a paid city staff of three people, having contracted out virtually all services.

Professionals Working for Free

Sandy Springs has scores of volunteers on 13 task forces working on various aspects of incorporation.

“We have no budgets. It’s all out of our own pockets,” DiJulio said. “We’re blessed in that we have a tremendous pool of talent. We have bright people on all levels. Our task forces are full of professional people who do for us free what they do for a living.”

DiJulio himself is a perfect example. He was named to direct the finance task force because of his professional background, which includes being a certified financial planner and manager of the local office of A.G. Edwards & Sons, a major full-service brokerage firm.

“I have on my task force attorneys, investment bankers, [and] a person who used to be chief financial officer of a major city, and I’m in the investment business,” he said.

DiJulio estimates first-year revenues will be about $66 million, climbing to more than $70 million thereafter.

Running Surplus, Boosting Services

“Fulton County was spending $24 million for our services,” DiJulio said. “We’re looking at running a surplus and increasing services, including additional police officers, more fire protection, synchronized stoplights to reduce traffic congestion, and better roads.”

Revenue sources will include property taxes, business licensing, a local option sales tax, franchise fees, and hotel/motel taxes. The tax base is big, as Sandy Springs is headquarters to United Parcel Service, Cox Communications, Porsche North America, three major hospitals, a major electric utility company, “and an enormous number of office buildings,” DiJulio said.

Handel said she views the incorporation “as an opportunity to break the logjam we have long had in Fulton County.”

She said the county board of commissioners has been divided racially and geographically. Atlanta and the rest of the southern part of the county is majority Democrat, with a large black population. North of Atlanta is Republican territory, with a large white population.

Because of the way the county districts are set up, the southern part of the county has been able to hold the majority of members, she said.

Some Problems Remain

“Incorporation won’t solve everything, because we still have inequities in general fund allocations,” Handel said. “Sandy Springs has nearly 90,000 citizens; South Fulton has about 56,000. The county police department spends $13 million in South Fulton, while just over $7 million is spent in Sandy Springs. That is the dynamics of the 4-3 split on the board.”

Handel said the Sandy Springs incorporation will cost the county general fund about $20 million of revenue. That does not concern her, she said, because that is just a small percentage of the $600 million fund.

Steve Stanek (stanek@heartland.org) is managing editor of Budget & Tax News.
Higher Alcohol Taxes Unlikely in 2006

by Sean Parnell

After mostly unsuccessful efforts to boost state taxes on beer and other alcoholic beverages in 2005, advocates for higher taxes are likely to face another dry year in 2006.

Evidence is mounting that higher alcohol taxes are not effective in reduc- ining underage drinking or driving while intoxicated, creating thorny problems for tax-hike advocates.

Tax Hikes No Deterrent

Even advocates who think alcohol tax increases have begun to doubt their impact on drunk drivers. Researcher Joel Grube of the Prevention Research Center, run by the pro-tax Pacific Institute for Research and Evaluation, noted in the September 2004 issue of Traffic Injury Prevention that recent research “... has found no evidence for the effects of taxation and price on alcohol consumption and alcohol-related traffic fatalities.”

California provides an example. In 1991, beer taxes increased nationally by 89 a barrel at the federal level, while California tacked on an additional $6 per barrel tax. According to data from the California Student Substance Abuse Survey, alcohol use among underage teens increased after the tax hike.

Youths Flush with Money

Research on teens’ spending patterns would seem to confirm that higher taxes are unlikely to impact alcohol use.

According to the consumer research firm Mintel International Group, “Teens aged 12-17 ... are a formidable consumer market with considerable spending power. Mintel expects teen spending to reach $124 billion in 2004.” Young people age 18 to 29 have tens of billions of dollars in spending power, much of it discretionary.

Alcohol taxes also appear to have a negligible impact on how many people drive while intoxicated.

For example, Wyoming has gone 70 years without raising its alcohol tax, and it also has the highest beer tax in the country, $2.41 per case. In 2003, 28.9 percent of traffic fatalities in Alaska involved alcohol, while 28 percent of traffic fatalities in Wyoming were alcohol-related.

Taxes Hit Poor Hardest

The regressive nature of alcohol taxes is well understood in the public policy community. The Center on Budget & Policy Priorities, a liberal think tank in Washington, DC, noted in a 1997 report by Nicholas Johnson and Iris Las, “Excise tax increases may be enacted for socially desirable reasons other than raising revenues. ... They nevertheless place a disproportionate burden on lower-income households.”

A more recent report on alcohol taxes, prepared in 2003 by Patrick Fleenor for the nonpartisan Tax Foundation, also concluded alcohol taxes impose a heavier burden on low-income consumers.

“Under current law individuals making less than $20,000 per year face federal alcohol tax burdens that are more than 18 times higher than individuals making in excess of $200,000.” Fleenor wrote.

A January 2005 research document by the Minnesota House of Representatives concluded: “Alcohol taxes are regressive; they constitute a higher share of income for lower-income families and individuals, on average. ... They are less regressive than the tobacco taxes, but are nevertheless more regressive than the general sales tax.”

Hikes Face Fierce Fight

Despite these hurdles, many advocates of higher taxes on alcohol vow to press on. The Center for Science in the Public Interest, a liberal advocacy group in Washington, DC, is pressing for higher taxes and has identified on its Web site 12 target states: Connecticut, Indiana, Kentucky, Louisiana, Minnesota, Missouri, North Dakota, Ohio, South Dakota, Texas, Washington, and Wisconsin.

The Video Choice Act has bipartisan support, but some interest groups oppose it. The U.S. Conference of Mayors, for example, doesn’t like the idea of new businesses “entering the video market to provide video service without obtaining local franchise agreements.”

Sharing the mayors’ concern is the Michigan Municipal League. The league has asked members to send Congress a letter saying they oppose the legislation because “it will deprive us of badly needed funds that are currently part of our municipal budget.”

Better Service, Prices, Choices

While some municipal politicians would lose the power to decide from whom their constituents can buy pay TV—and the cash benefits that accrue to such power through direct and hidden taxes—pro-consumer groups side with the bipartisan coalition in Congress.

“Americans’ ingenuity and creativity can provide more choices for consumers if government bureaucrats will get out of the way and allow our companies to compete.”

Joel Grube
Prevention Research Center Pacific Institute for Research and Evaluation

“I doubt they’ll have any more luck in 2006 than they had in 2005,” said Brian Dumas, vice president of Victory Enterprises, a political consulting firm in Des Moines, Iowa.

“State revenues are surging across the country,” Dumas continued, “and it’s increasingly evident that alcohol tax hikes don’t help much in reducing underage drinking or driving while intoxicated. Furthermore, politicians in both parties understand that raising taxes on hardworking families is not popular. I can’t imagine that it’s worth any legislator’s time to fight this type of losing battle.”

Sean Parnell (parnell@heartland.org) is vice president—external affairs for The Heartland Institute.

Federal Legislation Aims to Expand TV Offerings

by Max Pappas

The U.S. Senate is considering legislation that would remove government-created barriers critics say drive up the cost of cable television and keep technological improvements out of the hands of ordinary Americans.

Senate Bill 1504, the Broadband Investment and Consumer Choice Act, aims to modernize U.S. telecommunications law by reforming the local franchising process that makes it difficult for new providers to compete with local cable television companies. The legislation seeks to promote growth and competition among all technologies, allowing consumers to choose their cable provider.

It’s time to restore America’s status as a leader in the field of global communication technology and to improve burdensome and outdated government regulations for the benefit of consumers nationwide,” Ensign said. “Americans’ ingenuity and creativity can provide more choices for consumers if government bureaucrats will get out of the way and allow our companies to compete.”

Additional Legislation

The Video Choice Act of 2005, introduced by Sens. Gordon Smith (R-OR) and Jay Rockefeller (D-WV) and Reps. Marsha Blackburn (R-TN) and Albert Wynn (D-MD), also would allow consumers to choose their cable supplier.

“We as Americans are paying higher television service rates today because of the hoops we require new providers to jump through,” Blackburn said. “We need to bring these outdated regulations in the twenty-first century. You cannot expect the current system to meet the expectations of modern consumers who are used to choice and competition in virtually every area of daily life.

Wynn added, “The Video Choice Act would provide consumers with a much-needed option for television service. I am confident this bill would promote competition and lower prices for consumers by allowing alternative television service providers the opportunity to widely offer their services.”

The Video Choice Act has bipartisan support, but some interest groups oppose it. The U.S. Conference of Mayors, for example, doesn’t like the idea of new businesses “entering the video market to provide video service without obtaining local franchise agreements.”

Sharing the mayors’ concern is the Michigan Municipal League. The league has asked members to send Congress a letter saying they oppose the legislation because “it will deprive us of badly needed funds that are currently part of our municipal budget.”

Better Service, Prices, Choices

While some municipal politicians would lose the power to decide from whom their constituents can buy pay TV—and the cash benefits that accrue to such power through direct and hidden taxes—pro-consumer groups side with the bipartisan coalition in Congress.

Former U.S. House Majority Leader Dick Armey, co-chairman of FreedomWorks, a nonpartisan free-market think tank and lobbying group, said, “For too long, consumers have been denied the benefits of real cable competition: more choices, lower prices, and better service. It’s time to allow competition and put the consumer in the driver’s seat.”

Max Pappas (mpappas@freedomworks.org) is director of policy at FreedomWorks.
Chicago Ordinance Would Allow More Retail Stores

by John W. Skorburg

Some Chicago aldermen have proposed an ordinance to ban the use of “restrictive covenants” that some businesses use to keep new businesses from moving in if the existing business leaves. Supporters believe the ordinance would be the first of its kind.

On August 11 a joint Zoning and Economic Development committee reviewed the proposed ordinance.

Restrictive covenants are clauses in land deeds that govern the use of private property. If the deed says no new store can be built on the property after the seller leaves it, and a new property owner does so, the new owner can be sued. Such clauses have been used nationally by grocery and drug stores to keep competitors out of neighborhoods. Now the concept is under fire and causing a rift in the business community, pitting in some cases big firms against smaller competitors.

Ordinance ‘Breaches New Ground’

The proposed Chicago ordinance, introduced on May 11 by Democratic Aldermen Manuel Flores (1st Ward) and Margaret Laurino (39th Ward), “is breaking new ground,” said Peter Skoody, vice president of external relations at the Metropolitan Planning Council, which helped draft the measure.

“When a large plot of land in a city like Chicago is taken out of the site potential for a new store, it’s not as if large plots of land are plentiful,” Skoody said. “It’s difficult to site a new store in that community. Drug stores also have a clear health/safety component.”

Because of restrictive covenants, when a grocery store or pharmacy moves away, the property often sits vacant for an extended period of time, Skoody said.

“It becomes blight,” he said. “Often, when a grocery goes down, the rest of the stores [in the area] go down with it. You’re harming the rest of the retail in the neighborhood. From an economic competitive perspective, let the free market make a go of it. To date, nobody has tried this approach. Everyone has tried to lift existing restrictions [on land use]. We think this is more proactive.”

Business Organizations Opposed

The Chicagoland Chamber of Commerce opposes the proposed ordinance, arguing it would make the city a less attractive place for grocery stores and pharmacies to do business.

“Chicago has the highest commercial and industrial property taxes in the nation. We have amongst the highest workers compensation costs. We have the highest sales tax. And now the city will tell you how to manage your private property. We can’t continue to pile on ordinance after ordinance and take rights away from the business community. We deal with each site on a case-by-case basis. There’s no one-size-fits-all remedy.”

Orchid Garden, Edwardsville, a former owner of a Dominick’s grocery story chain, closed 12 stores in the Chicago area in March 2004. At that time, Orchid’s had a restrictive covenant agreement in place.

“But who are they, because they want to pull up stakes, to say that we can’t have something if it’s similar in our neighborhood?” Edie Cavanaugh, executive director of the West Lawn Chamber of Commerce, supports the ordinance.

“Are businesses that use restrictive covenants so insecure and poorly managed that they can’t stand competition?” asked Cavanaugh at the hearing.

Flores said at the hearing, “When a business leaves the community, that doesn’t give the business the right to leave the community high and dry.”

Flores told hearing participants the ordinance is “not intended to beat up on businesses” but to “undo” practices he described as “anti-competition” and “anti-consumer.”

Need for Balance Noted

“It forces businesses that are failing to evaluate what they’re doing wrong,” Flores said. “But if you corner the market, you can abuse your power. If you do not allow anyone else to come in, it doesn’t matter whether you’re good or bad. You’re the only person in town.”

David Vite, CEO of the Illinois Retail Merchants Association, said the city would be on the “cutting edge” with the ordinance. But he warned at the hearing, “I hope we don’t sharpen the edge so finely that we cut out the businesses we’re trying to bring here. Please. Don’t tip the scales farther than they need to be tipped to solve the problem.”

When contacted by the author, Vite noted that “major grocers represent half a billion dollars in investment and an estimated 13,500 jobs within the city of Chicago.”

Groceries, Pharmacies Called Vital

Flores said the legislation “targets groceries and pharmacies because they are vital to the health of neighborhoods and frequently occupy large tracts of land in shopping centers or at key intersections where they are catalysts for development,” according to an August 12 article in the Chicago Tribune.

Alderman Bernard Stone (50th Ward), speaking in favor of the ordinance, said, “I value the rights of property owners. But property owners do not have the right to hurt their community, they do not have the right to hurt their neighbors, and they do not have the right to hurt the municipality,” the Tribune story said.

Existing Leases Exempted

Under the ordinance, existing real estate leases would be exempt, and as currently formulated the new law would apply only to deals approved after May 11, 2005. In addition:

• The ordinance would apply only to stores of at least 7,500 square feet;
• Any new deed restrictions lasting longer than a year would be outlawed;
• Restrictive covenants would be allowed for relocation, but only if the grocery or drugstore owner moves the operation to a comparable or larger store within a half mile of the old store within a two-year period and the restriction expires in three years;
• The measure would not prohibit non-compete clauses included in shopping center leases in which a landlord agrees with the tenant of a grocery or drugstore not to lease space simultaneously to a similar business.

The city’s corporation counsel has reviewed the legislation and has deemed it legal, but aldermen are anticipating a court challenge, most likely from the grocery industry.

Dominick’s Move Sparks Alderman into Action

The debate over deed restrictions surfaced when California-based Safeway Inc., which owns the Dominick’s grocery story chain, closed 12 stores in the Chicago area in March 2004. At that time, Dominick’s had a restrictive covenants agreement in place.

“Who are they, because they want to pull up stakes, to say that we can’t have something if it’s similar in our neighborhood?” Edie Cavanaugh, executive director of the West Lawn Chamber of Commerce, said to the Daily Southtown on August 15. “That’s just not right.”

Dominick’s spokeswoman Wynona Redmond was quoted in the Southtown article as responding, “it is never the company’s intention to deprive a neighborhood of access to groceries and ... in some instances, it has lifted its covenants. We deal with each site on a case-by-case basis. There’s no one-size-fits-all remedy.”

Alderman Manuel Flores on May 2 supported a plan by Dominick’s to build a 50,000-square-foot store. “I In Chicago’s East Village neighborhood. According to the Southtown article, “the supermarket chain agreed not to restrict future use of the property” as a condition for city council permission to build the store.”

— John W. Skorburg
On September 23, 2004, 120 elected officials, public policy experts, and grassroots activists from across the country gathered in Chicago to look forward to the shape of public policy debates in the coming years. Twenty-eight short presentations were delivered by many of the country’s leading free-market thinkers. Emerging Issues 2005 contains the edited proceedings of this remarkable conference.

All the major public policy topics of the day are covered: Taxes and budget issues, environmental regulation, school reform, health care finance, telecommunications, tort reform, and more. The authors include elected officials at the front lines of public policy change, leaders of major think tanks and foundations, and highly respected scientists, economists, and legal authorities.

Emerging Issues 2005 is a timely and authoritative guide to the public policy debates that lay ahead, yet it is short and written in plain English, making it an excellent introduction to public policy debates for an entire government affairs or public affairs staff. It can provide essential background and perspective for everyone from the boardroom to the mailroom.

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