

Pennsylvania House of Representatives Intergovernmental Affairs Committee

March 9, 2009

Testimony by:
Chris Whatley
Washington Director
The Council of State Governments

Chairman Thomas, Ranking Member Ross, committee members, I want to thank you for the opportunity to be with you today. The American Recovery and Reinvestment Act of 2009 is the single most important development in state federal relations since the New Deal. It has arrived at a time when states are staring down the barrel of cumulative budget deficits exceeding one quarter of a trillion dollars, but the sheer complexity of the legislation will place strict demands on all states. Just by holding this hearing you have made Pennsylvania a leader in responding to this historic legislation.

The goal of my remarks today is to try to render 1,100 pages of turgid legislative text into an approachable form and to identify action items that the legislature will need to consider in order for Pennsylvania to take full advantage of the funding opportunities within this historic legislation.

The Recovery Act includes over \$300 billion in potential funding for states and state-related entities. This funding is spread out over dozens of program accounts each with their own eligibility requirements and deadlines. However, the funding breaks out into three general buckets: 1) roughly \$95 billion in flexible funding which may supplant state spending (Medicaid & General Purpose Fiscal Stability Funds); 2) almost \$130 billion in formula funding which may supplement state spending (primarily Transportation & Education Fiscal Stabilization); and 3) over \$100 billion in competitive grant opportunities.

Most public announcements about Pennsylvania's share of the Recovery Act quote a figure of roughly \$10 billion. This figure reflects the flexible funding and formula funding that can be estimated with relative ease. According to Federal Funds Information for States (FFIS), the state is eligible to receive approximately \$4 billion in flexible fiscal relief and \$5.5 billion in formula funding. However, these estimates include over \$400 million from energy and unemployment programs that may require changes in state law and they do not include any estimate of funds the state could receive from dozens of competitive grant programs.

H

The legislature has a key role to play in maximizing Pennsylvania's federal funding under the Recovery Act. This role includes four key elements: 1) ensuring that all spending complies with the state constitution; 2) providing oversight in meeting the key statutory requirements; 3) conducting cost benefit analysis of potential changes in state unemployment laws and utility rates which could generate additional funding eligibility; and 4) providing ongoing oversight of the executive branch's response to competitive grant cycles.

The Recovery Act is a dialogue between Washington and the governors. While the legislation includes an override clause to allow a state legislature to request funding if the governor does not, the law is otherwise silent about the role of legislatures in allocating funds. However, state constitutions require robust legislative involvement in such major spending initiatives. If governors do not work with legislatures either to allocate funding through appropriation or to establish alternative mechanisms for legislative consent, they may face constitutional challenges which could cripple program implementation. Idaho, Maine, North Dakota, and Wisconsin are implementing laws or executive orders to address these concerns and many more are considering them.

In terms of oversight priorities, the first order of business for every state is to officially request funds. The general provisions of the Recovery Act require each governor to submit a simple certification declaring two things: 1) the state will request and use funds available under the act; and 2) all funds received will be used to create jobs and promote economic growth. As of March 2, only seven states had submitted certifications including Illinois, Kansas, Massachusetts, Michigan, Oregon, Texas, and Wisconsin.

The next priority is to ensure that states meet the statutory requirements necessary to receive the largest sources of flexible and formula funding, namely increased Medicaid reimbursements, Fiscal Stabilization funds, and transportation funding.

While increased Medicaid payments are already flowing into the states, to continue to take advantage of these funds states will need to ensure that: 1) Medicaid eligibility standards are no more restrictive than those in place on July 1, 2008; 2) they continue to make prompt payments; and 3) they do not divert moneys saved through the increased federal match into rainy day funds.

For the Fiscal Stabilization Fund, the Department of Education will release detailed guidance on the dispersal of both the flexible funding and education funding under this program. However, the statutory guidelines require each governor to make an application for the funding which includes assurances that the state will: 1) maintain fiscal support to elementary, secondary, and higher education through 2011 at least at 2006 levels; 2) improve teacher effectiveness and

equity in teacher distribution; 3) establish a longitudinal data system; 4) enhance academic standards and assessments; and 5) support struggling schools.

Transportation and infrastructure funding has received more attention in state capitols than any other single issue. This is largely due to the fact that the Recovery Act creates a March 10 deadline for the Department of Transportation to allocate funding and states are scrambling to submit their own lists of projects to be funded. In addition to reporting how their transportation funds will be allocated, the Recovery Act requires each governor to submit a certification by March 19, 2009 to the Secretary of Transportation “that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation”. If states do not obligate the funds they receive within 120 days, 50 percent of any unobligated funds will be distributed to other states. All funds remaining unobligated after one year will be redistributed.

Maximizing Pennsylvania’s funding for energy efficiency programs and unemployment insurance is a much more complicated matter. Funding under both programs is distributed by formula, with Pennsylvania eligible for approximately \$125 million in energy efficiency funding under the State Energy Program and just over \$290 million incentive funding under unemployment modernization. Both programs will require significant rule making actions to clarify their requirements. Unfortunately, the raft of rule making required by the Recovery Act, combined with the fact that most agencies have not received their full complement of senior political appointees, has created a bottle neck within the Office of Management and Budget that will take time to work through.

Statutory guidelines for accessing the State Energy Program require the governor to certify that: 1) the state utility commission will implement policies that ensure state-regulated electric and gas utilities have appropriate financial incentives to help their customers reduce energy use; and 2) the state, or applicable unit of local government, will implement energy codes for residential and commercial buildings that meet or exceed certain conservation and efficiency standards. The Recovery Act also requires states to prioritize funding to energy efficiency and renewable energy projects, such as building retrofits. However, it is difficult to determine the full scope of these requirements until the Department of Energy completes its rule making on the program. Understanding the full scope of these requirements will have to await rule making from the Department of Energy.

The Recovery Act provides “incentive payments” to states which agree to amend their unemployment compensation laws to provide more generous base-period calculations and adopt less restrictive grounds for disqualifications based on availability of and applicants’ search for work. The Secretary of Labor is required to issue rules regarding state law modernization provisions by April 18. States must have permanent laws in place, or set to take effect within 12

months, that contain the revised provisions. Until the rule making is complete, it is difficult to determine the long-term fiscal impact of such permanent eligibility changes.

The most elusive challenge in Recovery Act oversight is to ensure that state agencies fully take advantage of competitive grant opportunities. Federal agencies are required by the Recovery Act to post details for all grant cycles by March 19 on www.grants.gov. The Department of Justice has already posted grant information for both formula and competitive grant programs with application deadlines as soon as March 18. States may need to convene task forces or set up other bodies to ensure that all available grant opportunities are pursued. Legislative oversight will be crucial to ensure that whole areas of potential funding do not fall through the cracks.

Mr. Chairman, Ranking Member Ross, and committee members, I want to thank you again for the opportunity to be with you here today. Helping states understand, access, and account for Recovery Act dollars is a top priority for The Council of State Governments (CSG). To help states meet this challenge we established STATERECOVERY.org, a website updated daily to help states understand federal funding opportunities and learn from each other in implementing Recovery Act programs. We at CSG stand ready to assist you in any way as you go forward with your efforts.