



THINK RECOVERY

The economic stimulus act is one of the most complex bills ever passed. Here are some tips on how to understand the legislation.

BY CARL TUBBESING

Huge, massive, audacious and ambitious are the sort of words national politicians and reporters have used to describe the 1,000-page America's Recovery and Reinvestment Act and its \$787 billion price tag. As state legislators and legislative staff attempted to dissect it, they added their own descriptors—complicated, confusing and convoluted.

There is no simple way to decipher it. There are, however, six keys to understanding the law and what it means for state legislatures.

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TWENTY-THREE DIFFERENT LAWS

The act is divided into an appropriations division and a tax provision and has a total of 23 titles. The principal authors of the legislation for the most part chose not to use it to create new programs. Instead, most of its 23 titles use pre-existing federal laws for distrib-

uting the money. That means each funding stream has its own unique set of conditions, rules and parameters—for the most part, conditions, rules and parameters included in pre-existing laws.

The answer to one of the first questions facing lawmakers—Must states maintain a certain level of services to receive federal funds, a so-called maintenance of effort requirement?—demonstrates the complexity of the legislation. It turns out there is not one maintenance of effort provision, but 17.

For example, the Medicaid portion of the act prohibits states from changing their rules about who is eligible for the program, although they can alter the benefits. To receive a portion of the \$54 billion in the State Fiscal Stabilization, which is largely dedicated to education programs, states must maintain education funding at fiscal year 2006 levels. The secretary of education, however, can waive this requirement. And the Child Care Development Block grant, which gets \$2 billion in new funding, can't be used

by states to replace current state funding.

There are similar complexities when it comes to other conditions for receiving the federal money, both new requirements and existing ones. There are even different responses to the most urgent question: When will the money start hitting state treasuries?

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A HUGE SUPPLEMENTAL APPROPRIATIONS BILL

Congress, like many legislatures, uses supplemental appropriations to provide money for unexpected events or circumstances. Recent examples have included funding for the wars in Iraq and Afghanistan, and for reconstruction and relief efforts following the Gulf Coast hurricanes.

Congressional budget rules require offsets for spending increases or tax reductions in regular appropriations bills, but to the chagrin of budget hawks, those pay-as-you-go rules don't apply to emergency spending. And that's a second key to understanding the

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economic recovery law. The last section of the act's first title declares its funding to be for an emergency.

That's why Senate negotiators were adamant that this year's fix for the alternative minimum tax be included. Considered outside the recovery act, the fix would have needed a corresponding spending cut or revenue increase. That's also why so many state-federal programs, which might not be considered to have a stimulus effect on the economy, got substantial funding boosts. The absence of pay-go rules meant Congress could allocate \$13 billion for the Individuals with Disabilities Education Act, \$12.4 billion for Title I elementary and secondary education programs, \$1.5 billion for the prevention of homelessness, \$13.9 for Pell grants and \$2 billion for the Child Care Development Block Grant without finding spending cuts elsewhere or tax increases to offset these and other increases.

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TEMPORARY FUNDING

"You mean all of this money disappears in two years? What are we supposed to do then?"

The answer to the first questions is "yes."

To the second, "pray."

The funding is temporary and intended to last two years. Supporters argue the money will help states avoid service and spending reductions and tax increases during the roughest months of the recession. In two years, their hope is that the economy will have recovered, so that demand for services such as food stamps and child care will have abated and state revenues will have rebounded. Some very public critics of the law, including South Carolina Governor Mark Sanford and Mississippi Governor Haley Barbour, are not as sanguine. They worry states will face a budgetary cliff when the federal funding disappears in 24 months.

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WHAT IF GOVERNORS DON'T WANT THE MONEY?

Sanford, a Republican, opposed the economic recovery package and has indicated he might not accept funding for his state. U.S. Representative James Clyburn, a House Democratic leader from South Carolina, wanted to make sure the state got its share,

however, so he inserted language in the bill that lets a state's legislature request the money if the governor refuses.

Legislators in several other states—including Alaska, Louisiana, Mississippi and Texas—became alarmed when their governors said that they might also reject some or all of the stimulus funding. By late February, though, the five governors had indicated they likely would reject only money that is offered as an incentive for states to change their unemployment compensation programs. That funding is optional anyway and will require legislatures to make statutory changes. Their altered posture reduced the chances of a confrontation between the five governors and their legislatures over accepting the stimulus money.

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WHO GETS TO SPEND THE MONEY?

It appears simple. The money is headed for a state. The state constitution says something like: No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law. It seems obvious to many legislators that the money is subject to an appropriation made by law.

On the other hand, if you are a governor, you might look at a line or two in the new act and say, "Wait a minute. This is my money to spend the way I want."

The language in question is in the title that creates the State Fiscal Stabilization Fund, which provides \$53.6 billion for education and other government services. This is actually two funds. The larger one is dedicated to education. The smaller one has more flexibility. Each paragraph setting up these funds begins with the words, "The governor shall use ..." It does not say "The state shall use ..." or "The state legislature shall appropriate ..."

The issue revolves around whether the word "use" simply sweeps away state law that spells out how money should be spent. The language could provoke a series of showdowns between legislatures and governors, with legislatures asserting their constitutional and statutory authority over appropriations and governors arguing the letter of the new federal law. Perhaps more likely, governors will offer plans for spending the funds in their budget proposals, and legislatures will consider these proposals in the appropriations bills they prepare for the next two fis-

The economic recovery legislation has elicited an unprecedented demand for information from state legislators and legislative staff. And it's not surprising. The bill signed by the president was more than 1,000 pages. Many, but not all, of the provisions would directly or indirectly affect state revenues. Some place conditions on accepting funds. Some would require changes to state law. NCSL has established a Web page—which is receiving thousands of hits daily—where you can see the latest developments, including detailed information on each aspect of the legislation. Go to www.ncsl.org/magazine for more information.

cal years. In that case, the drama will play out along with the hundreds of other budget decisions legislatures and governors make together this year and next.

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FOLLOW THE MONEY

When President Obama signed the recovery act into law on Feb. 17, the administration launched www.recovery.gov. The website's purpose is to let taxpayers "figure out where the money from the act is going."

The website, with its timelines, databases, maps and charts, is the most visible of several steps the administration has taken to make implementation of the law transparent and accountable. Although these initiatives focus on transparency and accountability in the federal government, many legislatures and governors are setting up their own mechanisms—websites, recovery czars, work groups and task forces—to coordinate and track the stimulus programs.

Several legislatures created special committees or are using existing committees and commissions to ensure legislative oversight of the recovery efforts. Some have worked with their governors to segregate stimulus funds in state budgets, so the money will be easier to track.

No matter the mechanisms, it is clear that the administration, Congress, the press and the public will be monitoring how state officials use the money and the effect their decisions will have on reviving the national economy.