All 50 state legislatures are scheduled to meet in 2011. Twenty-eight new governors and 1,765 freshman legislators will be sworn into office. This report previews several issues to be debated heavily this year—beginning with our State budget outlook.
About Whiteboard Advisors

Washington D.C. and state governments can be confusing. Seemingly unrelated political and policy issues cloud the legislative calendar, and conflicting expert opinions mask emerging trends. As a result, it is difficult to separate the substance from the rhetoric to accurately forecast funding levels or legislative and policy outcomes. The current education policy environment exemplifies this phenomenon.

Whiteboard Advisors is a policy-oriented consulting practice. We provide proprietary research and strategic support to investors and philanthropic donors, government leaders and entrepreneurs that seek unparalleled understanding of the policy and business environment.

Our team members have been on both sides of the policy and implementation experience; including the creation of regulations and programs and managing organizations within the regulated environment. We have

- Worked within state and federal agencies; within Congress and the White House;
- Advised foundations and corporations on their strategies and corporate social responsibility initiatives;
- Counseled investors, corporations, and government leaders on the latest developments in federal, state, and local policy and politics; and
- Assisted government agencies with deploying public-private partnerships to address public policy needs.

Our team members actively engage in areas where business and public policy converge, including: education, tech and telecom, health IT, and clean energy technology.

In 2010, we launched the Education Insider – the first in a series of research products that leverage our proprietary survey methodology to provide unparalleled insight into policy trends and outcomes. We will also take a limited number of clients that demand real-time or complex analysis of education policy trends and outcomes.

Whiteboard Advisors is the non-lobbying arm of Dutko Worldwide - a bipartisan government affairs strategy and management firm with over 100 subject matter experts in DC and throughout the US. As part of the Grayling global family, Dutko and Whiteboard draw upon the expertise of these subject matter experts in 80 office and 40 countries to provide strategic advice, research, and guidance for clients. Visit us at http://www.whiteboardadvisors.com or follow us on Twitter at WhiteBdAdvisor

We have advised a number of our clients to hire the team at Whiteboard Advisors for their insight into education policy and the impact it will have on businesses. All have reported a great experience.

Susan Wolford, Managing Director, BMO
2011 Legislative Preview

There will be a lot of talk about “reform” in the states this year. Education reform, pension reform, health care reform, Medicaid reform, tax reform and immigration reform will be legislative priorities across the country. Reform is code. In this context reform does not necessarily mean better. It means cheaper. The discussion is not really about policy; it will be about budget. The states remain fiscally strapped and without major reforms that produce lower spending lawmakers will be forced to raise taxes to balance budgets. Few governors and legislators will be willing to raise taxes this year; voters in November delivered a clear message: “If needed, do less with less but do not raise taxes.” Not surprisingly then, for the third consecutive year, budgets will be the number one issue when lawmakers return to their capitols this year.

All 50 state legislatures are scheduled to meet in 2011 and 28 new governors and 1,765 freshman legislators will be sworn into office. Montana, Ohio and Wisconsin were the first legislatures to convene; they began their sessions January 3. Some 43 states convene this month. Louisiana will be the last to meet; lawmakers do not head to Baton Rouge until April 25. Virginia is typically the first to finish its work. Legislators in Richmond are required to adjourn no later than February 26.

Below we preview several issues to be debated heavily this year beginning of course with budgets. Other priorities include: education, health care and pension reform, legislative redistricting, job creation, public private partnerships (P3), immigration and transportation.

Budgets

The national economy is recovering slowly. The states are recovering even more slowly. State revenues this year will be better than last year. But revenue from taxes and fees in 2011 is projected to be 6.5 percent below 2008 levels. The states are not expected to see revenues equal to pre-recession levels until 2012 or 2014. State Medicaid costs continue to skyrocket and the federal stimulus funds used to prop up budgets for the past two years no longer exist. State employee pension programs and related retirement benefits are underfunded by as much as $1 trillion, according to a recent Pew Center report.

“Money is the starting and stopping point for virtually every state program and service,” William Pound, Executive Director of the National Conference of State Legislatures (NCSL), explained. “We are expecting that budget cuts will again be deep, controversial and painful.”

The loss of federal stimulus money will be devastating in FY 2012, which begins for 46 states in July. The temporary federal aid to the states totaled over $107 billion in FY
2010 and $89 billion in FY 2011. The losses will more than offset the small growth projected for revenues this year and next. The states have also drained their rainy day funds to the point where many no longer have a safety net.

To balance budgets in the last two years states have quietly raised $40 billion in new taxes and fees to deal with the recession-driven revenue shortfall. In FY 2011, states enacted $6.2 billion in new taxes and fees along with $2.9 billion in other revenue measures. The previous year they raised $23.9 billion in increased taxes and fees and $7.5 billion in other revenue increases.

Lawmakers are expected to play word games this year with the no tax increases pledge. Most will define tax increase very narrowly. Some states will simply extend existing taxes that are scheduled to sunset. For example, California Gov. Jerry Brown, a Democrat, is expected to try to extend the $8 billion in sales and income taxes that are about to expire by asking voters whether they really want to increase class sizes, force teacher layoffs, close parks and deny health services to the poor and elderly.

Lawmakers in several states have commissions charged with examining and proposing ways to reform their tax code. These commissions may propose changes lawmakers will consider, especially if they can be sold as revenue neutral. Look for several states to again consider taxing services, Internet sales and sins new and old including sweetened beverages like soda. Illinois legislators are already considering the so-called Amazon tax, a move supporters say will raise $150 million. The tax would require retailers that have contracts with “affiliates” within the state who post a link to an out-of-state business on their website and get a share of revenues from the out-of-state business to collect the state’s sales tax. This law has passed in New York, Rhode Island, North Carolina, and Colorado. The laws are being litigated and the North Carolina statute has been struck down in part. Tax collections in the states that passed the law have been well below the forecast.

Few options remain that do not involve serious program cuts. The most impoverished states have cut budgets deeply in each of the last four years. The National Association of State Budget Officers reports that 39 states cut their enacted FY 2010 budgets by $18.3 billion and 14 states cut $4.0 billion for FY 2011. In FY 2009, 43 states cut $31.3 billion and in FY 2008, 13 states cut $3.6 billion. These cuts are considerably larger than the last downturn when in 2002 and 2003, 37 states made mid-year budget reductions totaling $14 billion and $12 billion, respectively.

The states with the deepest projected FY 2012 deficits include: California, $28 billion; Illinois, $15 billion; New Jersey, $10 billion; New York, $9 billion—$10 billion; Ohio, $8 billion—$10 billion and Texas at $10 billion. We have included a map below and an associated table as an attachment that provide a state-by-state look at budgets as a percentage of each states' general fund. Specific dollar amounts can be found in the attached table.
The states will have to be creative to solve their fiscal woes and survive politically. Some examples:

**New York** Gov. Andrew Cuomo, a Democrat who during the campaign pledged to “cap taxes,” delivered his State of the State address this week and proposed to freeze most public employee salaries for one year, to limit new spending to no higher than the rate of inflation, to limit school property tax increases and to “hold the line” on taxes in general. “New York has no future as the tax capital of the nation,” Cuomo told the assembled lawmakers.

The governor has a lot of leverage on the pay issue, as freezing salaries does not require legislative approval. Cuomo is also enforcing about 900 layoffs ordered by former Democratic Gov. David Paterson.

The governor is creating a new commission aimed at reducing the number of state agencies, authorities and commissions by 20 percent, and said that as a first step he was merging the Insurance Department, the Banking Department and the Consumer Protection Board. The new governor’s proposals will set up a battle with members of his own party who control the state Assembly.
**Illinois** Democratic Gov. Pat Quinn is considering borrowing $15 billion to pay overdue bills and balance the biggest budget deficit in the state’s history. Illinois faces a budget shortfall of at least $13 billion because of declining tax revenue. The state Senate in November did not have the votes to approve the borrowing of $3.7 billion to cover pension fund contributions for the fiscal year that ends June 30.

**Nevada** Republican Gov. Brian Sandoval has inherited major problems. He will preside over a state with a $1.2 to $3 billion deficit, a 14 percent unemployment rate, one of the highest foreclosure and bankruptcy rates in the country and a large pool of uneducated, unskilled labor. Sandoval, a former judge, took the no tax pledge during the election. He is building a budget that assumes a 10 percent cut to state agencies, a $175 million reduction in higher education, the extension of furloughs for state workers and rosier-than-expected projections for state spending on unemployment insurance and Medicaid. He plans to raid local governments for revenue and has proposed shifting some essential state services to the counties. Sandoval can expect trouble from his own party in the legislature. Republican leaders in the Assembly and Senate are on record saying they believe taxes passed in 2009, and set to expire in 2011, will have to be extended. Senate Majority Leader Steven Horsford, D-Las Vegas, has said there will need to be both spending cuts and tax increases.

**Michigan** Republican Gov. Rick Snyder has promised to deliver a two-year, balanced budget by July 1 and has pledged to get there without tax increases. Governor Snyder faces a $2 billion budget gap in the current fiscal year and a projected $1.8 billion gap for the next. Snyder has promised to replace the state’s complicated business tax with a flat six percent corporate tax that in the short term would cost the state $1.5 billion. Without tax increases, Snyder has said he will have to cut public employee compensation and benefits at all levels of government.

**Washington** Democratic Gov. Christine Gregoire proposed a two-year budget last month that is designed to eradicate a projected $4.6 billion deficit. She described the choices she had to make as the “most difficult ones I have ever faced.” She lamented starkly, “In any other time I would not sign this budget.”

**Pennsylvania** Republican Governor-elect Tom Corbett will take office this month with an important advantage that always eluded his predecessor: a legislature controlled by his own political party. In recent years Pennsylvania faced partisan induced budget gridlock and two years ago was the last state in the country to pass a budget. Deep spending cuts seem inevitable this year. A balanced budget is required by law, but the state faces a projected deficit of at least $4 billion—one-seventh of this year’s $28 billion budget. Corbett has promised to reduce state administrative operations by 10 percent and to reduce the state automotive fleet by 20 percent, saving the state $140 million over 10 years. Corbett has also said that he wants to require all elected officials to contribute to their health care coverage. Proposals to sell the state-owned liquor stores to private owners and revamp the Pennsylvania Turnpike Commission are also being discussed.
Massachusetts Democratic Gov. Deval Patrick has taken the no new tax pledge and has promised to reduce spending this year by $1.5 billion as part of his strategy to eliminate the projected $2 billion deficit. Patrick has said that he is “examining virtually every program in state government” and that “everything is on the table,” including possible further cuts in state aid to cities and towns. He will release his budget January 26.

Education

2009 set the stage for this pivotal year in education. In February of that year, President Obama signed the American Recovery and Reinvestment Act (ARRA) into law. The law seeks to do many things, including: (1) creating new jobs and saving existing ones, (2) spurring economic activity and investing in long-term growth, (3) fostering accountability and transparency in government spending, and (4) advancing the four education reform priorities: teacher effectiveness, statewide data systems, common standards and assessments and rigorous school interventions.

The timeframe for this work is winding down. State and district have until September 30, 2011 to obligate most ARRA funds. This is the date of the oft-discussed “funding cliff.” The hope was that ARRA funds would bridge States and districts to more stable economic times, and help root the four education reform priorities along the way. September 2011, however, is fast approaching. That fiscal bridge, it seems, may be too short, and the reforms roots are far from deep.

Some States are better off than others. The 11 States and the District of Columbia that won additional funds to carry out reforms through the Race to the Top Fund (RttT) have an edge; so too do the 49 districts that won investing in Innovation Funds. Even there, however, hefty fiscal challenges remain, compounded by changes in gubernatorial leadership, which require careful review of their predecessors’ work.

As noted, budgets are the story for 2011 and state legislatures will try to balance their work with the flurry of education initiatives sparked by the ARRA. In 2009, the education community believed that 2011 would be a challenge. That was correct. This will be an eventful year. States to keep an eye on include:

California’s new State Superintendent Tom Torlakson will work with Governor (again) Jerry Brown and the State Board of Education to figure out how much of a cut education will face. Per California politics, the Governor plans to ask voters to decide if they want to pay to keep primary and secondary education funded at current levels. Public schools could face up to a $2.1 billion budget cut this year if tax extensions proposed by Governor Brown are rejected by voters or never make it to the ballot.

Indiana’s Superintendent of Public Instruction Tony Bennett assumed office in 2009 and earned a name as an aggressive reformer by focusing on teacher evaluation, teacher preparation, setting a high bar for student graduation and achievement, among other initiatives. He has the support of Governor Mitch Daniels (R) who was reelected in 2008.
for his second four year term. In 2010, Republicans took firm control of both state legislature chambers. The politics are aligned in the Hoosier state, so expect continued education reform activities.

**North Carolina** won nearly $400 million in RttT funding. That, in conjunction with a new Republican majority in the legislature, may result in attention to the state’s cap on charter schools and new teacher performance pay proposals. Despite the additional RttT funds, the state faces a nearly $3 billion shortfall. That will certainly result in another legislative session focused on difficult budget cuts.

**New Jersey** narrowly missed being an RttT finalist last year as a result of an administrative “error.” This triggered intense legislative investigations. Lawmakers have filed resolutions looking at why the state did not win the award. One of these resolutions, SR 399, requires the Senate Legislative Oversight Committee to investigate all aspects of the state’s application for RttT funding and whether the circumstances dictate further legislative action of any kind. Governor Christie removed Bret Schundler after the incident and appointed reform minded Chris Cerf to the post. Commissioner Cerf has a long and ambitious record in education with a wide range of public and private experience. How he will work with both the governor and the legislature will be worth monitoring.

**Ohio** begins 2011 with considerable uncertainty. Newly elected Governor (former Congressman) John Kasich (R) defeated Ted Strickland by, in part, promising to tackle the state’s dire deficit. This includes a top-to-bottom review of all spending and services, including Strickland’s “evidence based” school funding formula, the number of schools that are operating, and rethinking the role of the private sector in education. Changes are coming to Ohio, assuring plenty of tumult in 2011.

**Rhode Island’s** State Superintendent Deborah Gist has a new boss in the Independent Lincoln Chafee. The Governor has to decide whether to keep Gist, who helped the State win RttT funding and was named to Time magazine’s “100 people who most affect our world” list for her hard charging style. Chafee may appoint new members to the nine-member Board of Regents. It is not clear if the new members would support Gist’s efforts to date, and that throws some question on the state’s reform direction.

The above states are just a sampling of the many education issues that will impact the work of legislatures. Education reform will have to co-exist with deep state deficits. The negotiations will not be easy, but there are plenty of impressive leaders who are up to the task. Be sure to also keep an eye on Pennsylvania Secretary of Education Ron Tomalis (a former Whiteboard Advisor associate), Oklahoma State Superintendent Janet Barresi, New Mexico Secretary Hanna Skandera, South Carolina’s Mick Zais (who retired from the military as a Brigadier General), and Mitch Chester’s ongoing work in Massachusetts, among others. Education reformers are also watching who Tennessee Governor Haslam will appoint as Commissioner of Education who will be responsible for implementing the state’s Race to the Top plan.
Health Care Reform

The health care reform debate will shift this year from Washington to the state capitals. U.S. House Republicans will make a noisy attempt to repeal the Patient Protection Affordable Care Act but the U.S. Senate and White House will control the debate in the end so the real action will take place in more quiet discussions in the states. Most states received $1 million federal planning grants last year to develop health insurance exchanges and another $1 million for rate regulation review courtesy of the federal reform measure. Thirty-three states have created some entity to implement the new federal health law and over a dozen require a report on the law in 2011, according to the NCSL.

Some governors intend to push the limits imposed by the new federal law and others have vowed not to comply with it.

**Vermont** Gov. Peter Shumlin has vowed to bring single-payer health care to the Green Mountain State. Congress rejected single-payer and the public option during its debate last year and the new federal law instead would create health insurance exchanges to give consumers information and multiple insurance options. Governor Shumlin, a first-term Democrat, plans to move forward with his campaign promise. Within days of his election he was in Washington meeting with Health and Human Services (HHS) Secretary Kathleen Sebelius to discuss obtaining the federal waivers needed for his plan. He has assembled a special health care team to push Washington for the waivers and to lobby single-payer through the General Assembly. Obtaining the federal waivers will likely be the more difficult task as Democrats have a stranglehold on the Vermont legislature and will likely support their governor’s plan.

**Alaska** Gov. Sean Parnell, a Republican, is an aggressive, anti-health care reform governor. Alaska was one of two states not to pursue an exchange planning grant, and one of five that turned down an opportunity for increased rate review funding. State agencies are complying with the minimum requirements of the law for now but if Alaska remains defiant it will be a key state to watch to understand how HHS will deal with an adamantly opposed state.

In **California**, where one out of every four families is without health insurance and the economy is in terrible shape, political leaders have made implementing federal health care reform a major priority. “When it comes to health reform implementation, some states have hit the pause button. Some states are actually taking a step back and reconsidering...we really have been leaning forward and moving forward,” said Kim Belshé outgoing Secretary of Health and Human Services who was recently appointed to the health benefit exchange board. Republicans and Democrats are working together to implement the health insurance exchange program. California has already created an online health insurance exchange marketplace and received a $10 billion waiver to expand its Medicaid program and administer other reforms.
Public-Private Partnerships (P3)

Late last year the NCSL reported that in 2011: “Lawmakers (will be) looking for more efficient and innovative ways to create jobs and encourage business development, by offering incentives, providing tax credits, training workers and encouraging small business growth through public-private partnerships.” Politicians increasingly are embracing P3 projects as a way to shift state spending to the private sector. In flusher financial times politicians, especially Democrats, eschewed P3 projects because they feared reprisals from public employee unions. Three years of deep recession and shrinking revenues have changed the playing field and many states are now ready to embrace innovative P3 projects.

New Jersey Republican Gov. Chris Christie is a poster child for privatization. Facing a projected $10 billion deficit Christie has already slashed education funding, fired scores of teachers, cut aid to municipalities and cancelled a popular rail tunnel to Manhattan that would have created 6,000 construction jobs. For Christie privatization is essential to balancing the budget. He has already moved forward on his plan to privatize toll collection for the New Jersey Turnpike. The state has also looked at privatizing the New Jersey Transit parking lots and leasing more than 37,000 parking spaces to a private firm for the next 30 to 50 years. In addition to those proposals, the state’s privatization task force that was created by Christie in March 2010 said the state could save more than $210 million a year by contracting out other services to the private sector.

Alabama Republican Governor-elect Robert Bentley is considering a plan that would privatize in part the state’s economic development effort. Bentley is considering a public-private partnership between the Alabama Development Office (ADO) and Birmingham’s Economic Development Partnership of Alabama (EDPA), the corporate community’s main economic development organization. In one scenario, the chief executive of EDPA would be elevated to a new position as the state Director of Commerce with what amounts to chief operating officers at the EDPA and ADO reporting to him. “EDPA is a great private organization. They have a lot of good ideas,” Bentley told the Birmingham Press. “We’re going to look at whether we can use a public-private partnership. We’re going to look at everything.”

Louisiana wants to privatize much of its Medicaid system. The state expects the new federal health care law will require it to add 467,000 new recipients to Medicaid in 2014. Louisiana wants to transition some state Medicaid recipients into “Coordinated Care Networks,” where multiple private health plans would enroll recipients and manage their benefits. Ideally this proposal will “improve health outcomes, save money for the state and provide budget reliability,” said Gil Dupré, Chief Executive Officer of the Louisiana Association of Health Plans. Coordinated Care Networks will reportedly reduce costs by seven to 10 percent. The program would have a “pay-for-performance” feature in which physicians could get more money if they meet certain medical standards of care.
California Governor Jerry Brown has promised to undue at least one of the budget-driven privatization efforts launched by his predecessor Republican Gov. Arnold Schwarzenegger. Brown wants to stop the controversial sale of 11 state buildings—including the Ronald Reagan building in Los Angeles and the San Francisco Civic Center—for $2.3 billion. As the state attorney general, Brown declined to defend the measure in court and asked that it be delayed.

Immigration

Last year, there were 222 immigration laws and 131 related resolutions enacted in 48 states, according to the NCSL. None was as tough or controversial as the Arizona law that several states are expected to try and duplicate in 2011. The bill, sponsored by state Sen. Russell Pearce, R-Mesa, has several provisions. It requires police officers, “when practicable,” to detain people they reasonably suspect are in the country without authorization and to verify their status with federal officials, unless doing so would hinder an investigation or emergency medical treatment. It also makes it a state crime—a misdemeanor—to not carry immigration papers. In addition, it allows people to sue local government or agencies if they believe federal or state immigration laws are not being enforced. It imposes severe penalties on businesses that hire illegal workers.

Georgia is one of about 10 states expected to seriously consider adopting the Arizona law this year. A poll commissioned by the Georgia Newspaper Partnership determined that two-thirds of the respondents supported immigration limits similar to those in the Arizona law. Georgia Republicans have already filed two bills—to prevent illegals from attending Georgia’s public colleges and to block their employment by state and county governments. “They took the Arizona legislation, they tweaked a couple of words, and they’ve got it ready to go,” Charles Kuck, a Sandy Springs immigration attorney told the Atlanta Journal-Constitution.

A study by the National Immigration Forum determined that Georgia, Mississippi, Nebraska, Oklahoma, Pennsylvania, South Carolina and Tennessee all have governors, governors-elect and/or many state lawmakers who strongly support the Arizona law. Georgia is among several states that have already barred illegal immigrants from receiving in-state college tuition; others are Arizona, Colorado, North Carolina, Oklahoma and South Carolina. And lawmakers in at least 14 states are working on legislation to deny U.S. citizenship to the children of illegal immigrants.

Some state lawmakers will refuse to follow Arizona’s lead. Washington is among a minority of states that refused to sign a memorandum of agreement with the Department of Homeland Security that would allow the fingerprints of people booked in local jails to be checked against a national immigration database. Washington is one of only three states that grant drivers’ licenses to illegal immigrants.

California Asm. Tim Donnelly, R-Twin Peaks, has prefILED a bill that would make it a crime to be in the state without proper documentation. Local police would be required
to check the papers of anyone they detain if they have reason to believe the person is in the country illegally. With Democrats controlling both chambers, it is unlikely that Donnelly’s bill will even make it to the Assembly floor for a vote. But the measure is sure to cause headaches for GOP leaders, who want to focus on issues that hold broad appeal after a disappointing November election in which voters rejected all of the party’s statewide candidates.

**Legislative Redistricting**

The U.S. Constitution requires all local, state and federal legislative districts to be redrawn after the census is taken to make the districts roughly equal in population establishing a constitutional principle known as “one person, one vote.” Ideally, legislative redistricting should be done in a way that ensures racial fairness as well as partisan fairness. After lawmakers receive the new census data, they must develop new district plans before any new elections can be held. In some states bipartisan commissions have the authority to redraw the lines; in others there are advisory commissions. But in most states the legislature has the final say.

While most states have about a year to complete the job, *Louisiana, Mississippi, New Jersey* and *Virginia* hold off-year elections and have only a few months to complete their work. Sixteen states have a tight deadline because they are required by the Voting Rights Act of 1965 to obtain approval of any change in election law by either the U.S. Department of Justice or the federal district court in Washington, D.C.

Republicans made big gains in the November elections and therefore will be able to create GOP-favorable districts that will be used for the next five election cycles. Republicans now control both chambers in half the states. Democrats have absolute control in 16 and eight are divided. Nebraska is nonpartisan.

The courts still invariably get involved in the redistricting process. For example, following the 2000 census a divided *Colorado* Legislature failed to agree on maps and the Republican-dominated General Assembly redrafted the districts at the 11th hour. The Colorado Supreme Court eventually threw out the maps and came up with its own. This year Colorado has created a 10-member joint select committee, with co-chairs from each party, to handle initial redistricting discussions. House Minority Leader Rep. Sal Pace, D-Pueblo, said that giving the bipartisan committee responsibility for early discussions would take “one of the most partisan topics [for the 2011 session] off the table” and allow legislators to focus on the session’s top priority, job creation.