



VIEW*S* & VISIONS

A publication of Bowles Rice LLP

Summer 2017



The Critical Need for State Policy Makers to React to Change

Robert S. Kiss, Esquire
Bowles Rice LLP

Robert S. Kiss, a partner in the Charleston office of Bowles Rice, practices in the areas of tax, estate planning and commercial law. From 2013 to 2016, he served as Cabinet Secretary of the Department of Revenue by then West Virginia Governor Earl Ray Tomblin.

During his tenure with the Tomblin administration, Bob presided as the state budget director and the governor's designee for the Board of Treasury Investments, where he served as chairman of the Investment Committee and on various other boards and committees. He was also chairman of the Investment Management Board.

He first joined Bowles Rice in 2003, after serving 19 years in the West Virginia House of Delegates. He served as Speaker of the House from 1997 to 2006 and House Finance Chairman from 1993-1996. Pursuant to his Legislative duties, he was extensively involved in more than a decade of major economic and fiscal legislation including the West Virginia School Building Authority; water and sewer infrastructure development; state tax policy; state health care plans including PEIA and Medicaid; state retirement systems; the workers' compensation system; and the Tax Increment Financing (TIF) legislation.

The State of West Virginia operates under an annual budget, if you consider all funding sources, in excess of \$12 billion a year. Similar to any large business, the magnitude of an operation of that size and the implications of it being able to adapt to change efficiently and, in some instances, quickly, is critical for State policy makers. Like any large financial operation, the State of West Virginia can be buffeted or, in some instances, devastated, by change which can be triggered by international or national and regional economic trends, changes in federal law and changes in the economics and demographics of the State's population and business sectors.

In this article, I will discuss two examples of those occurrences, one which has already occurred and is continuing to reverberate through the State's economic and fiscal structure, and the second, which I believe we are on the verge of experiencing, which will likewise present significant fiscal, economic and healthcare implications for State policymakers.

Anyone familiar with national and international economic trends is aware that, for several years

now, energy prices have been significantly depressed. While some evidence appears to point to the fact that those downward price trends are reversing, implications to energy-producing states like West Virginia have presented significant economic and fiscal challenges for State policymakers.

This downward price spiral over the last several years resulted, within an approximately 18-month period, of more than a 40 percent drop in the annualized severance tax revenue collections for the State of West Virginia. An annual revenue source of more than \$500 million was reduced to just over \$300 million. This quickly resulted in the creation of a more than \$300 million structural hole in the State's general revenue budget.

Secondary revenue impacts were also seen in reduced income tax collections. Obviously, significant reductions in economic activity in oil, gas and coal extraction corresponded to significant reductions in income tax collections for employees and owners in those sectors. As a tertiary impact, the State also saw negative sales tax implications, as businesses and individuals affected by a restriction in their income-producing capabilities decreased their consumption.

In 2015-2016, Governor Tomblin reacted to this economic challenge in two ways. First, by utilizing the Governor's constitutional authority he imposed mid-year budget cuts on many agencies and departments, which reached the magnitude on an annualized basis of more than \$100 million a year. Secondly, the administration recognized the fact that the challenges were insoluble without significant additional revenues and he proposed several





revenue measures to the West Virginia Legislature. The Justice administration also made additional revenue requests a part of its most recent budget proposals. However, the secondary and tertiary effects mentioned above and other natural growth in significant programs, such as health care costs, have continued to expand the structural deficit in the budget.

In addition, the State's rainy-day fund, which a few years ago had approached its peak of nearly one billion dollars, was used judiciously to stabilize revenue with the goal of buying time until policy makers could, over time, fix the structural budget hole. The rainy-day fund has now reached a point where it would be imprudent and dangerous for the State to continue to deplete it further. A healthy rainy-day fund balance is critical for a state like West Virginia and has significant implications, not only on the ability of the State to timely meet its financial obligations, but also to maintain a healthy bond rating to assure that any debt which the State

is required to incur for infrastructure developments is incurred at the lowest possible interest rates.

State policymakers still face pressure over the next few years, to make further significant adjustments to the State's spending policies and programs, to access significant additional revenue, or a combination of both. Failure to do so will jeopardize the long-term fiscal and economic health of the State of West Virginia and further jeopardize many of the critical programs and services, which are funded annually by the State.

A second major occurrence, which the State of West Virginia and every other state are likely to experience, will result from changes in law at the federal level.

The federal government appears to be on the verge of either repealing and eliminating or, more likely, repealing and modifying the Affordable Care Act in ways that will have significant policy and fiscal implications to the State.

I believe the State of West Virginia acted prudently and cautiously as it pursued, several years ago, the implementation of options available to it under the Federal Affordable Care Act. The State emphasized, as its strategy to provide coverage for as many new insureds as possible, an expansion of Medicaid by changing the applicable federal poverty level at which individuals qualify for Medicaid. The State of West Virginia, with its limited resources and population demographics, probably benefited as much or more than any other state by emphasizing its Affordable Care Act goals by expanding Medicaid.

Through that expansion, more than 100,000 individuals attained health insurance coverage in the State when previously they had none, and 90 percent of the total coverage cost for those insureds was originally to be borne by the federal government through the applicable Medicaid match. The State benefits when

(continued on p. 33)



The Critical Need for State Policy Makers to React to Change

Robert S. Kiss
(continued from p. 25)

these additional individuals have health insurance for the first time, but will also benefit as, over time, significant additional funding is provided to our health care industry, which is one of the State's important remaining and ongoing economic sectors.

The fact that these West Virginians are now covered by health insurance will reduce the significant amount of uncompensated care which health care institutions (predominately hospitals) are required to provide. This also should indirectly benefit those who have other types of insurance coverage, such as the Public Employees Insurance Agency or private health insurance.

At the same time, the State of West Virginia saw an expansion of new insureds under the new exchanges established by the Affordable Care Act. But, those numbers of new insureds were small in comparison to the Medicaid expansion numbers.

Major changes at the federal level, which are likely to now occur, depending upon what they are and how they are implemented, could have significant negative fiscal impacts to insureds, state taxpayers and also to the health care industry in the State of West Virginia.

For example, there has already been discussion in some quarters about phasing down the initially promised 90 percent match for costs of that expanded coverage, by block granting the amount of dollars which go to states for Medicaid. This could create tremendous fiscal stress on the State's Medicaid program, necessitating either significant changes in the benefit structure, reductions in reimbursement rates, significant state taxpayer subsidization, or significant decreases in covered populations if the prior expansion is reduced or eliminated. Some projections even indicate that the percentage of the state's health care uninsured will rise from an all-time low of 5 percent to as high as 20 percent.

Once the likely federal changes come into clearer focus, state policy makers will face significant policy decisions, which will have far reaching health care and fiscal implications to the State. ▽



The Reverberations of Change in the Electric Power Industry

Bruce Edelston
(continued from p. 23)

Electrification of the economy, including increased use of electric vehicles on and off roads, also holds promise. On the generation side, we are currently building one of only two new nuclear plants in the country. Future use of coal will likely depend on our ability to capture carbon in an economic manner – something we are working on. In the meantime, shale gas will serve as a bridge to our future, as we adjust to the changing times. And renewables will continue to be an increasing part of the overall energy mix. ▽



Bowles Rice Welcomes Keith Burdette as Business Development Director

Bowles Rice is pleased to welcome Keith Burdette as our first Business Development Director. Keith served as Cabinet Secretary for the West Virginia Department of Commerce during the administration of Governor Earl Ray Tomblin. In that role, he also served as the executive director of the West Virginia Development Office and chairman of the West Virginia Development Authority and the Jobs Investment Trust.

Keith is invaluable in dealing with economic development issues and helping our clients' businesses grow and succeed. ▽