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January/February 2019

Volume 45 | No. 1

FEATURES

10 | Top 10 Issues to Watch in 2019

These challenges are sure to keep lawmakers busy as legislatures reconvene this year.

16 | Maternity Care in Crisis

American women are dying from childbirth at a higher rate than in any other developed country.

22 | The Long View of State Budgeting

Accrual accounting is a big-picture way of ensuring state governments are living within their means.

28 | Get Ready to Enumerate

The decennial census, the government's single largest civilian undertaking, wants to find everyone this time.

32 | Toxins on Tap

Lawmakers are working to keep potentially dangerous fluorochemicals out of drinking water supplies.



DEPARTMENTS

Notes from the Director and the Editor | 6

Trends | 7
Apprenticeships, traffic safety, campus diversity and more

Stateline | 20
National firsts and quirky alerts

Toolbox | 26
5 tips for every new lawmaker

StateStats | 35
The earned-income tax credit: rewarding hard work

Newsmakers | 36
What's happening under the domes

Yes, No, Maybe So | 38
Is it better to be ethical or to appear ethical?

The Final Word | 39
New Jersey Assembly Speaker CRAIG J. COUGHLIN

"People demand a certain tenor in their government, and that we ought to be mindful about the things that are important to our voters."

STAY IN TOUCH
Agree with something you read in the magazine? Disagree? We'd love to hear your thoughts. Drop us a line at magazine@ncsl.org.

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You can find more information and links to resources on many of the topics covered in these pages at ncsl.org/magazine.

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Thank You for Supporting America's Greatest Support System: Family Caregivers

To recognize their work to support family caregivers, AARP honors 64 elected officials by naming them to the 2018 class of Capitol Caregivers—a bipartisan group from 24 states and territories. Specifically, these elected officials advanced policies to support the adult children, spouses, friends and others who make it possible for older Americans to live independently in their homes and communities—where they want to be.



Congratulations and thank you to the elected officials in AARP's 2018 class of Capitol Caregivers:

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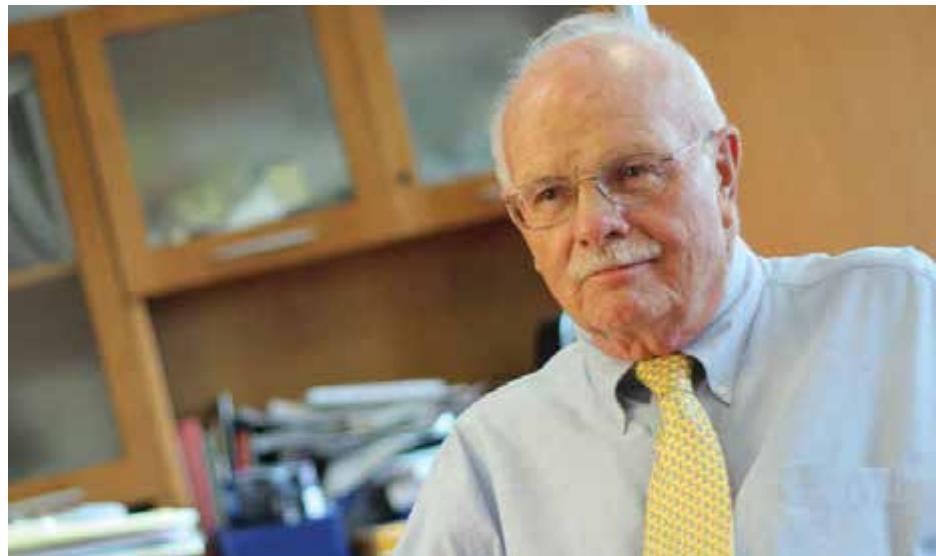
- Delegate Chad Lovejoy
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Wyoming

- Governor Matt Mead



At AARP, we believe supporting family caregivers is a top priority for all of us. In 2019, across the states, we will continue to fight for more support, help at home, workplace flexibility, training, financial protection and more. Learn more at aarp.org/SupportCaregivers.



FROM THE EXECUTIVE DIRECTOR

State legislatures deliver

Welcome all new and returning members elected to serve in our state legislatures. The decisions you make in the next two years will affect the daily lives of your constituents far more than those of your colleagues in Congress. As you convene in capitols across the country and begin the difficult work of solving some of the nation's biggest challenges, NCSL is here to help. From education and energy to transportation and taxes, we have thorough, unbiased and comprehensive resources to help you navigate complex policy issues.

Ironically, during the midterm elections we read and heard the least about the people who matter the most: you, the country's 7,383 state legislators and your staffs. The hard work you will be tackling in 99 chambers across our great country has far-reaching consequences. State legislatures decide how to fund road repairs, which crimes send offenders to prison, how teachers are evaluated, what the minimum wage should be, who must get a background check before buying a gun, how to protect people from identity theft. The list goes on.

Americans have made it clear: They want action, not impasse, from their

government. And state legislatures, the laboratories of democracy, deliver. You respond first to new issues and emerging concerns. You seek real solutions to difficult problems. You reach across the aisle to find common ground. You negotiate and compromise to get things done. You innovate.

Despite all the noise surrounding the 116th Congress, we would do well to remember that state legislators play second fiddle to no one, not to high-profile governors, not to your federal counterparts in Washington, D.C. It's true that state lawmakers spend less on campaigns, are not as well-paid and may have a harder time being seen and heard. But you—just like your congressional peers—have power. The only difference is, you use it.

The contributions you and your staffs make to American democracy cannot be overstated. Remember, through NCSL, you are part of the community of all legislators across the country—Republicans and Democrats. Turn to us often. We are committed to your success.

—William T. Pound, NCSL executive director

EDITOR'S NOTE

The magazine's new look

Nearing middle age often brings about a desire for change—perhaps a sporty new car, a new job or even just a new hair color can avert a mid-life crisis. As State Legislatures approached its 45th year as “the magazine of state politics and policy,” we knew it was time for a makeover, a refresh. And this issue is the great unveiling.

We've updated the look and name, shortened some articles, simplified the design and will now publish six issues a year. The online version is getting updated as well.

What hasn't changed is the great content. Focus groups held last year and a random survey of our members showed a high percentage of you like reading our stories.



We value your opinions and strive to make each issue helpful to you in your challenging job. Behind the bold, clean new design, you'll discover solutions you can adapt to your state, insight to challenge your assumptions, facts to bolster your positions, people you can relate to, ways to become more effective, and, we hope, a phrase or story to make you chuckle, all written in clear language that helps you digest it the first time through.

Let us know when you question or disagree with an opinion expressed in a story. Call when you want to know more about an article. Even better, let us know when reading State Legislatures prompted you to act, perhaps introducing legislation or reaching out to your constituents. Let us know what you think. It's your magazine.

—Julie Lays, editor, State Legislatures magazine

Trends



HIGHER EDUCATION

Apprenticeships help pave the road to success

Apprenticeships are back. As businesses and industries demand better trained employees, state lawmakers are responding by integrating apprenticeships into more comprehensive state education programs. The “learn-while-you-earn” model has gained traction across the country as a crucial tool to help states meet their workforce needs and educational goals.

The growing recognition that traditional, four-year degrees are not necessarily right for all students has helped fuel growth in apprenticeship programs. Since 2016, 30 states have passed 60 new laws relating to apprenticeships. Nearly half of them were passed in 2018.

The bills commonly create new training programs or establish new requirements for existing ones. Lawmakers have found a variety of ways to fund and develop programs at all levels. Several states have increased grant funding to support appren-

ticeships at state community and technical colleges. Others offer tax credits to businesses that welcome trainees.

In April last year, lawmakers in Iowa unanimously passed the Future Ready Iowa Act, which created a registered apprenticeship program and provided some scholarship funding.

A 2017 Kentucky law allows students in apprenticeship programs to receive funds from the existing Kentucky Educational Excellence Scholarship, which offers merit-based aid and is funded by the Kentucky Lottery.

Colorado extended a program that provides funding to school districts for each student who completes a certificate, internship or pre-apprenticeship program or who takes an Advanced Placement computer science course.

Last year, Florida lawmakers allowed students to use credits earned from an

apprenticeship or pre-apprenticeship program to satisfy certain high school graduation requirements. And a 2017 Virginia law requires community colleges to develop policies and procedures for awarding academic credit to students who complete a registered apprenticeship credential.

States also are trying to raise students' awareness of apprenticeship opportunities. Virginia lawmakers last year required schools to notify students and their parents of their availability. An Oklahoma law requires schools to include apprenticeships in students' individualized career and academic planning.

The future of apprenticeships looks bright. They will likely continue to be an area of focus for legislators and policymakers.

—Andrew Smalley



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TRAFFIC SAFETY

Slow down, you move too fast

The latest traffic safety data from the National Highway Traffic Safety Administration show there were 673 fewer traffic deaths in the U.S. in 2017 than there were the year before.

That's good news. Still, despite a slight decline in 2017, deaths of pedestrians, bicyclists and others not in cars make up 19 percent of all U.S. traffic fatalities, according to the traffic safety administration, compared with 14 percent in 2008.

With studies showing that reducing motor-vehicle speed can make the difference between life and death for vulnerable road users, at least seven states—Colorado, Indiana, Massachusetts, New Hampshire, New York, Oregon and Washington—have given local governments more flexibility in setting speed limits. The new laws let municipalities reduce speeds if certain conditions are met.

Colorado is the latest state to make such a move. Previously, localities could lower speed limits only if a traffic survey justified a change. Last year, however, lawmakers authorized counties, municipalities and residential neighborhoods to consider road characteristics, development, and pedestrian and bicycle activity, among other factors, when adjusting limits.

—Magazine staff

HIGHER EDUCATION

Diversity is the new normal on campus

As states seek ways to increase the number of students who earn a college degree or certificate, higher education institutions face new challenges in meeting those goals.

Today's college student population is older, more often financially independent and increasingly diverse. Although nearly 60 percent of students on campus are still 18 to 24 years old and have recently graduated from high school, an increasing number don't fit this traditional mold and may struggle to navigate a system not designed for their needs.

According to Danette Howard with the Lumina Foundation, an education research group, 38 percent of college undergraduates are 25 or older and more than one-quarter are parents.

Today, 47 percent of students are financially independent. But that doesn't mean they are independently wealthy.

In fact, nearly half of first-year students have incomes at or below the poverty line. A survey of the California University system found that 40 percent of students weren't sure where their next meal would come from. Concerns over hunger have prompted some schools to open campus food banks.

Employment can help ease financial insecurity, but evidence shows that students who work more than 20 hours a week are less likely to complete their degree or certificate program. About 38 percent of students leave school within their first year because of additional family, work or financial obligations.

Student populations continue to diversify. Since the mid-1990s, Hispanic student enrollment has tripled and African-American enrollment has climbed by 72 percent. But the rates of degree attainment among these students still lag be-

HEALTH

Suicides are up

More than 47,000 Americans died by suicide last year, according to the Centers for Disease Control and Prevention. Suicide is the 10th-leading cause of death among people of all ages and the second-leading cause among people 10 to 24.

Research shows that most suicide attempts are preceded by warning signs such as extreme agitation or calm, withdrawal and excessive drinking or drug use.

Oregon and a handful of other states are providing suicide-prevention training for family doctors, emergency room practitioners and other medical professionals who care for young people, so they can be on the lookout for those at risk.

In 2018, at least 10 states—California, Colorado, Idaho, Illinois, Iowa, Kentucky, Maine, Rhode Island, Utah and Washington—strengthened existing school-based suicide prevention laws, in most cases providing additional funding for mental health resources.

—Magazine staff

TOP TEN

These challenges will keep lawmakers busy as legislatures reconvene this year.

BY JULIE LAYS

In an era when national politics is often focused on personality over policy, most Americans might be surprised at what's going on in their state legislatures.

State lawmakers are seeking answers to some of the nation's most serious issues and intractable challenges, sometimes even crossing the aisle to find policy solutions that strengthen and protect their economies, workforces, families and the envi-

ronment. They aren't immune to the hyper-partisanship that defines our times, but they don't face the same level of gridlock as their counterparts in Congress.

With 48 legislatures having both chambers under the same party's control, it is likely the parties in power will more easily advance their policy priorities and pass more legislation than in the past. We'll have to see.

We also don't know what effect the election of more than an average number of new legislators will have, nor what the re-

cord number of newly elected women will mean for legislation. Historically, women have proved to be more collaborative and more likely to reach consensus.

One thing we do know, however, is that most states will be dealing with these 10 pressing issues.

BUDGET BATTLES

Balancing budgets and reforming taxes always monopolize lawmakers' time. The federal Tax Cuts and Jobs Act passed last year will complicate the tasks this year. The federal act was the largest overhaul of the nation's tax code since 1986. In 2019, the law will continue to challenge states to evaluate their conformity to the federal tax code and determine how specific federal provisions will affect state revenue.

Lawmakers also will be discussing how they can benefit from the U.S. Supreme Court's ruling in *South Dakota v. Wayfair*. In order to compel out-of-state remote sellers to collect and remit sales taxes, lawmakers must pass legislation or issue regulations. As of Jan. 8, 27 states and the District of Columbia had begun to enforce these requirements.

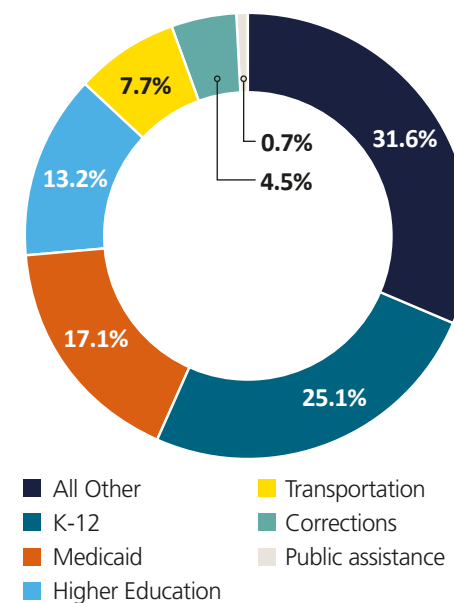
Although some speculate the laws could be subject to litigation, the U.S. Supreme Court suggested states should be on solid legal ground if they include several features of the South Dakota law upheld by the court's decision. Notably, that it excludes small vendors with limited business in the state from having to collect taxes; prohibits the collection of taxes retroactively; and adheres to the uniform, simplified rules contained in the Streamlined Sales and Use Tax Agreement to make it easier for sellers to comply.

Fortunately, state budgets are largely stable and many state leaders are optimistic about the coming year. Revenue collections in most states are on target or exceeding estimates. General fund revenues for states as a whole are expected to continue their modest growth at 2.6 percent.

EDUCATION FUNDING

Although states have been increasing higher education funding, K-12 funding remains below pre-recession levels. Teachers

State Funding Nationwide



Source: NCSL

took their protests, walkouts and strikes to state capitols last year demanding better pay, benefits and working conditions, and there's talk of more doing so this year. Many teachers' pay is so low they qualify for government benefits and must take on second or even third jobs just to make ends meet. A study by Maryland's Kirwan Commission on Innovation and Excellence in Education recommended a 10 percent pay hike for teachers after it discovered teachers made 25 percent less than comparable professionals with similar education and responsibilities.

Low pay could be a reason states are facing another hot issue: teacher shortages. Countries where students perform well compensate teachers on par with other professionals.

With these and other concerns, like school safety, you can be sure K-12 funding won't be left behind in this session. Plus, frustrated at yearly budget cuts, several teachers ran for legislative seats last fall and 42 won, according to Education Week. Thirty-three are Democrats and nine are Republicans.

Do you think they will keep school funding and teacher pay a topic of high interest this year? You betcha.



Teachers in several states took their protests, walkouts and strikes to the streets and state capitols last year demanding better pay and benefits. More protests are likely this year.

MEDICAID OPTION

Excluding federal matching funds, Medicaid consumes almost 20 percent of state spending. And every year, lawmakers explore ways to improve the efficiency, outcomes and cost-effectiveness of their programs. The Affordable Care Act gave states the option to expand Medicaid, and 36 states and the District of Columbia have done so. With the recent federal district court ruling the ACA unconstitutional, however, state lawmakers will be on watch. Attorneys general from 17 states and the District of Columbia have filed a notice of appeal challenging the ruling. Meanwhile, the ACA will remain intact.

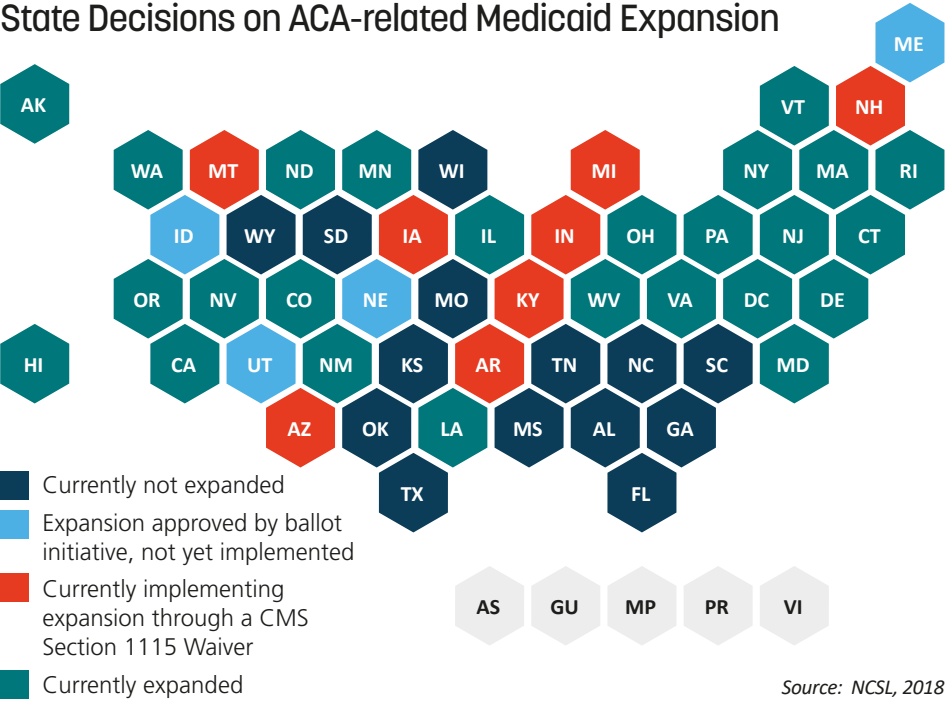
States were required to pay a small share of Medicaid expansion costs starting in 2017, with slight increases each year. Lawmakers will need to decide if those can continue to be financed with general fund dollars, as most states have done. Some have used other sources like provider taxes or fees.

Several states have used waivers offered by the federal government to design Medicaid programs to meet their specific needs. Five states have received approval of waivers to require able-bodied adult Medicaid enrollees to verify that they are employed, actively seeking work or attending school or job training before receiving benefits, and several states have similar proposals pending federal approval.

Kentucky's waiver allowing work requirements was temporarily halted due to an injunction last November, but the Centers for Medicare & Medicaid Services re-approved the waiver shortly after the court decision. This action and other possible litigation may affect pending proposals as well as the debate going on in other states regarding work requirements and community engagement.

In addition, lawmakers will be looking to better integrate behavioral health and primary care services, especially for those with substance use disorder. States have

State Decisions on ACA-related Medicaid Expansion



been using 1115 waivers to serve this population. Last October, Congress passed the SUPPORT for Patients and Communities Act, which offers legislators more options and flexibility in using Medicaid for substance abuse treatment and other services.

OVERREACHING OPIOIDS

Few issues involve so many different aspects of state government as does the opioid epidemic. Among behavioral health, the criminal justice system and social services, the situation has reached crisis levels. People with mental illness and substance use disorders, like opioid addiction, are more prevalent in jails and prisons than in the general population. While 3.2 percent of men and 4.9 percent of women in the general population have a serious mental illness such as schizophrenia, major depression or bipolar disorder, in jail, the rates go up to 14.5 percent of men and 31 percent of women.

Opioid use disorders are also common among those incarcerated. Approximately half of state and federal prisoners meet criteria for substance use disorder, according to the U.S. Department of Justice. Additionally, people with a mental disorder are more likely than those with-

out one to also have an alcohol or substance use disorder.

The criminal justice system, however, was not designed to treat mental illness or drug addiction. Too often law enforcement officers arrest and jail a person who needs medical care instead. Opioid addiction rarely is treated in prison. After release, abuse often resumes, and overdoses occur due to a loss of tolerance gained while incarcerated.

Legislatures will be taking a closer look at who is in jail, why they are there and whether their detention promotes or hinders public safety. When it comes to prisoners addicted to opioids, among other options, lawmakers will consider allowing medication for opioid disorders inside prison and expanding community-based treatment for mental illness or addiction outside of jail,

WORKFORCE READY

The traditional American education system has struggled to prepare students for today's job market. So lawmakers are creating new pathways to careers with a greater focus on providing students with job skills before they leave high school. Businesses say they need

better-educated and -prepared employees who come to them with some skills already mastered. Students would benefit from knowing what kind of job or career they are headed for before taking on huge amounts of debt for a college degree they may never use.

State and local policymakers are establishing partnerships between education and businesses to create youth apprenticeships, career pathways, and rigorous career and technical education to build a stronger workforce. They are also studying high-performing countries, like Switzerland and Singapore, that have effective systems to help students choose and succeed in specific careers. Beginning in secondary school, students in these countries have many opportunities to get real-life job experiences and gain skills. All students leave the system with a fine secondary education that sometimes includes college-level coursework along with meaningful on-the-job experiences.

Equipping students with workplace skills addresses the needs of just one segment of the job-seeking population. Can lawmakers find similar solutions for unemployed adults, soon-to-be-released inmates and returning military veterans?



EQUIPPING STUDENTS WITH
WORKPLACE SKILLS ADDRESSES
THE NEEDS OF JUST ONE
SEGMENT OF THE JOB-SEEKING
POPULATION. CAN LAWMAKERS
FIND SIMILAR SOLUTIONS
FOR UNEMPLOYED ADULTS,
SOON-TO-BE-RELEASED
INMATES AND RETURNING
MILITARY VETERANS?



TRANSPORTATION TRAVAILS

America's transportation infrastructure has been idling in a state of near-crisis for more than a decade, while millions of drivers, passengers and pedestrians cross thousands of structurally deficient bridges every day. There are several reasons why states are struggling to keep their transportation infrastructure afloat:

- Increased costs of road construction and maintenance.
- Stagnant gas tax revenue due to years (decades in some instances) of fixed fuel tax rates and advancing vehicle fuel efficiency.
- Flat federal assistance.

Further out, the impending mass adoption of electric vehicles is likely to empty the tank of gas tax revenues.

More than half of state legislatures have enacted measures to increase transportation revenues since 2013, Emerging ideas range from fees on electric and hybrid vehicles to road-use charges to variable-rate gas taxes to innovative financing. But so far, a guaranteed long-term solution has proved elusive. The result is likely to be a mixture of new strategies. In the meantime, transportation infrastructure contin-

ues to crumble, keeping this topic on the list for the last three years.

PRIVACY AND SECURITY

As the amount of sensitive consumer data collected, shared and analyzed grows, so does the threat of cyberattacks and data breaches. Lawmakers will continue to search for new and effective ways to secure their constituents' privacy while beefing up security practices and policies to protect the sensitive data collected and held by state agencies.

They'll also look at the security and privacy practices of certain businesses, given the continued security breaches of the growing amounts of data collected, shared and used commercially. Businesses are using all this data in many new ways, prompting legislation requiring them to tighten their security practices. There has been a lot of global interest in the European Union's recent General Data Protection Initiative, which sets specific rules on how businesses may process personal data.

The "internet of things"—the network of vehicles, appliances and other products that collect data often without consumers' knowledge or consent—led California to

require manufacturers to equip connected devices with reasonable security features.

The California Consumer Protection Act, enacted in a rush to sideline a more stringent ballot measure late last year, imposes a broad range of privacy rules for businesses. California will be refining the legislation in the coming year, but other states are likely to be watching and will be considering some of the same requirements, among them that consumers be:

- Notified when their personal data is collected, sold or disclosed.
- Allowed to have their information deleted.
- Given the opportunity to opt out of having their information sold.

States have long taken the lead in consumer privacy and security matters, such as security-breach notification laws. That's likely to continue, especially if the federal government fails to act.

ENERGY INFRASTRUCTURE

The explosion of new technologies—from smart water heaters and thermostats to electric vehicles, rooftop solar panels and energy storage—promises a cleaner, more efficient, more reliable energy future. But it also requires a modernized power grid, and new regulatory approaches.

The old energy infrastructure, designed for a centralized grid with one-way energy flow, needs to be upgraded to accommodate two-way energy flows and the growth of an increasingly modular system. Massive infrastructure investments will be needed to create a 21st-century grid and finding the money often won't be easy. But that's just part of the challenge.

Lawmakers also will be busy updating policies and regulations that no longer work in this rapidly changing market. As more people generate their own energy and utilities downsize their generation sources, a fundamental shift is occurring. Large, distant generation sources are being replaced by smaller, local sources located near energy consumers. Creating a modular two-way system—where customers are also producers, managers and

THE CHALLENGE FOR
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market participants—requires building a more flexible, sophisticated grid and enacting regulations that equitably compensate market players.

The challenge for lawmakers is crafting policies that promote investment in infrastructure while allowing innovative industries and new energy management approaches to compete where once only regulated monopolies could operate.

VOLATILE VOTING

After the midterm elections, voters from New York to California complained of slow results, recounts, long lines, broken voting machines, voter registration purges, confused poll workers and legal disputes. Election issues are sure to pop up in sessions around the country as lawmakers seek to assure constituents that their votes matter and will be counted.

A recent Pew Research Center survey found that 91 percent of Americans agreed that voting is important, and 89 percent had confidence that their poll workers do a good job. Partisan differences emerged, however, in discussions on how easy it should be to vote. While most Democrats agreed that it should be easy for every citizen to vote, most Republicans believed

the process shouldn't be so easy that it is open to fraud. Lawmakers will be debating these concerns as they consider legislation this year dealing with Election Day and automatic registration, ID requirements, types of ballots, election security, early and no-excuse absentee voting, straight-ticket voting, postelection audits, felons' right to vote and rules around military and overseas voters.

Voting topics will be discussed widely, including bills on redistricting. Distrust in how districts have been drawn previously was evident on election night when voters in five states approved ballot measures that will move the whole process to a redistricting commission.

FAMILY FIRST

Family First will dramatically change the way federal Title IV-E funds can be spent by states, territories and tribes. States previously could use them for children only after they entered foster care. As of Oct. 1, states will have the option to claim federal reimbursement for approved prevention services—evidence-based in-home parenting training, mental health and substance abuse treatment—that allow “candidates for foster care” to stay with their parents or kin caregivers.

The act also provides incentives for states to change their use of congregate care. To be eligible for federal reimbursement, the act limits the number of foster children allowed in a family foster home to six, with some exceptions. To receive reimbursement for a child's stay in a congregate care setting or residential group home, the program must be designated as a qualified residential treatment program.

Such programs must be licensed and accredited, use a trauma-informed treatment model, have registered or licensed nursing staff, engage families in the treatment process and provide support after discharge. Assessment of a child must indicate the need for residential care, and each child's treatment must be regularly reviewed. Other types of facilities or services that qualify include prenatal, postpartum or parenting support programs for

teen moms, and high-quality residential settings for youth who have been, or are at risk of becoming, victims of trafficking.

Legislators will be busy assessing the foster care prevention services in their states and identifying which children in congregate care can be placed safely in family-based care. All these changes will require them to find ways to increase the number of foster families and therapeutic care options.

So there you have it: NCSL's educated guess at what will dominate state legislative agendas in the year to come. Let the sessions begin!

Julie Lays is the editor of State Legislatures. Thank you to these NCSL staff who contributed to this article: Glen Andersen, Emily Blanford, Jackson Brainerd, Jerard Brown, Ben Erwin, Michelle Exstrom, Savannah Gilmore, Pam Greenberg, Suzanne Hultin, Nina Williams-Mbengue, Kevin Pula, Wendy Underhill and Amber Widgery.

The Runners-Up

Lawmakers will also be busy with:

- Regulating sports betting
- Developing marijuana policies
- Addressing sexual harassment
- Keeping housing affordable
- Looking at occupational licensing
- Challenging the high cost of prescription drugs
- Dealing with disasters
- Adopting new (5G, blockchain) technologies
- Redesigning immigration policy
- Protecting drinking water
- Considering gun control

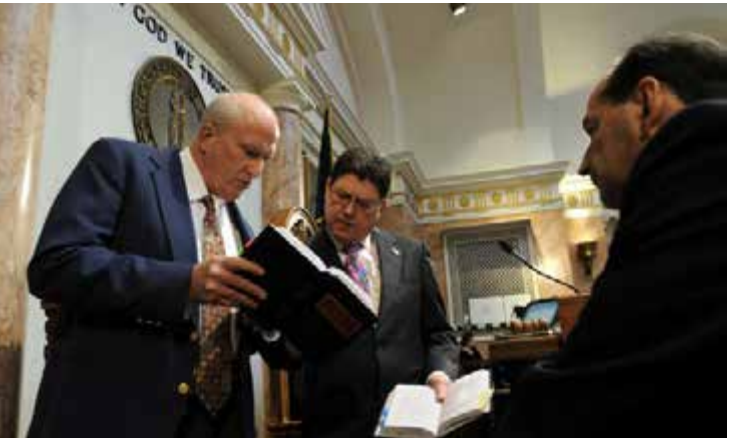
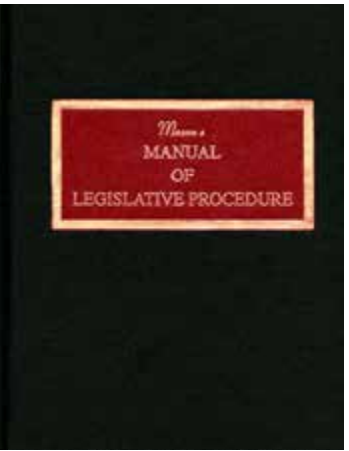
State-Federal Issues:

Many state policy issues have a federal component. These will all be part of legislative discussions in 2019.

- International trade
- Higher education
- Immigration
- Environmental regulations
- Federal infrastructure initiatives
- Data privacy
- 5G technology
- Sports betting
- Disaster mitigation
- Medicaid
- TANF/welfare reform
- Opioids
- Prescription drugs

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MATERNITY CARE IN CRISIS

American women are dying from childbirth at a higher rate than in any other developed country.

BY TAHRA JOHNSON

Kira and Charles Johnson were excited to welcome a second son into their family. Langston was to be delivered, like his older brother, by cesarean section on April 12, 2016. The Johnsons knew what to expect and were prepared for Kira's recovery. Or so they thought. While Kira was still in the hospital, Charles noticed blood in her catheter. He alerted the medical staff immediately, but hours went by before Kira could get a CT scan. By the time she went into surgery, it was too late. Kira died 11 hours after delivering her baby.

Like hundreds of other American women that year, Kira died due to a delayed response to complications from pregnancy or delivery. "Seven-hundred mothers die every year, and over 50,000 others experience dangerous complications that could have killed them—making the U.S. the most dangerous place in the developed world to give birth," Stacey D. Stewart, president of the March of Dimes, told the U.S. Energy and Commerce Subcommittee on Health in September last year. In fact, an American woman is three times more likely to die from childbirth than a Canadian woman and six times more likely than a Scandinavian woman. Kazakhstan and Libya have better rates than the U.S.

"This situation is completely unacceptable," Stewart said.

Uptick in Maternal Deaths

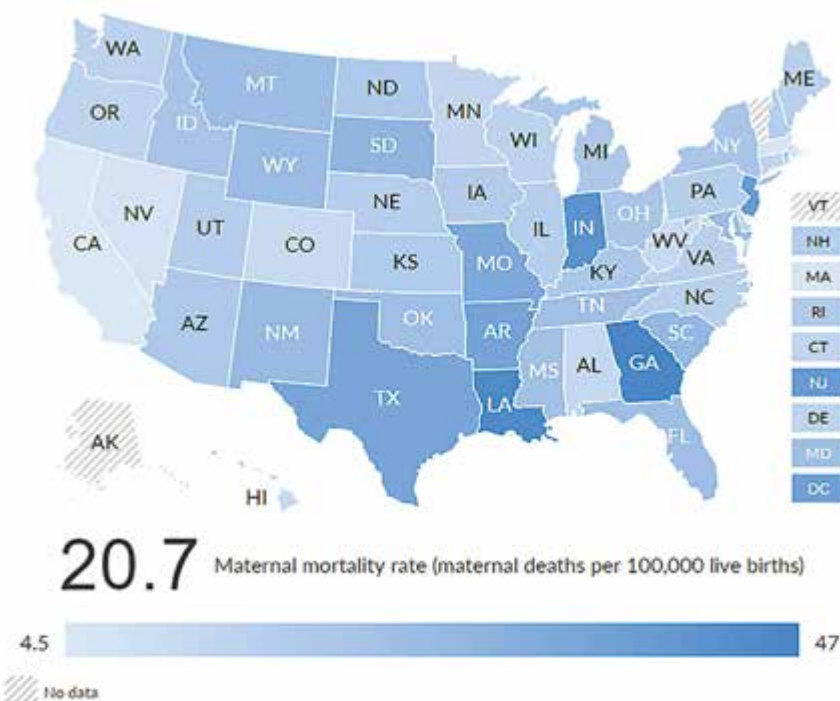
The national maternal mortality rate more than doubled between 1987 and 2012 and now sits at 20.7 deaths per 100,000 live births, according to the Centers for Disease Control and Prevention. The average maternal mortality rates for each state from 2011 to 2015 varied from 4.5 to 47 deaths per 100,000 live births.

Any time a woman dies while pregnant or within one year of the end of a pregnancy from any cause related to the pregnancy or its management, the CDC considers it a pregnancy-related death. The agency does not include deaths from accidental or incidental causes, such as dying in a car wreck while pregnant.

Different recording practices used over the years, however, make it hard to draw definitive conclusions on maternal death rates. According to a 2017 article in the journal *Obstetrics & Gynecology*, the current coding rules can negatively affect data quality. If the "pregnancy or post-partum within 42 days" box is checked, for example, the record is coded as a maternal death, regardless of what is written in the cause-of-death section. In some states, better information is available because maternal mortality review committees examine death records and decide whether the cause was pregnancy-related.

Maternal Mortality Rates

The number of maternal deaths per 100,000 live births varies widely. These averages for each state are from 2011 to 2015. The overall U.S. average is 20.7.



Note: Numbers are based on vital statistics collected by the Centers for Disease Control and Prevention and calculated by the United Health Foundation. (The averages for Delaware, New Hampshire and Wyoming are calculated over 10 years.) Source: Stateline, The Pew Charitable Trusts.

THE U.S. IS "THE MOST DANGEROUS PLACE IN THE DEVELOPED WORLD TO GIVE BIRTH."

Stacey D. Stewart, March of Dimes

A 2018 report from nine review committees shows that most deaths are preventable, especially those involving delayed emergency care, as in Kira Johnson's case, or a lack of protocols for responding to labor and delivery complications.

Severe Maternal Morbidity

Deaths are not the only concern. For every maternal death in the United States, as

many as 70 to 100 women experience severe maternal morbidity, or "near misses." Morbidity includes unexpected events during labor and delivery, like uncontrolled bleeding or serious infections.

After U.S. tennis star Serena Williams opened up about her near-death experience after delivering her baby girl, the issue received national attention. Williams developed a blood clot in her lungs. "I just remember getting up and I couldn't breathe, I couldn't take a deep breath," she recalled in her HBO docuseries "Being Serena." Williams had experienced a similar incident about five years earlier and knew to ask the medical staff for a CT scan with dye. She received the scan and endured three subsequent surgeries.

"I'm not someone who takes their health for granted," Williams said. "With as many issues and scares as I've had, I think I've learned pretty well how to listen to my body."

Aiming for Answers

So, why are mortality and morbidity rates increasing in the United States while they’re decreasing almost everywhere else? The reasons are unclear. Increases in maternal age, pre-pregnancy obesity, poverty, untreated pre-existing chronic medical conditions, the high number of cesarean deliveries and a lack of access to health care, especially in rural areas, all could be factors contributing to the up-swing in maternal deaths in the U.S.

With support from the Maternal and Child Health Bureau in the federal Health Resource Services Administration, at least 13 states and more than 667 hospitals are working with the Alliance for Innovation on Maternal Health, known as AIM, to put in place a set of effective, proven practices. The program works directly with practitioners in health care facilities, including hospitals, who perform 1,780,000 births a year, or 45 percent of the annual U.S. total.

Among the program’s tools are “maternal safety bundles”—one- to two-page briefs divided into bulleted sections with reminders for staff on how to prevent, recognize, respond to and report on a variety of conditions. When performed collectively and reliably, the strategies work. Safety bundles cover such topics as:

- Early-warning signs of complications.
- Hemorrhage.
- Hypertension.
- Vaginal births.
- Racial disparities.
- Basic postpartum care.
- Care for opioid-dependent women.

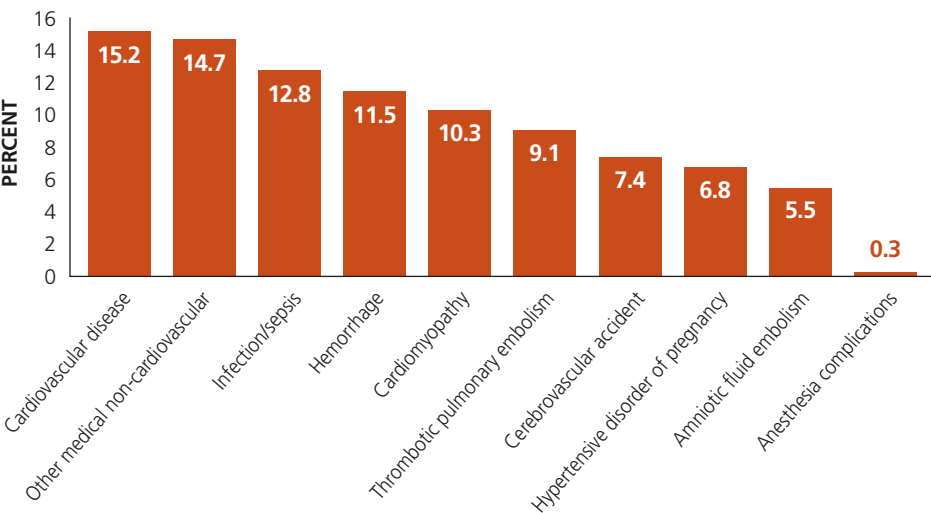
The American College of Obstetricians and Gynecologists reports that Illinois reduced severe maternal morbidity by about 22 percent and morbidity due to hypertension by nearly 20 percent through the AIM initiative. Oklahoma reduced severe maternal morbidity by roughly 20 percent in its participating hospitals.

A Better Review Process

About half the states have established a comprehensive maternal mortality review committee to examine deaths and identify areas for improvement. The committees typically include public health workers,

Causes of Pregnancy-Related Death in the United States

Percentage of all pregnancy-related deaths, 2011-14.



Note: The cause of death is unknown for 6.5% of all pregnancy-related deaths.

Source: Centers for Disease Control and Prevention

“WE WERE RANKED FIVE YEARS IN A ROW AS THE BEST STATE TO DO BUSINESS IN. HOW CAN WE BE RANKED THAT WAY AND NOT BE DOING WELL FOR OUR MOMS AND BABIES?”

Senator Renee Unterman, Georgia



obstetricians and gynecologists, maternal-fetal medicine experts, nurses, midwives, forensic pathologists, and those in the mental and behavioral health fields. Some include social workers or patient advocates.

Despite recent national attention, a few states created these committees more than 15 years ago. Maryland’s review pro-

gram, which was established in 2000, is required by statute to:

- Identify maternal death cases.
- Review medical records and other relevant data.
- Determine preventability of death.
- Develop recommendations to prevent maternal deaths.
- Disseminate findings and recommendations to policymakers, health care providers, health care facilities and the public.

Georgia’s legislature created a review committee through legislation sponsored by Senator Renee Unterman (R). It convened for the first time in 2012.

“Unfortunately, Georgia was ranked high in maternal and infant mortality. We were ranked five years in a row as the best state to do business in. How can we be ranked that way and not be doing well for our moms and babies?” she asks.

Georgia’s law provides legal protections for committee members and the review process, ensures confidentiality and gives the committee the authority to collect data for case review. The state also piloted programs to improve access to care in rural areas. The Centering Pregnancy program puts pregnant women into groups where, in addition to medical care, they receive



Unterman



Kyle

emotional peer support; education about nutrition, labor and delivery; breast-feeding and self-care advice; depression screening and group interaction. The program lowered the risk of preterm birth by 33 to 47 percent. Medical practices in at least 46 states have adopted the Centering Pregnancy model.

Data Delivers

Dr. Morgan McDonald is the assistant commissioner and director of the Division of Family Health and Wellness at the Tennessee Department of Health. She has overseen the implementation of 2016 legislation that created the committee there.

“Data is the first benefit with a maternal mortality review committee,” she says. “Until it’s in place, you just have vital records and it relies on the coding and timing of death, which may not give you the information you need.”

The review process verifies whether a death was related to pregnancy and identifies factors that may have prevented that death. The legislation for Tennessee’s review committee took effect in 2017.

“I can’t overestimate the impact of the maternal mortality review legislation in Tennessee,” McDonald says. “It has galvanized the prevention and I have no doubt it will direct our efforts to reduce our maternal mortality rate. It is a big win for women’s health and for everybody, that is not controversial.”

Tennessee Senator Sara Kyle (D) says she hopes the legislation will help prevent “senseless” maternal deaths. “Studies show us that America’s maternal mortality rate is higher than in any other developed country, and Tennessee’s is above the national average. I think we have to ask our-

selves the tough question: Why are these pregnant women dying at a higher rate than in any other developed country?”

To date, only California has successfully reduced its maternal mortality rate. The state’s Department of Public Health calculates that between 2006 and 2013, the rate fell by 55 percent, from 16.9 to 7.3 deaths per 100,000 live births. Currently, the rate is 4.5, the lowest by far of any state.

California used data collection and information from its review committee to focus on improving labor and delivery in hospitals. In short, the state linked birth and death records, hospital data files and coroner reports; reviewed each pregnancy-related death; and translated findings into quality-improvement initiatives that could be used statewide. To support the state’s hospitals, the California Maternal Quality Care Collaborative, a public-private partnership, created informational toolkits with C-section and early-delivery rates and other statistics to identify where improvements could be made. These toolkits were the model that the Alliance for Innovation on Maternal Health used to create its maternal safety bundles—the how-to guides now being used in birthing facilities in 18 states.

Hope on the Horizon

State legislatures will continue to explore opportunities to improve their maternal care systems, so that families don’t have to face the pain of losing a mother and wife the way Kira Johnson’s family did.

“I do not have the words to describe the loss my family has suffered,” Kira’s husband, Charles, told the U.S. Energy and Commerce Subcommittee last fall. “My boys no longer have their mother. Kira was the most amazing role model and mother any boy could ever wish to have.”

In a sign that the maternal mortality crisis is getting needed attention, President Trump signed the bipartisan Preventing Maternal Deaths Act of 2017 on Dec. 22 last year. The new law authorizes programs to promote safe motherhood and to support states in establishing or improv-

A Troubling Trend

There is significant racial disparity in health outcomes in the United States. Not only are African-American women 22 percent more likely to die from heart disease and 71 percent more likely to perish from cervical cancer than white women, they also are 243 percent more likely to die from pregnancy- or childbirth-related causes, regardless of their socioeconomic or educational levels.

Research shows that chronic stress, often higher in African-American women, takes a physical toll during pregnancy and childbirth. “As women get older, birth outcomes get worse. ... If that happens in the 40s for white women, it actually starts to happen for African-American women in their 30s,” says Dr. Michael Lu, a professor at George Washington University and former associate director of the Maternal and Child Health Bureau of the Health Resources and Services Administration.

Want to Know More?

The Review to Action website offers state profiles, contacts, examples of state statutes and other resources to help maternal mortality review committees. You can also get the Maternal Mortality Review Information Application, aka MMRIA or “Maria.” The app is provided free of cost to review committees for their own use in collecting and analyzing data on maternal deaths and opportunities for action.

ing maternal mortality review committees, so officials can better understand how to keep moms alive and healthy.

It could be a meaningful step toward changing America’s regretful status as the most dangerous place in the developed world for a woman to have a baby.

Tahra Johnson directs NCSL’s maternal and child health program.

NEW YORK

New year, new jingle

The celebration is sure to be muted, but New York lawmakers are set to get their first pay increase in 20 years. A compensation committee voted unanimously to phase in the raise over three years beginning Jan. 1, when Senate and House members' annual base pay will rise from \$79,500 to \$110,000. Salaries increase to \$120,000 in January 2020 and \$130,000 in January 2021. Although most see the boost as overdue—the panel's vote was based partly on research of legislator pay in other states—the plan has its critics. Some lawmakers object to panel recommendations that would eliminate most stipends for leadership positions and limit outside income to no more than 15 percent of their state salaries. And the conservative Government Justice Center filed a lawsuit challenging the legality of the panel's vote, claiming raises must be voted on by the Legislature.



STAY COOL

Incivility is widespread and growing

Ninety-three percent of Americans from both political parties agree that uncivil behavior is rampant and getting worse, according to the eighth installment of the "Civility in America" survey by Weber Shandwick and Powell Tate, conducted with KRC Research. The survey found that most agree that incivility is a major societal problem that is hurting our democracy, promoting political gridlock, causing people to disengage from politics and leading to intolerance of free speech. Sixty-nine percent of Democrats and 73 percent of Republicans believe it's a "major" problem.

TEACHERS CRYING

Civics knowledge weak in new study

A recent Johns Hopkins University survey of adults on their knowledge of state government yielded curious contrasts. As the news site Route Fifty reports, 59 percent of participants said their overall opinion of their state government was "mostly" or "very" favorable, yet more than a third couldn't name their governor, at least 81 percent couldn't name their state representative and 72 percent blanked on their state senator. About 80 percent

couldn't identify the "most debated issue" in their legislature last year. "The lack of understanding of state issues and state politics is so deep that we're concerned that citizenry is precluded from engaging with state government," one researcher said. Fear not. Other studies have suggested that even if people don't know names and debate topics, they seem to be aware when state governments are underperforming.



MARSHALL ISLANDS

Trouble in paradise?

With good jobs in short supply—unemployment lingers at about 40 percent—and the threat of climate change looming, a third of the Marshall Islands' population has moved to the United States, PBS NewsHour reports. The Marshallese benefit from the 1986 Compact of Free Association, which provided economic aid and special rights for the Marshalls, the Federated States of Micronesia and Palau, the Pacific island nations used by the U.S. military, including for nuclear tests in the 1940s and '50s. The law says citizens of these association states are free to live and work in the U.S. without visas or work permits.

OHIO

What's in your bitcoin wallet?

Bitcoiners took note last fall when Ohio became the first state to accept the cryptocurrency for 23 different business taxes. As the Cincinnati Enquirer explains it, businesses sign up through OhioCrypto.com, enter their tax payment information, then pay through the third-party processor Bitpay, which converts the

bitcoins into dollars that are deposited into the state's accounts. Businesses pay a 1 percent transaction fee, instead of the 2.5 percent assessed when they use credit cards. The payments are recorded in a blockchain, a publicly viewable ledger that cannot be erased. For now, bitcoin is the only cryptocurrency the state is accepting and the service is not yet available to individuals.

NORTH DAKOTA

No more snow-day slacking

Two North Dakota Republicans plan to introduce a bill that would replace make-up days with virtual classrooms when brick-and-mortar schools are closed due to extreme weather or other factors. Representatives Bernie Satrom and James Grueneich say the costs of holding make-up days at the end of the school year adds up. The bill, which would create a pilot program, would have an opt-in, opt-out option for schools that can't or don't want to participate in the snow-day alternative. "It should end up saving taxpayer dollars if we don't have to make up school days," Grueneich said.

BUDGETS

THE LONG VIEW OF STATE BUDGETING

Accrual accounting is a big-picture way of ensuring state governments are living within their means.

BY JULIE LAYS



Unlike the federal government, states balance their budgets every year—it's required for all of them except Vermont. But a different story sometimes emerges in states' own financial reports, which look more comprehensively at revenue and spending and how the money is managed.

These financial reports show that between fiscal years 2003 and 2017, most states amassed sufficient revenue to cover their expenses. The typical state's revenue, composed primarily of taxes and federal grants, totaled 102.1 percent of its total bills over those 15 years. That's pretty good, considering the Great Recession and two economic recoveries occurred during that time.

That's the median, however, of all states' revenue and expenses, and it obscures how widely states' situations can vary. While 40 states collected more than enough revenue to cover expenses during that period, 10 had negative balances. Those states carried forward deferred expenses for previously provided services, such as the annual cost of public employee retirement benefits. Such moves push off to future taxpayers some of the costs of operating government and providing services, which can jeopardize a state's long-term fiscal flexibility.

Diagnosing Fiscal Health

State budgets generally track cash as it is received and paid out. But there's a way to capture all of a state's financial activities (excluding those of some legally separate organizations, such as economic development authorities or some universities). It's called "accrual accounting," and it offers a different perspective on state finances.

Accrual accounting attributes revenue to the year it is earned, regardless of when it is received, and expenses to the year incurred, even if some bills are partially or wholly deferred. This method captures deficits that can be papered over in the budgeting process, even when balance

requirements are met by such means as accelerating tax collections or postponing payments.

This long-term view also produces data that are more comparable state to state. Examining aggregate revenue as a share of aggregate expenses transcends temporary ups and downs that states experience over the years, as it allows surplus funds collected in flush years to balance out shortfalls in other years.

Key Financial Reports

Researchers for The Pew Charitable Trusts' Fiscal 50 project, which tracks and analyzes key fiscal and economic trends, used accrual accounting techniques to get a longer-term view of all 50 states' financial health than can be seen in annual or biennial budgets.

The group's analysis was drawn from audited, comprehensive annual financial reports that have included accrual information since 2002. The reports broaden the scope of reporting beyond state budgets to capture all financial activity under the state government umbrella, including revenue and spending from related activities, such as utilities and state lotteries.

All states must file these standardized reports, but they are used mostly by credit rating agencies and other public financial analysts.

The Pew researchers used the FY 2003-17 time frame to get a perspective that was both long-term and relevant to current decision-makers—the ones who must consider whether to increase revenue or cut expenses when state finances are out of balance. Accounting for funds as the financial reports do is like a family reconciling whether it earned enough income over 12 months to cover not just cash expenditures but also credit card bills and car or home loan debts.

A state whose annual income falls short generally turns to a mix of reserves, debt and deferred payments on its loans to

get by. Conversely, when state income surpasses expenses, the surplus can be directed toward nonrecurring purposes, including paying down obligations, bolstering reserves or expanding services.

Chronic Deficits Cause Concern

Like families, states can withstand periodic deficits without endangering their long-term fiscal health. Chronic shortfalls, however, may indicate a serious structural deficit requiring changes in policy.

A negative fiscal balance is one indication of a structural deficit, but there is no consensus on how to determine when policy changes are needed. Some states, for example, diagnose structural deficits by comparing cash-based recurring general fund revenue to recurring expenditures under normal economic conditions. However, such data are not available for all 50 states.

What Did Pew Find?

Among the findings of the Fiscal 50 analysis for fiscal 2003-17:

- States with the largest accumulated surpluses were Alaska (135.9 percent of expenses incurred), Wyoming (126.1 percent), North Dakota (120.8 percent), Utah (110.3 percent) and Montana (109.8 percent). These resource-rich states use some of the large surpluses they acquire in boom years to help alleviate shortfalls when oil or mining revenue declines.
- Two states' long-term balances improved from negative to positive. With the addition of fiscal 2017 results and after seven consecutive years of surpluses, Michigan's revenue edged up to 100.5 percent of its expenses. New Mexico's revenue also reached 100.5 percent of expenses, thanks to a surplus in fiscal 2017.
- Two states had deficits every year: New Jersey had the largest long-term imbalance, with revenue able to cover only 91.3 percent of aggregate expenses, followed by Illinois at 93.8 percent.

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their Future



To honor the state elected officials who were integral to the passage of historic legislation to ensure retirement security is possible for all hard-working Americans, AARP announces the 2018 class of Super Savers. This bipartisan group of leaders worked to pass legislation or resolutions that address the retirement crisis by helping millions of workers without access to a workplace retirement savings plan to start growing the savings they need to take control of their future.

AARP applauds the 2018 class of Super Savers for their bold and visionary leadership:

Connecticut

- President Pro Tempore Martin M. Looney
- State Senator John W. Fonfara
- Speaker Joe Aresimowicz
- State Representative Jason Rojas

Kansas

- State Senator John Skubal
- State Representative Linda Gallagher

Maryland

- State Senator Douglas J. J. Peters
- State Senator Jim Rosapepe

New Mexico

- State Treasurer Tim Eichenberg
- State Senator Bill Tallman
- State Representative Tomás E. Salazar

New York

- Governor Andrew M. Cuomo
- State Senator Diane J. Savino
- Assemblymember Marcos A. Crespo
- Assemblymember Robert J. Rodriguez

Pennsylvania

- State Treasurer Joe Torsella

Virginia

- State Senator T. Montgomery “Monty” Mason
- State Senator Frank M. Ruff, Jr.
- Delegate Luke E. Torian

Wyoming

- State Senator Jim Anderson

• Eight more states had symptoms of a structural deficit: Massachusetts (96.1 percent), Hawaii and Connecticut (both 96.9 percent), Kentucky (98.3 percent), California and Maryland (both 98.8 percent), New York (98.9 percent), and Delaware (99.5 percent). All but California and Delaware experienced deficits in at least 10 of the 15 years.

• In fiscal 2017, Delaware had its largest deficit in eight years, pulling its long-term fiscal balance into negative territory. It was the only state to move from positive to negative during the period studied.

Year-by-Year Trends

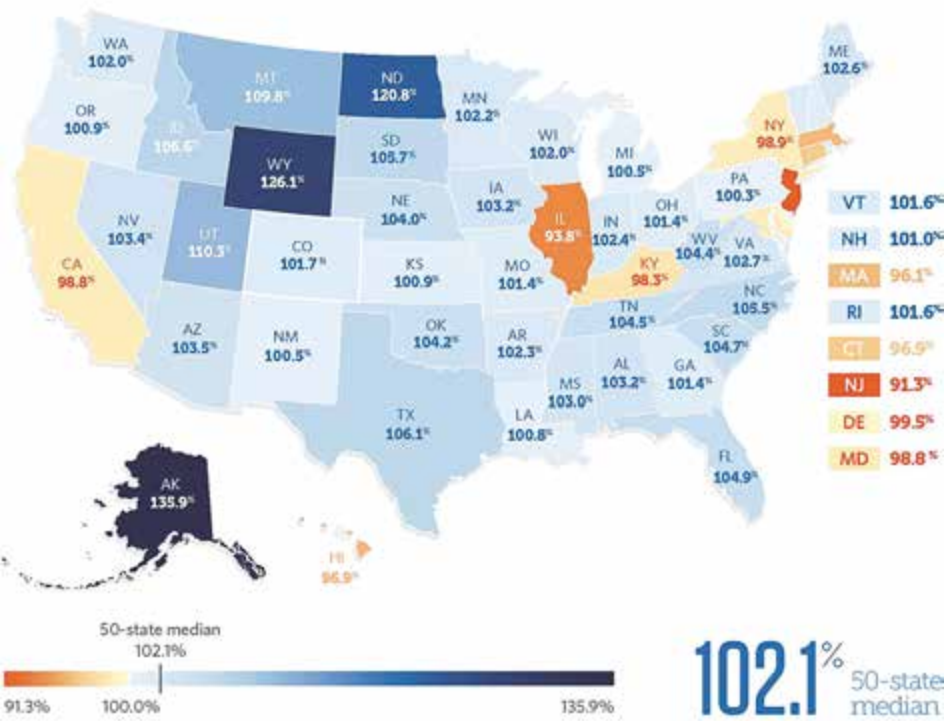
Looking at states’ balances year by year, shortfalls mainly occurred during and immediately after the economic downturns of 2001 and 2007-09, suggesting that most states’ challenges were temporary. For example, all but Louisiana, Montana, North Dakota and West Virginia ran deficits in 2009, the nadir of the Great Recession.

As the nation’s economic recovery took hold, most states balanced their books and have stayed in the black since 2011. In fiscal 2016 and ’17, however, more than a dozen states ran deficits. One reason was stagnant tax revenue growth, which through the second quarter of 2017 had its weakest two-year stretch—outside of a recession—in at least 30 years. Throughout much of 2016 and ’17, tax collections were stymied in some states by sagging energy and crop prices, and more widely by the slow growth of wages and a migration of consumer spending toward services and online purchases that were less likely to be taxed.

Among the 10 states with gaps between aggregate revenue and expenses between 2003 and 2017, a year-by-year breakdown shows that only California has turned a corner and reported surpluses for the past five fiscal years.

It’s important to note that just because a state raised enough revenue over time to cover total expenses does not necessarily mean it paid every bill. North Dakota brought in surpluses in nearly each year studied, for example, but frequently fell behind on annual contributions to its pension system, electing to use the money for other purposes. So, accrual accounting gauges states’ wherewithal but does not reconcile whether revenue was used to cover specific expenses. Collecting more revenue than expenses over the long term is just one of the conditions needed to achieve fiscal balance. Further insights

Expenses in 10 States Exceed Revenue Over the Long Term
Total revenue as a share of total expenses, FY 2003-17



Note: Owing to unavailable data at the time of collection, Alabama’s data are only through fiscal 2016.

Source: Pew analysis based on data from state comprehensive annual financial reports

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ACCRUAL ACCOUNTING
GAUGES STATES’
WHEREWITHAL BUT DOES NOT
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can be gleaned from examining states’ debt and long-term obligations.

After years of slow progress, lawmakers are seeing a more promising economic and fiscal environment in 2019. Still, not all states have fully recovered from the shocks of the Great Recession more than a decade ago. Some face vexing constraints: inherited shortfalls in funding for public employees’ pension and retiree health care benefits; recurring deficits between annual state revenue and expenses; and weak population growth, which can affect economic prospects and revenue collections.

Accrual accounting can help provide the long-term perspective these states need to get a true picture of their fiscal health.

Julie Lays is the editor of State Legislatures magazine. This article is based on research by The Pew Charitable Trusts. The report is available at pewtrusts.org/fiscal50.

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Toolbox

5 Tips for Every New Lawmaker

Getting elected was hard work, but now the really hard part begins—representing your district.

If you are one of the 1,500 brand-new lawmakers elected last fall, are you prepared?

We compiled the following advice from several seasoned legislators.

1

HOLD ON TO YOUR VALUES

Don't lose sight of who you are. Follow your moral compass. The legislature operates on truth and trust. Keep your word. And keep your ambition in check. Fellow lawmakers may treat you as an equal, but attention from the media, lobbyists and constituents can go to your head. Don't let it. It's easy to start feeling more important than you really are.

2

PLAY BY THE RULES

Obeying the law should be a given, yet most ethics scandals occur because this advice was ignored. When in doubt about an ethical gray area, find a mentor and seek his or her opinion. Know your state's constitution and master your chamber's rules. Clerks, secretaries and seasoned legislators are excellent resources. Use them. Do your homework and you'll build your credibility. Cavort with the enemy! Remember, you no longer are campaigning, you are now governing.

3

SERVE YOUR CONSTITUENTS

You are there to serve, but don't promise more than you can deliver. Know where to draw the line with constituents and where to send them for answers. Always follow through to make sure they were served. Invite people to the capitol, do surveys, write newsletters and attend community meetings. Send out email blasts before big votes. Schedule town meetings and pop into local cafes. You were elected by a majority of voters, but you represent everyone in your district.

4

GET SMART

Specialize in a policy area or look to fill a void, then team up with experts. Give clear instructions to bill drafters. Focus on your committee work as this is where the in-depth work on bills is done. Remember, state budgeting is driven by service, not profit. Be honest and forthcoming with the media and lobbyists and avoid grandstanding. The press may want a good story, but you don't have to be the one to give it to them.

5

AVOID (THE MANY) FRESHMAN TRAPS

Be aware of first impressions. Too many freshmen introduce bills with great ideas of how to spend money, but with no idea of where the money will come from. Don't commit too early to other people's bills. Keep your eye on long-term policy goals. Draw a line between the needs of your constituents and personal relationships with colleagues and lobbyists. Avoid a quid pro quo mentality.

Parting thought: This comes from former Wyoming Representative Rosie Berger (R), who would walk the capitol's vacant halls in the mornings before business started: "Be grateful for your opportunity to serve the public. Find some quiet time to collect your thoughts and gain appreciation for your experience as a legislator," she says. "In the quiet of the morning, I absorbed the history of the building. It reinforced why I chose to run and serve."

These tips, which have been updated, were first compiled by NCSL's Peggy Kerns and published in February 2013.

THE CENSUS

GET READY TO ENUMERATE

The decennial census, the government's single largest civilian undertaking, wants to find everyone this time.

BY PATRICK POTYONDY

The U.S. Constitution requires an “actual enumeration,” or counting, every 10 years of every person in the country. In the first count, in 1790, 17 marshals and their assistants were given nine months to complete the job.

The marshals faced several hurdles, not least because it was the first count. Roads were often impassable, if they existed at all. Bridges were scarce, forests impenetrable, people suspicious, and the horse was the only mode of transportation. It took the marshals twice their allotted nine months, but they came back with a final count: 3,929,214 people living in 13 states.

They counted the heads of households, the number of free white males 16 and older (for purposes of war), free white males under 16, free white females (but not their age because it was thought to be “indelicate ... to ask a young lady”), other

free persons and slaves. After considerable debate, Congress decided against James Madison’s proposal to collect detailed data on Americans’ occupations, citing the expense and potential unconstitutionality.

George Washington and Thomas Jefferson suspected, but had no way of proving, that the 1790 enumeration greatly undercounted certain groups and families. Indeed, an undercount was intentional back then. Only three of every five slaves were counted, and Native Americans weren’t counted at all. That didn’t change until after the Civil War and the passage of the 14th Amendment, when the country began counting the “whole number of persons” in each state.

It’s Coming Again

Our next counting begins around April 1, 2020, and the stakes could hardly be higher: The census is the basis for congressional apportionment (how many

seats each state gets); redistricting at all levels of government (how we draw the lines for the U.S. House of Representatives, state legislatures and school boards); decision-making by public officials, businesses and nonprofits; and the annual allocation of more than \$800 billion in federal funding to the states.

Missing less than 5 percent of the population might seem unimportant given the size of the country, but even a 1 percent undercount could cost a state a U.S. House seat and millions of dollars in federal funding.

Transportation and communication have improved greatly since 1790, but the dedicated public servants of the U.S. Census Bureau still wrestle with the question of how to reach everyone in the country and avoid an undercount. As lawmakers consider ways to ensure that every person in their state is counted in the spring of 2020, here are the key groups they will

EVEN A 1 PERCENT
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focus on, the people who have historically been undercounted. For every undercounted group, establishing trust and keeping the message simple are key.

Where Are the Children?

Surprisingly, the census often overlooks one of the nation’s most vulnerable groups. The estimated undercount of children less than 5 years old was 4.6 percent in 2010. Why? A lack of awareness among those completing the survey that kids need to be counted.

“If the mom, dad or guardian filling out the form is unaware that they need to include the young children in their household, those children and their needs become invisible,” says Flo Gutierrez of the Annie E. Casey Foundation. Moreover, undercounted children are more likely to be in hard-to-count households and neighborhoods, such as those with high poverty rates or multi-unit housing.



CENSUS FAQ

The citizenship question

The controversial question would ask people if they are citizens and, if so, where they were born. If they are naturalized citizens, it would ask in what year they became one. It would not ask if they are here legally, according to Wilbur Ross, secretary of the Commerce Department, which oversees the Census Bureau.

Has a question been asked in the past?

Sort of. A question related to citizenship status was asked on the 1820, 1830 and 1870 census questionnaires and in each decennial census of the total population from 1890 to 1950. But today’s understanding of “citizenship” wasn’t formed until the 1910s and ’20s. Until nearly the 20th century, the U.S. essentially had open borders for people from certain parts of the world. Since 1960, the citizenship question has been asked of only a sample of households.

Why do some say the question is necessary?

The official explanation has been brief. Ross stated in March that the Justice Department requested that the question be added to help in enforcing the Voting Rights Act of 1965. Open records documents dispute his recollection of the request, and decennial census information has never been used or needed in enforcing the VRA.

Why do others object to it?

Critics say the information collected in the American Community Survey is adequate for civil and voting rights enforcement. In addition, they are concerned that the question could deter millions of immigrants from filling out their mandatory surveys, which could seriously skew the national head count.

Sources: Pew Research Center, Time.com, Vox.com.

State and local complete count committees—the premier best-practice to achieving accurate counts—should include organizations involved with children. “This includes community clinics, pediatricians, religious institutions, Head Start, WIC offices and schools, to name a few,” Gutierrez says. “Roughly \$160 billion in federal funding goes to states to assist children, based on their numbers. These resources ensure that children have access to health care, food, education and housing. These are resources that are critical for their development and allow children to thrive.”

Convenience Is Key

Latinos make up 18 percent of the U.S. population. “An undercount of Latinos means a failed census,” says Arturo Vargas, executive director of the National Association of Latino Elected and Appointed Officials. “The hostile environment the federal government has created for immigrants, [and] the last-minute addition of an untested citizenship question will increase this fear and distrust” among Latinos, he says.

NALEO’s research found that Latinos prefer paper to electronic survey forms. Researchers tested four census-related messages:

- It’s convenient, safe and required.
- It’s your civic or community duty.
- Federal funding depends on it.
- It’s a way to show resistance and defend your community.

All four produced positive results, but the first one—that filling out the form is “convenient, safe and required”—performed the best. To encourage Latinos to complete their surveys, “state leaders should refer quality people to apply for census jobs,” Vargas says, echoing the sentiments of many others.

Oh Where? Oh Where?

Rural areas can be particularly tough to count, given the geographic obstacles and the digital divide. “One of the biggest hurdles in rural areas is the dearth of good internet access,” says William P. O’Hare, an independent researcher whose work is

published by the University of New Hampshire. “There are also many rural areas around the country where it is difficult to find housing units. They may be on unmarked roads and/or difficult to see from a main street or road.”

On top of these difficulties, “Rural communities are often characterized by the dominance of racial, ethnic or cultural groups,” O’Hare says. “American Indian reservations are a prime example of this, but many of the Hispanic communities in the Southwest and rural black enclaves in the Southeast are other examples.” He points out that complete count committees must know about these local areas to make the 2020 count accurate.

“AN UNDERCOUNT OF
LATINOS MEANS A
FAILED CENSUS.”

Arturo Vargas, National Association of
Latino Elected and Appointed Officials



Previous efforts have undercounted communities of color. The 2010 census is estimated to have undercounted Hispanics by 1.5 percent, African-Americans by 2.1 percent, Asian Pacific Islanders by about 1 percent and Native Americans by 4.9 percent. Experts agree that, for every community, it is essential to hire trusted voices who understand the culture of the people they will be counting.

Fair Share of Resources

The nonprofit civil rights organization Color of Change found three primary reasons why African-Americans might not participate in the census: They believe that it won’t make a difference to their community; that the government has other ways to obtain the information; and that the questions are intrusive. Regarding

the citizenship question, a majority said it would not deter their community from participating but that it would deter undocumented immigrants from doing so.

“Ensuring funding for programs in my community” was the study’s most persuasive message for African-Americans of all generations.

The organization also notes that, while cable TV is popular with older adults, social media is the preferred news source for millennials. Reaching blacks will be more difficult than reaching whites, however. Whereas 81 percent of whites have home internet, only 70 percent of Hispanics and 68 percent of blacks do.

The Census, When?

As with other communities of color, the Asian and Pacific Islander communities were concerned about the addition of the citizenship question, according to Asian Americans Advancing Justice, a nonprofit legal aid and civil rights group. Most, however, were unaware that the 2020 census was approaching.

Among Asians, Vietnamese-Americans were the most positive about completing an online form, while Native Hawaiians, Pacific Islander-Americans, Indian-Americans and Korean-Americans generally preferred paper.

And, as in the Color of Change study, the message that the census is important because it ensures a community’s fair share of resources tested the best, while messages centered on civic duty or legal requirements tested less positively.

Building on these themes, the National Congress of American Indians testified before the U.S. Senate Committee on Indian Affairs that “native people especially on reservations and in Alaska Native villages have been historically underrepresented in the census.”

The group has denounced cancelled field tests in Indian country and, like NCSL, has advocated for sufficient funding for the 2020 census. It also recommends finding strong, permanent, nonpartisan leadership for the Census Bureau and ditching the citizenship question.



Among the Census Bureau’s greatest challenges: counting the roughly 3.5 million people who are homeless.

Home Address: Nowhere

The roughly 3.5 million people who are homeless can be difficult for any census operation to count. Families with children make up about 35 percent of the total, while African-Americans are seven times more likely to be homeless than whites. Veterans represented about 9 percent of homeless adults in 2016.

“To effectively count the homeless population’ we need to first understand [them],” says Tom Murphy of the National Alliance to End Homelessness. “That includes knowing the locations of shelters, encampments and other places where people are likely to congregate.” And that will likely require “conducting a census at night.”

Murphy says communities often have success enlisting a combination of homeless service providers, people who have been homeless themselves and peers from specific subpopulations, such as veterans and youth, to help establish trust.

Nonprofits Chipping In

Foundations, their grantees and other philanthropic organizations have a stake in a fair and accurate census count, too. Nationally, more than 100 foundations are contributing to well over 100 organizations as part of a wide-ranging “get out the count” effort. A coalition of advocates, for example, launched the “Stand Up for the Count” campaign to restore trust in the census through public education.

The Funders’ Committee for Civic Participation started the Funders Census Initiative to support nonpartisan, nonprofit state and local efforts to boost participation. One such state-level nonprofit is Colorado’s Together We Count, which helps grassroots organizations, businesses and officials at the state, local and tribal levels reach hard-to-count populations.

Some nonprofits are pressuring legislatures to enact matching-funds programs for census outreach work. The programs direct philanthropic efforts toward a more

complete count. Michigan lawmakers, for example, enacted legislation that will fund 2020 census outreach by an allocation of one state dollar for every four private dollars received, up to a maximum of \$500,000.

Legislators also can use their influence and networks to help set up state and local complete count committees. They can encourage philanthropic leaders, as well as trusted messengers like child-care providers, clergy, teachers, librarians, health care providers and family members, to participate. Trusted voices are the best source of information about the census, and it’s not too early for legislators to mobilize these key assets. The one-year countdown to the 2020 census begins soon.

Patrick R. Potyondy was a Mellon-ACLS public fellow and a legislative policy specialist with NCSL’s Elections and Redistricting Program.

ENVIRONMENT

TOXINS ON TAP

Lawmakers are working to keep potentially dangerous fluorochemicals out of drinking water supplies.

BY DOUG FARQUHAR

They're pervasive in public water systems and around military bases across the country.

They've been found in public wells in Bucks and Montgomery counties in Pennsylvania and along the Cape Fear River in North Carolina. They've been detected in Oscoda and Kent counties in Michigan, and they've contaminated much of southeastern New Hampshire. Pennsylvania established an action team to deal with them.

What are they?

Per- and polyfluoroalkyl chemicals, a large, diverse group of man-made substances with differing characteristics, formulations and intended uses. Collectively known as PFAS, the group includes perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), GenX and many other chemicals commonly used in food packaging, carpeting, stain- and water-resistant clothing, nonstick products and firefighting foams.

PFAS are useful in manufacturing because they repel oil, grease and water. They keep your takeout pizza from sticking to the box, for example. But they can migrate from packaging into food, and they take a long time to break down in the environment, where they make their way into drinking-water systems.

All told, there are thousands of PFAS chemicals, and scientists are only just beginning to understand their effects on human health. Lawmakers have taken notice, though, as research is showing that some of the chemicals may interfere with hormones, increase cholesterol levels, affect the immune system and increase the risk of cancer. They may affect the growth, learning and behavior of infants and children. And they may decrease a woman's chance of getting pregnant. Although much about the health effects of these chemicals is unknown, they are, nevertheless, still being used in numerous applications.

"People are scared of PFAS because so much is unknown," says Michigan Repre-

sentative Peter MacGregor (R), whose district includes Kent County. The Michigan Legislature studied 17 PFAS-related bills in 2018.

Federal Response

Starting in the early 2000s, industry worked with EPA and other regulators to voluntarily phase out certain products—specifically PFOA and PFOS—which are no longer manufactured in the U.S., Europe or Japan. Since the voluntary phase-out, PFOS and PFOA levels in the U.S. population have declined dramatically, according to the Centers for Disease Control and Prevention.

In May 2016, the EPA established a health advisory—but not a regulatory standard—on the two chemicals. The advisory established the "safe" level of these two chemicals in drinking water to be no more than 70 parts per trillion.

The agency also is considering designating them as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act,

"PEOPLE ARE SCARED
OF PFAS BECAUSE SO
MUCH IS UNKNOWN."

Representative Peter MacGregor, Michigan



MacGregor



Allor



Messmer



Lee

also known as Superfund. Doing so would bolster states' and local water utilities' efforts to require the companies responsible for contamination to pay for the cleanup. It will be at least a few years until a hazardous substance standard will be finalized.

Peter Grevatt, formerly with the EPA's Office of Water, testified before Congress that the agency is considering using the Safe Drinking Water Act to develop a maximum containment level for both chemicals. He also said there is no plan to lower the lifetime health advisory for PFOA and PFOS in drinking water.

The federal Agency for Toxic Substances and Disease Registry is charged with protecting communities from hazardous substances. In 2017, it developed an Exposure Assessment Technical Tool for states and territories to use when measuring community exposures to PFAS in drinking water. New York and Pennsylvania are working with the agency to use this tool.

Recent federal legislation directs the agency to study the relationship between PFAS exposure and human health. Assessments at eight sites will measure the exposure levels of nearby residents and the environmental factors contributing to exposure. The study will let communities assess their risks and potentially mitigate some of the health effects.

"States can use these standards to shape their decision-making," Grevatt says. The federal government could regulate PFAS chemicals at some point in the future, once there is better understanding of how they act in the environment and their toxicity, he says.

This wait-and-see approach hasn't satisfied state legislatures.

"I wish the EPA would be more force-

ful on what levels are acceptable," says Michigan Representative Sue Allor (R), whose district includes the decommissioned Wurtsmith Air Force Base and the PFAS-contaminated township of Oscoda. "Michigan had to convene a PFAS Action Team to provide residents information on what levels of these chemicals are and are not safe."

States Need Answers

Without federal directives, 19 states have taken action on their own. Several have set standards for maximum safe amounts of PFAS chemicals in drinking water.

Lawmakers introduced 76 PFAS-related bills or supplemental appropriations in 11 states in 2018; 15 passed. Minnesota will upgrade its public health labs to handle PFAS testing. North Carolina is funding research and cleanup efforts. And Washington enacted two measures, one prohibiting the use of PFAS chemicals in paper food packaging, the other limiting the amount of the chemicals allowed in firefighting foam.

Former New Hampshire Representative, now U.S. Representative Mindi Messmer (D), joined her Republican colleagues in co-sponsoring legislation to establish maximum contaminant limits for several PFAS chemicals, including PFOA and PFOS.

"This law calls for the state to come up with standards for PFAS in drinking water, more in line with the Vermont standard of 20 ppt," Messmer says, using the abbreviation for parts per trillion.

New Jersey's Department of Environmental Protection is implementing PFAS standards of less than 15 ppt for drinking water through its Safe Drinking Water Act.

States with Numerical Per- and Polyfluoroalkyl Chemical (PFAS) Limits

PFAS includes perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), GenX and other common chemicals. Limits based on parts per trillion (PPT).

California	Minnesota
<ul style="list-style-type: none">14 PPT (PFOA)13 PPT (PFOS)Drinking water notification guidance	<ul style="list-style-type: none">35 PPT (PFOA)27 PPT (PFOS)Health-based guidance values
Colorado	New Jersey
<ul style="list-style-type: none">PFOA/PFAS listed as haradous waste70 PPT (combined PFOA/PFOS)Ground water quality standard for El Paso county only	<ul style="list-style-type: none">Set Perfluorononanoic acid standard at 13 PPTProposed standards for:<ul style="list-style-type: none">14 PPT (PFOA)13 PPT (PFOS)
Massachusetts	Vermont
<ul style="list-style-type: none">70 PPT (PFAS)State guidance for concentrations of six PFAS in drinking water	<ul style="list-style-type: none">20 PPT (PFAS)Drinking water health advisory for six PFAS
Michigan	Washington
<ul style="list-style-type: none">70 PPT (combined PFOA/PFOS)State standard for concentrations in drinking water	<ul style="list-style-type: none">Banned in firefighting foam and food packagingProposed drinking water standard

Source: Bloomberg Environment

In California, the Legislature delegated its authority over chemical safety to the Office of Environmental Health Hazard Assessment, which recommended the state notify residents when the level of PFOA in drinking water exceeds 13 ppt and 14 ppt for PFOS. Although public drinking water systems generally are not required to test for these chemicals, those that do are now required to report excessive amounts of PFAS chemicals to their governing boards and the state water board.

Pennsylvania elected not to set a standard in the absence of a federal one. Governor Tom Wolf (D) in September set up a team of state officials to advise his administration on how to curb the chemicals, which are being cleaned up at 11 locations around the state.

Pennsylvania’s concerns about drinking water began in the Philadelphia suburbs of Bucks and Montgomery, then spread statewide. A group of concerned citizens petitioned the Environmental Quality Board to set standards for PFAS in their drinking water. But state officials on

“THE GOVERNMENT AGENCY TASKED TO PROTECT OUR CLEAN WATER MISSED THIS ONE FOR OVER 37 YEARS.”

Senator Michael Lee, North Carolina



the board were uncomfortable setting a standard before the EPA does, saying the agency has better data and more research dedicated to the topic.

The Senate and House Environmental Resources and Energy committees, however, continue to hear testimony on the subject. Eleven bills were filed in 2018 regarding the state setting standards and requesting that the federal government clean the chemicals from drinking water supplies.

Fear on the Cape Fear

North Carolina has seen the biggest challenge with PFAS chemicals.

A facility near Fayetteville has been discharging wastewater containing the fluorochemical GenX, which is similar to PFOA, into the Cape Fear River since 1980. About a quarter million people downstream from the plant depend on the river for their drinking water. When the state tested several hundred of the residents’ wells, the chemical was found in 70 percent of them, with 160 wells being above the state’s health goal of 140 ppt.

The legislature convened a select committee to study the river’s water quality. Lawmakers ultimately allocated \$2.3 million for the Department of Environmental Quality to test for PFAS substances, with another \$530,000 going to establish a new Water Health and Safety Unit in the Department of Health and Human Services. An additional \$8 million was appropriated to set up statewide monitoring and testing for GenX and PFAS substances.

Increasing funding for both agencies has been a source of disagreement between the House and Senate but a top priority for Governor Roy Cooper (D), who recently proposed adding \$14.5 million for GenX response and testing in next year’s budget. Senate sponsor Michael Lee (R) says the legislation accomplishes the immediate goal of addressing water quality in southeastern North Carolina and puts in place the tools needed to help protect future North Carolinians from GenX and other emerging compounds.

“The government agency tasked to protect our clean water missed this one for over 37 years,” he says. “GenX is just one of over 5,000 compounds in the PFAS family.”

As residents learn of the existence of these chemicals and, increasingly, ask about the safety of their drinking water, lawmakers are responding.

“It’s important for the health of the people,” says Allor of Michigan. “Nobody wants this in their drinking water.”

Doug Farquhar directs NCSL’s Environmental Health Program.

StateStats

Earned Income Tax Credit: Rewarding Hard Work

For low- to middle-income families working hard to get ahead, federal and state earned income tax credits can be a real help.

The exact value of a federal EITC depends on the filer’s income, number of qualifying children and other factors detailed in the Internal Revenue Service’s Publication 596. Last year, 25 million workers and their families received about \$63 billion in federal EITC.

But these numbers represent only 79 percent of all taxpayers that are EITC-eligible, according to the IRS and the Census Bureau. Reasons for not claiming the credit include simply not knowing about it, not understanding the requirements or not receiving enough income to be required to file a return.

State credits, which are largely calculated based on what a filer receives in federal credit, provide an additional benefit and are similarly underutilized. In 2017, 1.4 million families in California shared a total of \$325 million in state credits, bolstering the \$6.8 billion they received in federal credits. Currently, 29 states, the District of Columbia, Guam and Puerto Rico have these additional credits in statute. Six of these states offer nonrefundable credits, meaning they can only reduce what the filer owes in state income tax, but do not issue a refund if the credit outpaces liability.

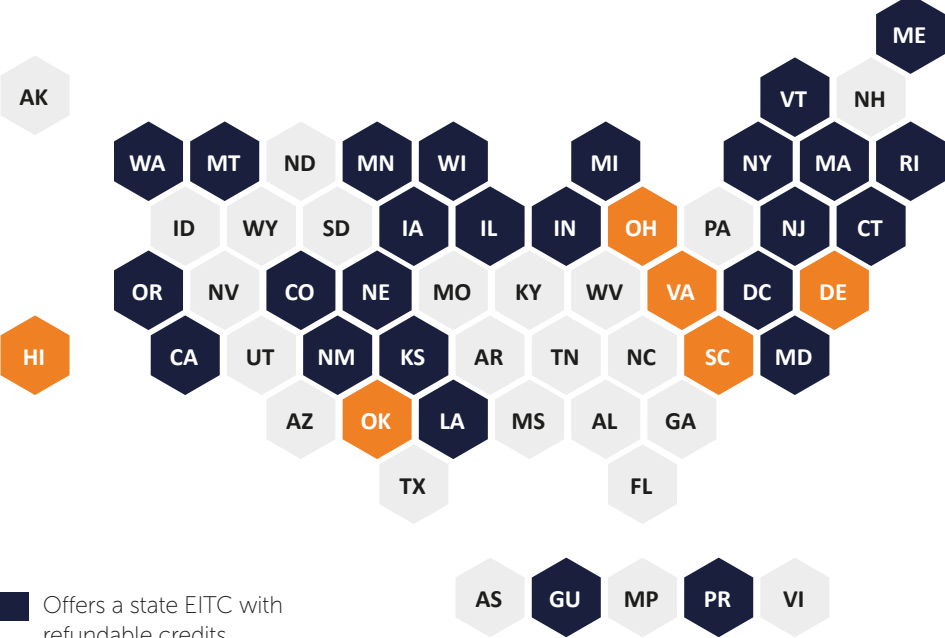
For legislators interested in the EITC, policy options include creating or altering your state-level credit or promoting the federal credit, which reaches people in every state.

To improve awareness and use of the EITC, the IRS leads an annual EITC Awareness Day, held this year on Friday, Jan. 25. The agency also provides free video, audio and social media advertising tools to help promote the credit.

—Richard Williams, manager, NCSL’s Family Economic Success Program

State EITCs

Twenty-three states, D.C., Guam and Puerto Rico offer refundable earned income tax credits that, like the federal credit, give recipients the maximum value they qualify for even if that exceeds what they owe in income taxes. Six nonrefundable states return only up to what the recipient owes in income taxes.



Source: NCSL, 2018

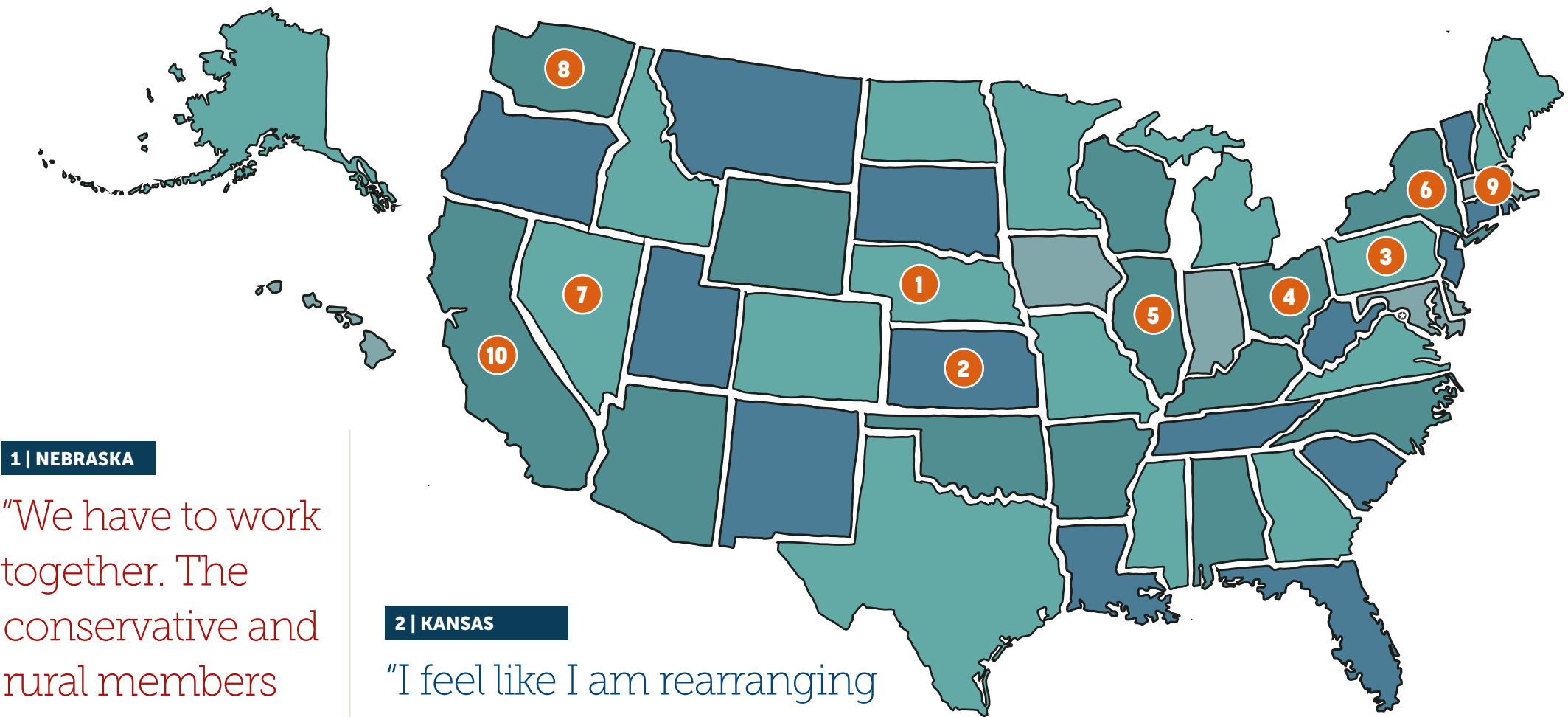
The Federal EITC

Who qualifies and for how much (for tax year 2018)?	Number of Children			
	0	1	2	3+
Single	\$15,570	\$40,320	\$45,802	\$49,194
Married, Filing Jointly	\$20,950	\$46,010	\$51,492	\$54,884
Maximum Credit Amounts	\$519	\$3,461	\$5,716	\$6,431
Maximum Limit on Investment Income	\$3,500	\$3,500	\$3,500	\$3,500

What State Legislators Can Do to Create a State EITC

- Set the minimum qualifications
- Set the method of calculation (most states use a percent of the federal credit)
- Decide if it will be refundable
- Develop a data collection system for claims
- Conduct outreach and awareness through employers and assistance programs
- Offer tax preparation assistance

Newsmakers



1 | NEBRASKA

“We have to work together. The conservative and rural members need to work with the urban senators and the progressives to really get something done.”

Nebraska Senator Patty Pansing Brooks, (NP) on balancing the pressure farmers face with the needs of her urban district, from The Associated Press.

2 | KANSAS

“I feel like I am rearranging chairs on the deck of the Titanic.”

Kansas Senate President Susan Wagle (R) on the political peril that awaits lawmakers dealing with next year’s cash-strapped budget, in the Kansas City Star.

3 | PENNSYLVANIA

“Pennsylvanians have spoken. They recognize the once ugly stigma of cannabis is now just a part of history.”

Representative Jake Wheatley Jr. (D), who plans to introduce legislation this year that would fully legalize marijuana, from MarijuanaMoment.net.

4 | OHIO

“There’s too much testosterone around the table. We’re bringing a different perspective.”

Ohio Representative Jessica Miranda (R), one of 28 women who won seats in the House, which is now 28 percent female, from Cincinnati.com.

5 | ILLINOIS

Illinois Senator and NCSL President Toi Hutchinson (D) was named a “Public Official of the Year” by Governing magazine. Hutchinson, Colorado Representative Faith Winter (D) and Indiana Representative Karen Engleman (R) were recognized for exposing sexual harassment in legislatures. Hutchinson says harassment is a “deep-seated cultural thing” that can’t be legislated away. At least now, she says, “We’re all starting to talk to each other in ways we didn’t before.”

6 | NEW YORK

Crystal Peoples-Stokes (D) will be the first woman and first African-American to serve as majority leader in the New York Assembly. “As both the first woman & minority to hold this position in NYS’s long history,” she tweeted, “I will continue to put people before politics & proudly represent WNY & the Majority Conf.”

7 | NEVADA

Nevada will be the first state with a majority female legislature. Women hold 32 seats (23 in the house, nine in the Senate); men have 31. The state’s Supreme Court will have a female majority, as will its six-member congressional delegation. Women also broke the 50 percent barrier in the Colorado House, and they’ll make up two-thirds of the territorial Legislature in Guam.

8 | WASHINGTON

Washington Speaker Frank Chopp (D), the state’s longest-serving speaker, plans to give up his leadership post after the 2019 session. He intends to run for his House seat again. “I think it’s good to make the transition when you’re at a strong point and a high point,” he said.

9 | MASSACHUSETTS

Massachusetts Senate Clerk William Welch retired after 45 years. He served in the clerk’s office during the tenures of nine Senate presidents. “I tried to maintain the reputation of the office,” he said. “It’s always had a good one, and I didn’t want to do anything to downgrade that.”

10 | CALIFORNIA

Mac Taylor must like round numbers. At the end of December, he called it a career after 40 years in the California Legislative Analyst’s Office. Taylor was just the fifth person to serve as the legislative analyst since the office was created in 1941.

Yes, No, Maybe So

ETHICS

Is it better to be ethical or to appear ethical?

BY NICHOLAS BIRDSONG

If something looks like a duck and quacks like a duck, then it probably is a duck.

But what if it were a talented goose in disguise? Would it make any difference to a person who likes watching ducks? Wouldn't some avid duck-watchers be more disappointed by an ugly duck than a deceptive goose?

If those seem like odd questions, look at them as a thought experiment regarding the importance of perception in the context of government ethics. A well-functioning government relies on the public's faith and perception of legitimacy. Legitimacy, particularly in a representative democracy, requires the perception that the state and its leaders are acting in the public interest.

Government ethics oversight encourages righteous behavior by revealing and punishing officials who abuse positions of trust. Consequently, ethical rules strengthen the state by enhancing legitimacy in the eyes of the public.

But, are we a bit like the duck-watchers above who care more about the view than the truth? Does it matter more that government appears ethical than it actually be ethical? To some, this question may seem counterintuitive, even offensive. Modern ethicists often critique appearance ethics by citing the 18th-century novel "Tom Jones." The villain of the story manipulates the "ornaments of decency

LEGITIMACY, PARTICULARLY IN A REPRESENTATIVE DEMOCRACY, REQUIRES THE PERCEPTION THAT THE STATE AND ITS LEADERS ARE ACTING IN THE PUBLIC INTEREST.



and decorum" to appear ethical and malign the genuinely honorable protagonist. The story demonstrates how this sort of "ethics" can be, itself, unethical.

Few would describe attempts to address the appearance of impropriety as unethical, though such rules have been challenging to implement in nonlegislative contexts. The American Bar Association, for example, adopted a model rule in 1932 based on a biblical passage that forbade "all appearance of evil." The rule was removed soon after because it was too vague to be enforced, unpredictably and subjectively applied, and often redundant because of more specific ethical prohibitions.

Critics have suggested replacing general appearance-of-impropriety prohibitions with rules that forbid specific actions that tend to appear corrupt. Revolving-door prohibitions, for example, provide a

bright-line rule against state employees and officials leaving public service to immediately go to work as lobbyists. The practice is not inherently unethical or contrary to the public interest, but it can create the perception and increase the risk that well-funded special interests are able to unethically buy influence.

On the other hand, rules using an appearance-of-impropriety standard can be more effective at preventing, revealing and punishing instances of actual misconduct than those limited to what's banned specifically by statute or regulation. An ethics board could avoid the arduous task of proving a corrupt act occurred and instead simply demonstrate how the circumstances appear unethical.

Proper appearances may also matter more when applied to public service than the context of the ABA's rules for private practice attorneys, justifying broader restrictions. An objective "reasonable, well-informed person" standard might help avoid the subjective and unpredictable application of appearance-based standards.

Being ethical is likely more important than appearing ethical, but appearances can help inform the development of ethics rules or be used as a standard of conduct. A middle road might incorporate aspirational rules that encourage avoiding the appearance of impropriety while stopping short of naming consequences for violating them. Even those most wary of the darker side of appearance ethics would likely see little harm in aspiring to avoid actions that appear unethical.

After all, as in the duck test, if something looks unethical and sounds unethical, then it probably is unethical.

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The Final Word

Craig J. Coughlin

Speaker, New Jersey Assembly

Attorney Craig Coughlin entered politics nearly 35 years ago, serving on the school board and city council in South Amboy, N.J. He was elected to the Assembly in 2009 and has served as speaker since January 2018. Coughlin graduated from St. John's University School of Law in New York.

Are leaders born or made?

It's actually a combination of both. You need the innate skills and desire, and you need an environment that helps direct you. You can't be afraid to lose if you're going to be a leader, and I think that only comes from the environment you're raised in. If you grow up in a place where it's OK to be out in front on an issue in your family, that's a terrific training ground for being a leader.

How did your upbringing prepare you?

Everything I have or ever will be is the product of Claire Coughlin's work. My dad died in 1962, a time when the world was different. She was a single mother who raised two kids by herself. Never once did I hear her say, "Woe is me." If there was a problem, you solved it. If there was a challenge, you met it. My sister and I were both raised to be confident and to go forward. Sadly, she has passed and I wish she had been here to see me get to be the speaker. I think she would have been proud.

What did you learn from the last election?

That people demand a certain tenor in their government and that we ought to be mindful about the things that are important to our voters. People here were dissatisfied with the things we've seen in Washington. Before the election, our 12 congressional seats were split 7-to-5, now it's 11-to-1 Democrats. We had huge voter turnout, which is really hopeful, because there were people engaged on both sides of the aisle, and I think that's important.

What are your legislative priorities?

To expand medical marijuana and also consider legalization of adult-use marijuana. We're going to look to raise the minimum wage to \$15. One of the things I've tried to focus attention on is eliminating hunger in



this state. And we'll do things like expand paid family leave.

What was the worst job you ever held and what did it teach you?

When I was in college, during the summertime I cleaned out chemical barrels. The image that sticks in my mind is doing that in the pouring rain. I remember thinking, this stinks, it's not for me. I also remember thinking how incredibly lucky I was to be able to go to college and pick my career. That hammered it home when it was a pain in the neck to study or write a paper. It reminds you that there are people doing those jobs every day. That's how they feed their family. You have a duty to stick up for them.

When you were a kid, what did you want to be when you grew up?

I wanted to be a sportscaster. And I get to be the play-by-play announcer on my local-access TV channel. I do the games with our mayor here in Woodbridge Township. We do baseball, football, basketball, hockey ... You name it, we do it. It's just great fun to do high school sports.

What book is on your nightstand?

A book about World War I called "A World Undone: The Story of the Great War." With the recent 100th anniversary of the end of the war, I felt I didn't know enough about it.

What final words would you like to share?

We should be optimistic about the future, particularly about the leaders of tomorrow. The reason I say that is that I have great confidence in my three sons, all in their 20s. I work with some dedicated, smart young people on my staff, and we have a group of legislators in the Assembly who are in their 30s and they're all energetic and ambitious and I think they have a real appreciation for their work. The final word is that we're going to be fine.

Jane Carroll Andrade, a contributing editor, conducted this interview, which has been edited for clarity and length.

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