

July/August 2018

STATE LEGISLATURES

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FEDERALISM AND THE BALANCE OF POWERS

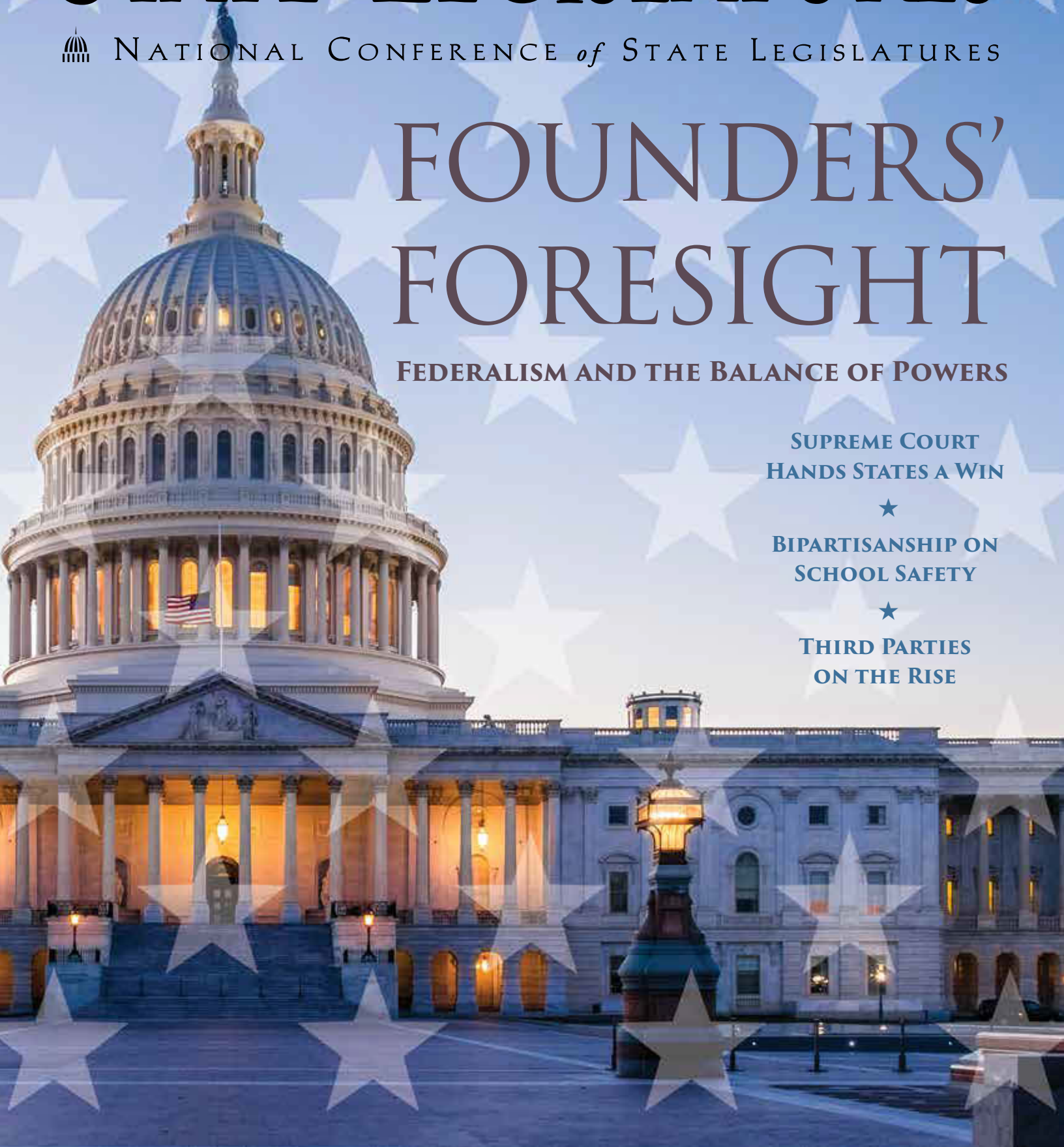
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STATE LEGISLATURES

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State Legislatures magazine is printed on recycled paper.

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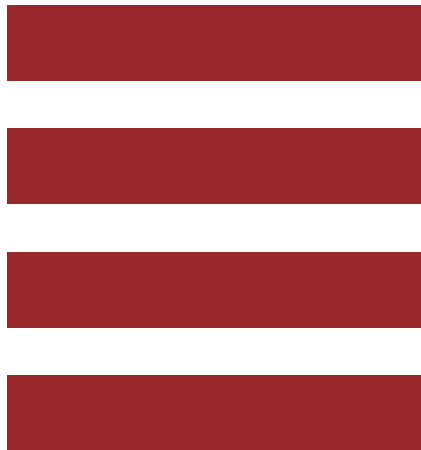
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Meet California Assembly Speaker ANTHONY RENDON

“I encourage legislators around the country to look at all that we’re doing here in California versus what’s not happening in Washington, D.C.”



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SHORT TAKE NEWS FROM NCSL

NCSL EXPERTISE



“While Tennessee has similar legislation pending, no other state has passed a law like the one in South Carolina.”

Sunny Deye on South Carolina’s bill to fight anti-Semitism on college campuses, from Reuters.



“More and more states are passing comprehensive marijuana programs.”

Karmen Hanson on state lawmakers responding to increasing public support for legalized medical marijuana, on pbs.org.



“It’s a complicated issue, and no two states are the same.”

Ethan Wilson on state efforts to impose taxes and fees on sports betting and internet gambling, in the Philadelphia Tribune.



“Many legislatures have realized that while their policies are strong, the overall environment needs to change.”

Jon Griffin on sexual harassment policies and the workplace culture in statehouses, in Governing magazine.

SUPPORT

NCSL Goes Back to School

Members of NCSL’s Student-Centered Learning Commission went back to the classroom in New Hampshire. The bipartisan group of 16 lawmakers from eight states visited schools participating in a first-in-the-nation, competency-based pilot program that uses fewer standardized tests and more locally developed performance assessments. Competency education, in which students must demonstrate mastery of a subject before receiving credit, is expanding across the country. Legislators want to understand what it is, how to implement it and how to support it. The commission, which was formed last year, will release its findings in 2019. For information, contact Sunny Deye in NCSL’s Education Program.

Students at Parker-Varney Elementary School in Manchester, N.H., produce videos, design projects and direct much of their own learning.



CONNECTIONS

Foundation Welcomes New Sponsors

The NCSL Foundation for State Legislatures works to strengthen state legislatures, counteract cynicism about government, and help solve pressing state issues with public-private partnerships and dialogue. It supports NCSL’s Center for Ethics in Government, the Women’s Legislative Network and a host of special projects, including leaders’ services, e-learning, civic education, international programs and more. The foundation gratefully welcomes the following new and upgraded sponsors:

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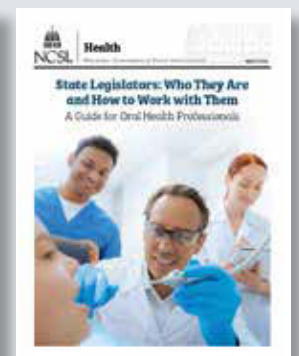
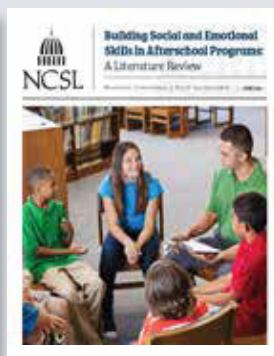
Want to know more? Contact Caroline Carlson, director of development, for information.



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for State Legislatures

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CTIA— The Wireless Association
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Google
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International Council of Shopping Centers
LexisNexis State Net
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National Athletic Trainers' Association
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National Retail Federation
National Rural Electric Cooperative Association
Novo Nordisk
Nurse-Family Partnership
NWEA
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Satellite Broadcasting and Communications Association
Securities Industry and Financial Markets Association
Service Employees International Union
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Got a Capitol DEI Committee? Oregon Does.

In 2016, well before the revelations that energized the #MeToo movement, staff and members in Oregon began discussing ways to make the Capitol a more diverse, equitable and inclusive place. The conversation grew out of a recognition, House Speaker Tina Kotek says, that more constituency groups than ever—particularly communities of color—were coming to the building to represent and advocate for the broader population.

Two years later, the discussion has led to action: the creation of the Capitol Diversity, Equity and Inclusion Committee and a new full-time staff position with the title accessibility and inclusion administrator. The committee already is planning and developing an agenda that will guide it through 2019. And the new staff position, which will be part of the human resources office, was recently posted.

In keeping with the goal of improving the Capitol’s workplace culture holistically, the committee includes legislators and staff, Kotek says. The group recently developed definitions of what it means by the terms diversity, equity and inclusion.

On diversity, its definition includes familiar references to race, ethnicity and gender but also addresses “power relationships in which the dominant cultural group is viewed as one up and the subordinate cultural group is viewed as one down.” Equity, the committee writes, “involves striving to identify and eliminate barriers that have prevented the full participation of some groups.”

An inclusive climate, the committee says, “embraces differences and offers respect in words and actions for all people.” But it cautions that “a diverse group isn’t always inclusive.” It says that,

“Increasingly, recognition of unconscious or ‘implicit bias’ helps organizations to be deliberate about addressing issues of inclusivity.”

The new administrator position may be unique among the state legislatures. Oregon’s legislature has long been a leader in human resource management, and this initiative fits with its pattern of innovation in human resource practice.

According to the job posting, the new administrator will develop the “inclusion and equity program’s long-range plans, goals, objectives and milestones,” and “engaging the organization in a dialogue that promotes understanding, respect and inclusion in the work environment.”

Perhaps most important, “This new position is part of a comprehensive effort to make the Oregon Capitol a model workplace,” Kotek says.

To Efficiency and Beyond

Lawmakers have caught a bit of Buzz Lightyear’s enthusiasm when it comes to buildings and energy efficiency.

But instead of going beyond infinity, like Buzz, they want builders to go “beyond code”—that is, beyond traditional energy code requirements for buildings. The policies they’re considering incorporate established green-building rating systems: the U.S. Green Building Council’s Leadership in Energy and Environmental Design, known as LEED; the Green Building Initiative’s Green Globes; the U.S. Environmental Protection Agency’s Energy Star; or net-zero energy requirements.

It takes a lot of energy to power buildings. Residential, government and commercial structures accounted for 39 percent of U.S. energy consumption in 2017, according to the U.S. Energy Information Administration.

This power doesn’t come cheap. The electricity required to light commercial buildings amounts to more than \$35 billion a year, the U.S. Department of Energy estimates. That’s before adding the costs of maintaining comfortable temperatures, heating water or powering appliances, computers and office equipment. Lowering building energy use not only decreases operating costs, but also reduces air emissions and strain on the electric grid.

Lawmakers address building energy use through state commercial and residential building energy codes, which have been adopted in most states and the District of Columbia. By updating or strengthening their codes, states can help building owners and renters realize the economic and comfort benefits of increased efficiency.

Beyond-code policies include those that mandate adherence to LEED or other standards and those that set net-zero energy building requirements—the concept that a building produces as much energy as it uses, or more, by combining a high degree of efficiency with on-site renewable energy generation.

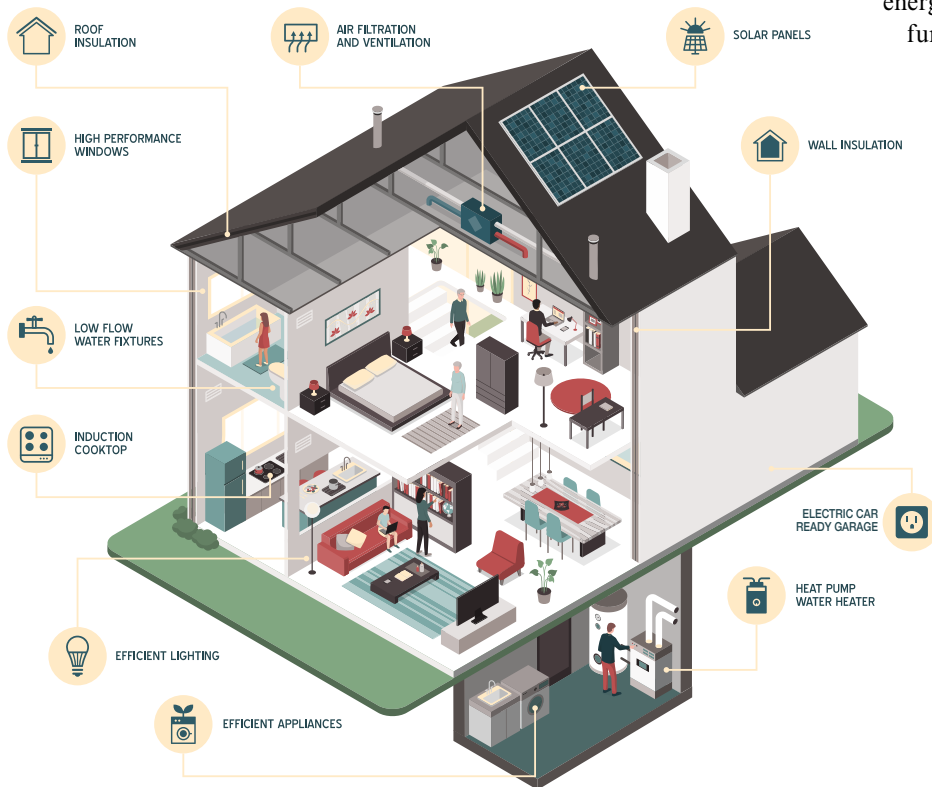
California’s Long-Term Energy Efficiency Strategic Plan, for example, set a goal for all new residential and commercial construction to meet net-zero standards by 2020 and 2030, respectively. A handful of cities also have established net-zero targets, including Santa Monica, Calif., which approved an ordinance in 2017 requiring all new single-family construction to be rated net-zero.

To encourage going beyond code, states have created incentives or financing initiatives for high-efficiency buildings. Arizona, for example, enacted legislation in 2016 that amended tax incentives for data centers to include certain newly constructed facilities that meet Energy Star, Green Globes, LEED or comparable standards. In 2014, Maryland legislation established an energy-efficient home construction loan program and fund to build low-energy and net-zero homes.

Some states have set “lead by example” policies, creating efficiency and green-building requirements for government-owned facilities or state-funded projects. In Hawaii, 2015 legislation set a collective goal for the University of Hawaii system to be rated net-zero by 2035, and 2017 legislation created a revolving loan fund to help meet that goal. Rhode Island lawmakers enacted companion bills in 2017. One expanded the state’s Green Building Act to include public real property; the other updated standards, including LEED for building projects, LEED for Neighborhood Development and the Green Building Council’s Sustainable Sites.

In the last two years, at least a dozen state legislatures enacted bills on high-efficiency buildings, and in this session at least eight states have introduced legislation related to green and net-zero buildings. As they strive for greater efficiency and more vibrant economies, states may continue going beyond code to achieve their energy conservation goals.

— Megan Cleveland



Health Centers Filling the Gaps

The federal Bipartisan Budget Act showed continued support for community health centers, which served around 27 million patients in 2016, more than ever before. The law increases health centers' discretionary grant funding, bringing the total funding for the centers to \$5.4 billion. The money helps to expand the availability of primary care at health centers across the country.

That's good news for the millions of patients who use these nonprofit, community-directed facilities for most of their medical needs. Also known as federally

The Patients

Health centers served close to 27 million patients in 2016.

- 1 in 6 Medicaid patients
- 1 in 5 uninsured individuals
- 1 in 3 people living below poverty line
- 1 in 6 rural residents

Source: National Association of Community Health Centers, 2017

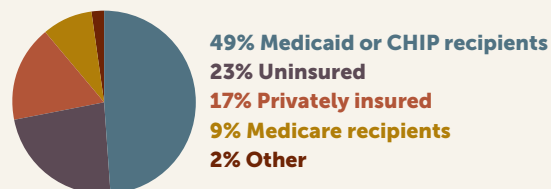
qualified health centers or, simply, health centers, they operate in more than 10,400 underserved rural and urban communities across the U.S., serving all who come through the doors, regardless of their insurance or financial status. The centers offer a full range of primary and preventive medical services, along with translation, health education and transportation assistance, when needed.

As their use grows, more are adding supplemental services, such as dentistry, behavioral health care, pharmacies and substance abuse treatment. Studies indicate these centers increase access to care and improve patients' health. For example, health center patients have fewer low-birthweight babies and higher control rates of diabetes and blood pressure than the national averages.

But they couldn't survive without additional funding. Since only 17 percent of health center patients carry private insurance, centers rely on federal grants to

The Cost Factor

The insurance status of health center patients in 2016



Source: National Association of Community Health Centers

cover their costs. In addition, some health centers also receive state grants to maintain various services. In FY 2017, 33 states provided direct funding to health centers, several tapping into tobacco taxes and tobacco settlement funds.

Health centers employ nearly 213,000 people nationwide who not only offer patients cost-effective care, but also generate economic activity in their local communities, estimated at \$45.6 billion in 2014, according to Capital Link, a national nonprofit dedicated to strengthening community-based health care.

—Samantha Scotti

Internet Deregulation

The Restoring Internet Freedom Order, which the Federal Communications Commission issued early this year, became effective June 11. It repeals net neutrality rules established in 2015 that prevented internet service providers from blocking, slowing down or speeding up the delivery of content, or favoring one website or app over another. Supporters say the new FCC order was needed to replace those “unnecessary” and “heavy-handed” regulations with strong consumer protections, increased transparency and common-sense regulations that will pave the way for better, faster, cheaper internet access.

Many doubt those claims, fearing that repealing net neutrality rules will give major telecommunications companies unprecedented control over how we use the internet. As of June 1, legislators in 30 states had introduced more than 65 bills or resolutions in support of maintaining net neutrality principles. Oregon, Vermont and Washington passed legislation. Governors in Hawaii, Montana, New Jersey, New York, Rhode Island and Vermont have signed executive orders requiring companies wishing to contract with the state to confirm they will follow net neutrality requirements. In addition, the mayors of at least 120 cities also have pledged to require entities contracting with them to adhere to



net neutrality rules.

The rule change also gives primary jurisdiction over internet service providers' practices to the Federal Trade Commission and pre-empts actions states take to reinstate net neutrality restrictions. Attorneys general from 22 states have filed a protective petition for review against the FCC in the U.S. Court of Appeals seeking a determination that the order violates federal law and is “arbitrary” and “capricious.”

—Danielle Dean

Defense Spending and the States

The U.S. government spends defense dollars in every state through purchases of military equipment, wages for service members and civilians, pension payments, health care services and grants to states.

But the size and mix of those investments vary substantially by state, so changes in defense spending will affect each state differently. The effects also depend on which programs and operations are increased or cut.

This analysis of defense spending in the states goes beyond con-

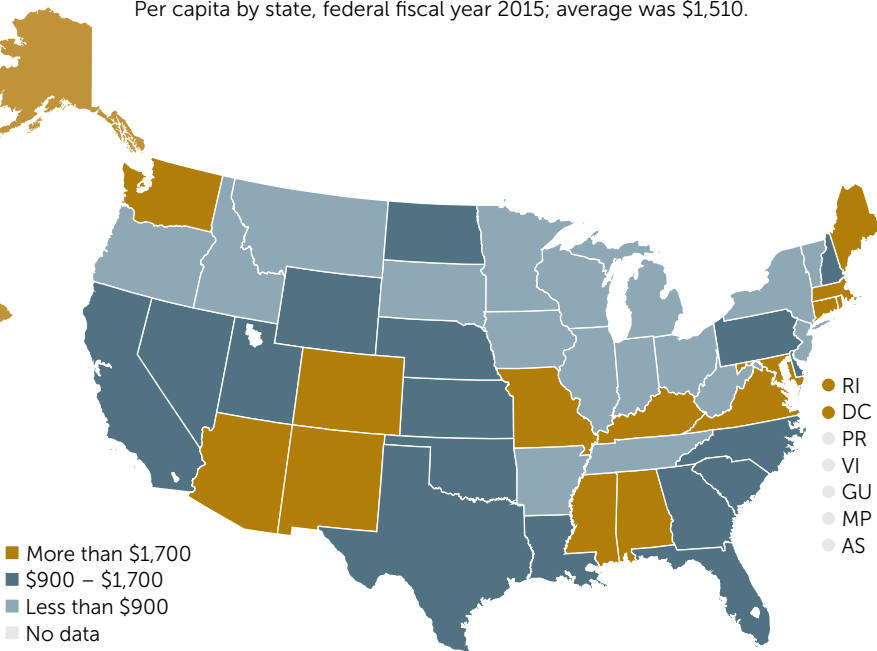
tracts and salaries to include retirement payments, nonretirement benefits and grants.

In fiscal year 2015—the most recent year for which complete data are available—federal defense spending totaled \$485 billion in the states and the District of Columbia, or \$1,510 per person. The amount spent by state per capita ranged from \$386 in Michigan to \$7,132 in Virginia. The District of Columbia received the highest amount of spending per capita at \$10,413.

—Anne Stauffer

Distribution of Federal Defense Spending

Per capita by state, federal fiscal year 2015; average was \$1,510.



Notes: Defense spending is defined as expenditures by the Department of Defense on salaries and wages for military personnel as well as retirement and nonretirement benefits (e.g., military pensions and health care services, respectively) and obligations for contracts for purchases of goods and services, such as weapons systems and information technology consulting, and grants to state and local governments. Contracts spending also includes “purchases by non-DOD agencies which end up in DOD products,” as reported by the Office of Economic Adjustment.

Sources: Pew’s calculations using data from the U.S. Department of Commerce’s Bureau of Economic Analysis, *Annual State Personal Income and Employment, “Personal Current Transfer Receipts (SA35),”* accessed February 2018; *USASpending.gov*, accessed Feb. 7, 2018; U.S. Department of Defense Office of the Actuary, *“Statistical Report on the Military Retirement System, Fiscal Year 2015”* (2016); Department of Defense Office of Economic Adjustment, *“Defense Spending by State, FY 2015”(2017);* and U.S. Census Bureau, *“Annual Estimates of the Resident Population for the United States”* (December 2017).

The Big Five

Defense spending falls into these categories.

- **Contracts for purchases of goods and services**, such as military equipment, information technology, and operations and maintenance programs, accounted for 56 percent of all spending in the states. This was the largest category in 35 states and the District of Columbia, and it made up at least 70 percent of federal defense dollars in Connecticut, Massachusetts, Minnesota, Missouri and Pennsylvania.
- **Salaries and wages** for active-duty military, civilian, reserve and National Guard personnel accounted for 28 percent of total spending. California, Texas and Virginia received nearly one-third of these funds, reflecting the high numbers of federal defense employees in these states. For 13 states, this category was the largest.
- **Retirement benefits**, which are payments to individuals for military pensions, accounted for 12 percent of spending in the states. More than one-third of the total went to California, Florida, Texas and Virginia.
- **Nonretirement benefits**, which are payments for health care provided through the military’s Tricare Management Program, accounted for 3 percent of spending. More than one-fifth of these funds went to Florida and Texas.
- **Grants, which include funding to state and local governments** for programs such as National Guard activities, medical research and development, and basic and applied scientific research, accounted for 1 percent of spending. More than one-fifth of these funds went to California and Maryland.

— Anne Stauffer, Justin Theal and Laura Pontari,
The Pew Charitable Trusts

Anne Stauffer is a project director, Justin Theal is a senior associate and Laura Pontari is an associate with The Pew Charitable Trusts’ fiscal federalism initiative. Pew published this article on April 9, 2018.

One Size Legislature Fits All?

When lawmakers consider changing the sizes of their chambers, the debate typically centers on three major themes: representation, efficiency and cost. This year, at least three state legislatures debated downsizing.

Pennsylvania, with the second largest number of lawmakers in the country, is considering a bill to shrink the General Assembly from 253 members to 189 members—50 senators to 38, 203 representatives to 151. Representative Jerry Knowles (R), who introduced the bill, told public radio that, with fewer members, there “would just be better discussion, better debate.” In a smaller legislature, the responsibility of each member increases and legislators become more visible, supporters argue. It’s also cheaper to shrink. Pennsylvania would save an estimated \$15 million a year if Knowles’ bill passes and citizens approve it.



Representative
Jerry Knowles
Pennsylvania

But rural lawmakers worry that if the number of legislators is decreased and the

size of districts is increased, it will be more difficult to connect with constituents. The more the members, the fewer the constituents for each. With fewer constituents, opponents to these bills argue, it’s easier to have face-to-face dealings with them.

Kansas, Minnesota and New York also had legislation proposing downsizing this year. New York’s and Minnesota’s legislatures currently are the fourth and fifth largest in the country, respectively; Kansas falls in the middle.

So, what’s the right size?

“Ideally, a legislature should be large enough to represent and reflect the diverse elements of its constituency and small enough to get things done,” the authors of the groundbreaking legislative study “The Sometime Governments” wrote in 1971.

Historically, the most significant changes to state legislatures occurred during the 1960s and ’70s. The U.S. Supreme Court ruling *Baker v. Carr* and other “one man, one vote” redistricting decisions in the early 1960s sparked an interest in state legislatures and their size. In all, 34 states changed the number of legislative seats in one or both chambers during those years. Many others made significant modifications.

Since 1990, five states—Idaho, New

Large Works for Some, Small for Others

Largest State Senates

Minnesota—67
New York—63
Illinois—59
Georgia—56
Mississippi—52

Smallest State Senates

Alaska—20
Delaware, Nevada—21
New Hampshire—24
Hawaii—25
Utah—29

Largest State Houses

New Hampshire—400
Pennsylvania—203
Georgia—180
Missouri—163
Massachusetts—160

Smallest State Houses

Alaska—40
Delaware—41
Nevada—42
Hawaii—51
Arizona, Oregon, Wyoming—60

Note: As of December 2013.



Alaska Senate chamber



Minnesota Senate chamber

York, North Dakota, Rhode Island and Wyoming—have made changes. The total number of state legislators nationwide sits at 7,383—down 398 since 1960. But not all changes have been to eliminate seats. Over the years, Florida, Maryland, New Jersey, New York and Utah have added members.

Size has much more to do with tradition than it does with some objective measure of efficiency. Each legislature represents a microcosm of its state’s people, traditions and political cultures. These factors vary greatly across the country. Opinions about them often differ within a state. Consequently, there may never be consensus on what size is “just right” for a legislature.

—Brenda Erickson

How Young Is Too Young?

From driving to drinking, it's been up to state legislatures to set legal age minimums. Currently, the focus is on raising the legal age of marriage. Since 2016, legislators in nearly half the states have been asking, "How old should you be before saying 'I do'?"

Delaware became the first state to bar anyone younger than 18 from getting married. Before lawmakers passed the bill, all that was needed for minors to wed was a judge's approval. A few other legislatures have considered absolute bans like Delaware's. New Jersey passed one, but the governor vetoed it, and Pennsylvania and Vermont have bans pending.

Proponents of raising the minimum age believe more needs to be done to protect some children who, they say, are being pushed into abusive marriages at young ages. Unchained at Last, an advocacy group working to end child marriages, estimates that about 200,000 minors in the United States were married between 2000 and 2015.

Opponents to changing current laws argue that absolute bans are too con-



stricting. Their concerns include blocking young soldiers from marrying and providing military benefits to their families and possibly violating the cultures and

religious traditions of some immigrant communities. Some say the change could lead to more single-parent households.

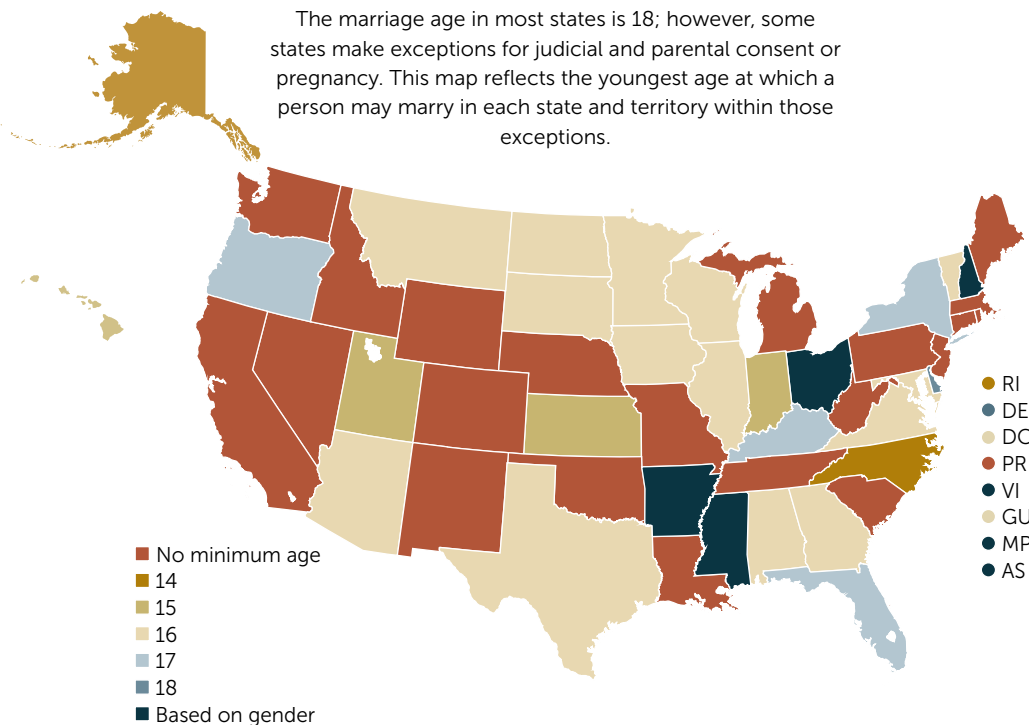
All but two states designate 18 as the age of majority, and most allow those 18 or older to marry without exception. (Alabama's age of majority is 19; Mississippi's is 21.) Most states also allow minors to marry if they obtain parental consent or court permission. Other states specify no age minimum in statute and allow young people to marry with conditions.

Lawmakers in Virginia, where girls under 16 were permitted to marry only if they were pregnant, passed legislation that allows any 16- or 17-year-old to marry if granted adult status from a court. Texas passed similar legislation, as did New York, which settled on allowing 17-year-olds to marry with parental consent and the approval of a judge, who must follow specific guidelines to assess whether a minor is marrying by choice.

—*Meghan McCann and Sarah Hill*

Minimum Marriage Age

The marriage age in most states is 18; however, some states make exceptions for judicial and parental consent or pregnancy. This map reflects the youngest age at which a person may marry in each state and territory within those exceptions.



Building a Principal Pipeline

As schools struggle to improve student achievement, lawmakers are looking for solutions by strengthening the role of the school principal. Research shows that school leadership is second only to teaching in school-related factors that affect students' learning. Good leaders create the working and learning conditions needed to recruit and retain qualified teachers and build the strong community found in effective schools.

The Wallace Foundation partnered with six large urban school districts in 2011 to create a pipeline of well-prepared principals. The ongoing initiative is built on a cohesive system of training, hiring and supporting future administrators.

Research on what's working—and what isn't—is now emerging.

Adopting strong standards for the principal position and improving hiring practices have produced the biggest bang for the buck. Other successful policies include encouraging university and district partnerships to improve principal preparation, cre-

The Six-Pack
School Districts in the Wallace
Foundation initiative:
 Charlotte-Mecklenburg, N.C.
 Denver
 Gwinnett County, Ga.
 Hillsborough County, Fla.
 New York City
 Prince George's County, Md.

ating statewide leadership academies based on best practices, mentoring beginners, creating data systems that allow districts and states to identify where leaders are most needed and offering more pay for serving in struggling schools or areas of shortages.

States are working to put these policies into practice. Since Tennessee won its Race to the Top grant, it has stuck to its goal of improving student achievement and has found success on recent National Assessment of Educational Progress reports, aka the Nation's Report Card. State education officials credit this in part to a statewide effort to build a strong principal pipeline.

They have created partnerships between universities and school districts and formed the Tennessee Transformational Leadership Council to guide principal preparation, using the 3 percent set-aside available in Title II ESSA funds to support their efforts.

In 2017, the Utah Legislature held two interim Education Committee meetings at which NCSL staff arranged for policymakers to hear from researchers, state and local experts, and educators. Legislators learned of the challenges in their state and what the research says might work in response to them. "School leadership is key to creating a culture of student achievement," Senator Ann Milner (R), who led the effort, says. "This work has been immensely helpful in identifying and facilitating policy discussion on what best practices will support the individualized needs of states."



Senator
Ann Milner
Utah

—Michelle Exstrom

Tariff Effect on Soybean Trade

Chinese soybean imports from the United States could drop by as much as 71 percent if China were to impose trade restrictions on U.S. soybeans in response to U.S. tariffs on Chinese products, according to a study for the U.S. Soybean Export Council conducted by Purdue University agricultural economists Wally Tyner and Farzad Taheripour.

China is the world's largest soybean importer, and 62 percent of all U.S. soybean exports go to China. Using an analysis model developed at Purdue, the researchers projected the impact on soybean production if the Chinese government were to adopt tariffs ranging from 10 to 30 percent. Their analysis shows that if the Chinese were to adopt a 10 percent tariff on U.S. soybeans, U.S. exports to that country could fall by a third. Total U.S. soybean exports could

decline by 18 percent, and total U.S. soybean production could drop by 8 percent. If China imposed a 30 percent tariff, total U.S. soybean exports could fall by 40 percent and total U.S. soybean production could decrease by 17 percent.

Tyner said an escalating trade war could hurt both countries.

"The annual loss in U.S. economic well-being would range between \$1.7 billion and \$3.3 billion," he said. "Chinese economic well-being also falls if they impose a tariff, in some cases as much or more than for the U.S. The reason is that soybean imports are very important to their domestic economy."

—Darrin Pack, based on an article from *Agricultural Communications*, Purdue University College of Agriculture, March 28, 2018

Top Soybean Growers

Value, in millions, of soybean production in the top-producing states in 2017

Illinois	\$5,874	
Iowa	\$5,195	
Minnesota	\$3,479	
Indiana	\$3,063	
Nebraska	\$2,951	
Missouri	\$2,722	
Ohio	\$2,394	
South Dakota	\$2,147	
North Dakota	\$2,133	
Arkansas	\$1,740	

Source: U.S. Department of Agriculture, National Agricultural Statistics Services, 2017

FEDERALISM

FEDERALISM FORGES ON



WHEN CONSIDERING
WHERE AMERICAN
FEDERALISM IS TODAY, IT'S
HELPFUL TO REMEMBER
WHERE IT ALL BEGAN.



BY MAX BEHLKE AND JULIE LAYS

Everyone's got their limits. The federal government and the states have been testing each other's ever since the ink dried on the Constitution.

The state-federal relationship has been both challenged and strengthened recently by important U.S. Supreme Court decisions and by congressional and executive actions, proving once again that our system is strong yet pliable—and that it's come a long way from the steamy summer of 1787.

That's when 55 men met in Philadelphia to draft a framework for the new nation: a constitution. Their months of debate culminated in the creation of a document that changed our country and the course of human history.

Of the world's roughly 160 national constitutions, the U.S. Constitution is now the oldest written one; nearly all the others borrow from the work created in Independence Hall. The longevity, durability and near universal support of our Constitution is a testament to its genius. But when it was first made public, Americans were skeptical.

States, and their citizens, had fought for the principle of state sovereignty during the Revolutionary War and were understandably hesitant to replace a king with another dictator in the form of a dominant federal government.

However, the Articles of Confederation under which they were living weren't working. The national government couldn't levy taxes and was chronically underfunded. With little

Max Behlke is the director of budget and tax policy on NCSL's State-Federal Affairs team. Julie Lays is the editor of State Legislatures. Lisa Soronen, of the State and Local Legal Center, contributed to this article.

enforcement power, it was unable to address conflicts between the states. And because it took unanimous state support to amend the articles, change was nearly impossible.

Something New Was Needed

The obvious need for a new national framework is what led to the 1787 Constitutional Convention. During that hot, muggy summer in Philadelphia, state delegates vigorously debated, compromised and, ultimately, agreed to the new national framework.

Convincing nine of the 13 state legislatures to ratify it, however, was no small task. Supporters and opponents alike penned letters to newspapers, praising or condemning the document. Many felt that the Constitution usurped their state's authority to self-govern. That's where the genius of Alexander Hamilton comes in. His essays, along with those by James Madison and John Jay (known collectively as "The Federalist Papers"), on the virtues of the new Constitution's system of governance, won over the skeptics.

American federalism—where democracy rules and the power to govern is shared among the states and the federal government—has evolved from the time of Hamilton, of course. Often, the most significant shifts in the balance of power were driven by necessity or moral imperative. Almost all, however, ended with the federal government gaining authority.

The Road to Now

Many scholars argue that the beginning of this federal expansion began with ratification of the 14th Amendment following the

Civil War, a conflict fought over slavery, but partly on the grounds of state sovereignty. The amendment enshrined the due process and equal protection clauses in the Constitution to protect the newly freed slaves from arbitrary and capricious state actions.

Then came World War I, which drastically increased federal power, followed by the nationalization of the railroad, telegraph and telephone, along with federal involvement in labor relations, manufacturing and commerce.

The Great Depression ushered in President Franklin D. Roosevelt's New Deal, expanding the role of the federal government still further, this time through a series of domestic programs to jump-start the nation's shattered economy.

After World War II, the U.S. government emerged as a world power with the largest financial system. Ever since, it has used its significant resources to influence, persuade, help and hinder events and behavior within the states and around the globe.

During and after the Cold War, the federal government remained in the driver's seat with President Lyndon Johnson's civil rights campaign and "War on Poverty," President Richard Nixon's "New Federalism," which set up revenue-sharing programs, and President Ronald Reagan's block grants in 1987.

So where are we now? Will the states ever again enjoy the sovereignty they had at the advent of the republic? That's hard to say. The balance of power between the states and the federal government continues to shift.

Charges of federal overreach fired the debate over the Affordable Care Act,



enacted in 2009. Opponents of the law argued the federal government did not have the authority to dictate state health policy. They also resurrected the states' insistence that "Congress not solve its tough problems by dumping the hard issues on the states—without providing money to pay for them," writes Donald F. Kettl, a former dean of the School of Public Policy at the University of Maryland.

From health care to education, tax policy to the environment, many feel the federal government has stepped over the line into state authority too often, inserting itself in nearly every area of governance.

Is Change a-Comin'?

Some see the state-federal pendulum swinging back toward states and localities.

In the last generation, "We've evolved from a federalism that was largely about state and local governments asking for money from Washington to one focused on allocating power between the center and the provinces," writes Kettl. "Alexander Hamilton himself would have recognized many of the recent frictions. But some of the new tensions are ones that would have been hard to imagine in 1987, let alone 1787."

Disasters, man-made and natural, Kettl writes, have shown states they can no longer count on the federal government to provide for their security. The 9/11 terrorist attacks, and Hurricane Katrina four years later, tested the readiness of localities and states to provide the first response. "It established a new reality: Big national crises increasingly begin as local events, and the early stages of response depend on the capacity of local governments to act effectively."

With a dysfunctional Congress, and an unpredictable president, "We could be witnessing the most radical reshaping of federalism—the division of responsibilities across multiple levels of government—since the New Deal," Bruce Katz, of the Brookings Institution, said in a speech last year.

"States, local governments, private business and civil society are filling the vast vacuum at the center. This is the Next Federalism—messy, uneven, chaotic, ground-up and quintessentially American," Katz wrote back in 2014. And that still seems to be the case.

President Donald Trump's actions have both alarmed and charmed state officials. Are they state-friendly or not? From eliminating environmental regulations to threatening aluminum and steel trade wars, his policies and actions defy categorization and predictability.

Then there's Congress, so polarized it's unable to lead. With half the members coming from state legislatures, how do they so easily forget their roots and try to preempt state sovereignty on so many issues?

Questions Remain

Will the federal courts, in particular the U.S. Supreme Court, be more likely to maintain the federalism balance than Congress?

A couple of big Supreme Court cases went in states' favor, allowing them the freedom to govern and raise revenue as they see fit. The *South Dakota v. Wayfair* ruling opened the door for states to require remote sellers, many of which are online sellers, to collect the sales taxes on transactions made by the state's residents. That struck down the *Quill* ruling, which allowed businesses without a

physical presence in a state to avoid collecting state sales taxes. Justice Anthony Kennedy, writing the majority opinion in the *Wayfair* case, stated, "In the name of federalism and free markets, *Quill* does harm to both. The physical presence rule it defines has limited states' ability to seek long-term prosperity and has prevented market participants from competing on an even playing field."

In another case decided this term, *Murphy v. NCAA*, the high court struck down the Professional and Amateur Sports Protection Act, a federal law that banned states from legalizing sports betting, thus giving oversight of gambling to the individual states. In an amicus brief, filed by the State and Local Legal Center, representing the National Conference of State Legislatures and other state and local organizations, the Supreme Court was asked to rule PASPA unconstitutional because it violated the Constitution's anticommandeering doctrine. Justice Samuel Alito, in writing the majority opinion, stated that PASPA "unequivocally dictates what a state legislature may and may not do. ... State legislatures are put under the direct control of Congress. It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine."

Regardless of one's views on these issues, the court's recognition of state sovereignty is significant. It could be a sign of things to come.

Our system of federalism is not the government our forefathers could have envisioned; still, the framework those visionary men constructed 231 years ago has proved its durability through changes big and small.

SUPREME COURT HANDS FEDERALISM A VICTORY

On June 21, the U.S. Supreme Court acknowledged that the “laboratories of democracy” are working. In *South Dakota v. Wayfair*, the court, in overturning its 1992 *Quill* decision, ruled that states can require out-of-state sellers to collect and remit applicable sales tax on purchases made by in-state consumers. This decision will afford states the ability to enforce their existing sales tax laws on all sellers, not just in-state, job-creating businesses. No more, no less.

Over the course of our republic, the federal government has continually eroded the sovereignty of states. On June 21, however, the laboratories of democracy triumphed. This is a tremendous, yet long overdue, victory for federalism, main street retailers, states and the National Conference of State Legislatures.

For the last 20 years, NCSL’s membership has advocated for passage of federal legislation to close the ever-growing loophole on sales tax collection. NCSL’s Washington office staff and the thousands of legislators over the years who joined us for Lobby Days, led the advocacy efforts on Capitol Hill. Even though our efforts led the Senate to overwhelmingly pass the Marketplace Fairness Act in 2013, we could not get legislation to the finish line.

In lieu of the congressional

roadblock, especially in the House, the NCSL Executive Committee Task Force on State and Local Taxation in 2015 altered our strategy to include bringing a case before the U.S. Supreme Court to overturn *Quill*. The task force, through our Executive Committee, prepared draft legislation to share with state legislatures that wished to pass laws challenging *Quill*. South Dakota’s legislation, sponsored by NCSL President Deb Peters, was the first law ready for Supreme Court review.

The Supreme Court accepted the South Dakota case in January 2018 and held oral arguments in April. On June 21, in a 5-4 decision, the court removed the physical presence standard it established in *Quill*, which stated that a business must have physical presence in a state before that state could require the business to collect and remit legally imposed sales taxes. Writing for the majority, Justice Anthony Kennedy stated that, “In the name of federalism and free markets, *Quill* does harm to both. The physical presence rule it defines has limited states’ ability to seek long-term prosperity and has prevented market participants from competing on an even playing field.” This has been NCSL’s argument for 20 years.


As you begin to ponder what this means for your state, please know that NCSL experts are ready to assist with



the questions you may have and about next steps. NCSL will hold a special session on the remote sales tax at the Legislative Summit in Los Angeles.

Finally, I want to thank all of you who have stood up for your states, your businesses, and with NCSL through our tireless efforts on Capitol Hill and in the courts. Without a doubt, the states’ success was due to your efforts and the support of NCSL through this 20-year endeavor.

—William T. Pound

William T. Pound is executive director of the National Conference of State Legislatures. 

A Team of Their Own

Independents and third-party legislators are succeeding by staying outside of party lines.

BY JOHN MAHONEY

Let's begin by recognizing the obvious—serving as an independent or third-party legislator in the United States is a tough gig, but getting elected in the first place is even harder. Over the past 20 years, on average, only 21 of the nation's 7,334 state legislative seats have been held by members who identify as something other than Democrat or Republican. That's less than a third of 1 percent. (Nebraska's 49 seats are not included as they are held by nonpartisan senators.)

There's no mystery behind this statistic; it is notoriously difficult for candidates not associated with either major party to get on the ballot in the first place, and even when they do, their relative lack of funding and support, compared with major-party candidates, often puts them at a severe disadvantage by the time Election Day rolls around.

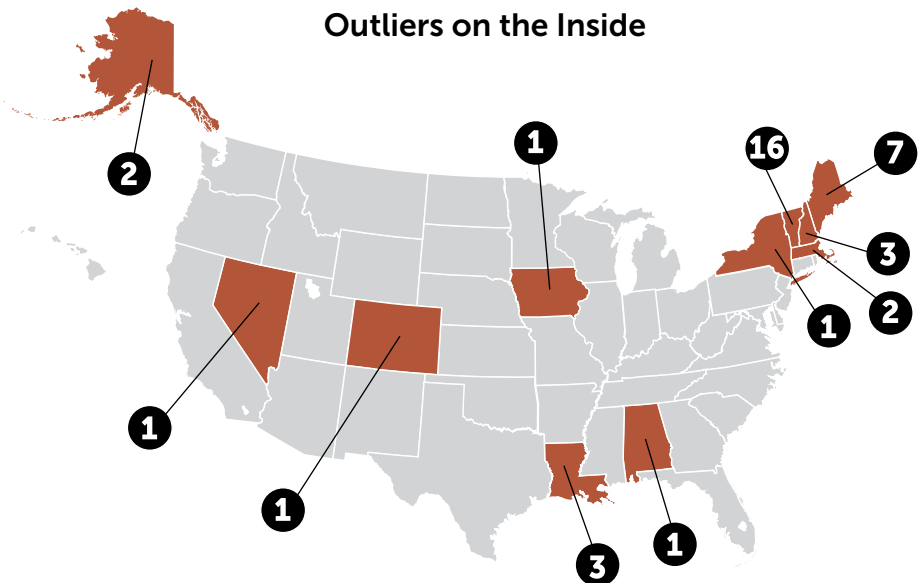
Over the past five years, however, the number of members not associated with either of the two major parties has begun to grow. And that includes a slow but visible increase in the number of independent and third-party members serving in state legislatures. As of June 2018, 38 state legislators identified as either independent or a member of a third party—easily the highest in decades. This reflects a January 2018 Gallup poll that found a historic number of Americans now say they are independent (42 percent, significantly higher than those identifying as Democrat or Republican). How do these “outsiders” survive, and often flourish, in the world of partisan politics? Here's what a few had to say.

Maine Representative Kent Ackley

Ackley just finished his first term as an independent in the Maine House. A small-business owner and registered Maine guide by trade, Ackley decided to run for office in 2016 under the label “Common Sense Independent.” (In Maine, independent candidates can run under three words that best fit their political philosophy.) Driven to run by a desire to serve as a true citizen legislator, in a state that has long valued its tradition of part-time, citizen-oriented politics, Ack-



Outliers on the Inside



Eleven states have lawmakers who don't identify with either major party. Twenty-four call themselves independents and 14 are members of one of the following third parties.

- Green Independent (1)
- Libertarian (3)
- Independence Party (1)
- Vermont Progressive Party (9)

John Mahoney is a policy specialist in NCSL's Center for Legislative Strengthening.

“Something tells me this is how politics used to be done, perhaps how it’s supposed to be done—focusing on building personal relationships with people with whom you have a difference.”

—REPRESENTATIVE KENT ACKLEY, MAINE

ley hoped to harness his position as an independent to strengthen civility and honesty in the Legislature, which has been sharply divided in recent years.

When elected in 2016, Ackley made up one half of the independent presence in the House. Alongside independent Representative Owen Casas, also a new member, Ackley found himself immediately thrown into a turbulent pool of partisan politics. But, following a handful of defections from both sides of the aisle, Ackley and Casas formed a loose caucus of seven independent and third-party legislators.

“All of a sudden we find ourselves being the difference between a majority for either side,” Ackley says. “It gave us much more leverage in terms of the policymaking process. ... I think people started paying us a little bit more attention.”

With newfound attention and influence, this small and philosophically diverse group needed to find a way to work together. “Becoming independents didn’t change who these folks were, it didn’t necessarily change the way they voted,” Ackley says, “but what it did change was their ability to have conversations that don’t usually happen in divided governments.”

Rather than focusing on their differences as individuals and legislators, the group decided it was “OK to disagree, let’s just not be disagreeable.” He knew that group members wouldn’t always find themselves on the same side of every debate, but he was comfortable telling his colleagues, “Let’s talk it through, let me understand what it is you’re trying to get at in terms of values, and I’ll tell you my side of the story.”

This simple, civil approach proved effective, as the group reached consensus on several key issues, notably those surround-

ing the 2016 referendum on ranked-choice voting, which had sharply divided the Legislature. While not always voting as a bloc, the seven regularly came together to discuss legislative business and serve as effective policymakers while remaining outside of party lines. Ackley proudly notes, “Something tells me this is how politics used to be done, perhaps how it’s supposed to be done—focusing on building personal relationships with people with whom you have a difference.”

Ackley is encouraged by the number of other independents and third-party candidates running in his state this fall. He hopes to continue working with independent and partisan members to foster stronger personal relationships and to craft policies that best address Mainers’ needs.

Louisiana Representative Joe Marino

Marino, a criminal defense attorney and lifelong resident of the district he serves, is a first-term member of the Louisiana House. Elected in 2016 by special election, Marino ran as an independent because he’s been one for close to two decades and didn’t feel that joining a party would make him a better legislator.

“I ran for judge in 1999 in Jefferson Parish as an independent, because I wanted to send the message that party affiliation isn’t part of a judge’s job,” Marino says, “and ever since I’ve grown more comfortable being an independent. I’ve always voted for individuals, not the letter next to their name, and I’d like my constituents to do the same.”

As an attorney, Marino was energized by the major criminal justice reform efforts taking place in the Legislature when he arrived. It was natural for him to join the efforts, and he found his position as an independent to be a major advantage throughout the process.

“By the end, I had become one of the main mediators between the parties,” he says. “I was able to get people to the table from opposing viewpoints and get them to sit down and talk through the issues until we were at some type of consensus.” Marino’s legal experience instilled a desire to approach debate with complete transparency and objectivity, something he feels would not be as easy to achieve if he were a major-party member.

“I’ve always voted for individuals, not the letter next to their name, and I’d like my constituents to do the same.”

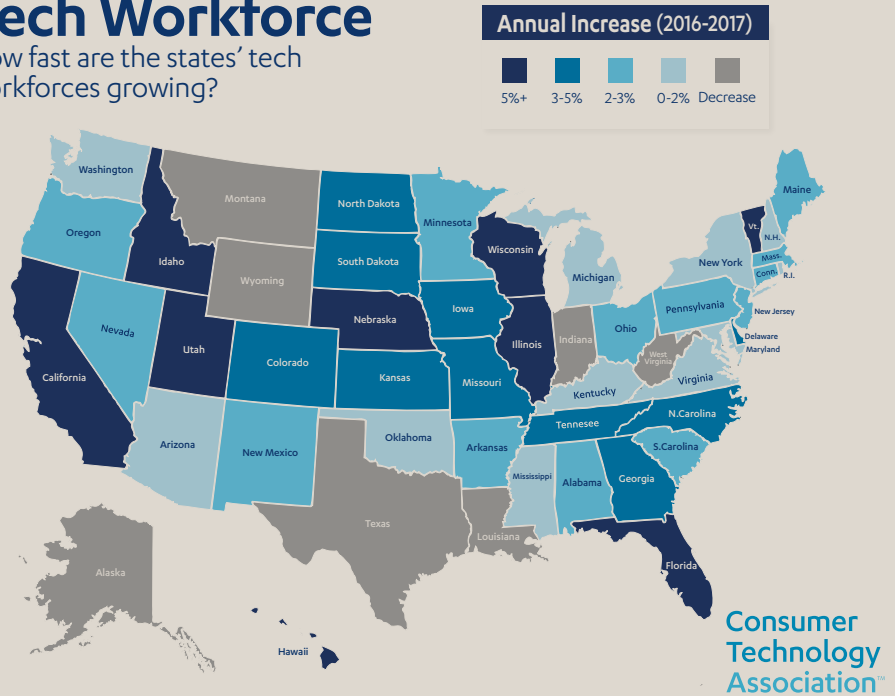
—REPRESENTATIVE JOE MARINO, LOUISIANA



Top U.S. States Growing Their Tech Workforce

Tech Workforce

How fast are the states' tech workforces growing?



BY BRONWYN FLORES, CTA

The United States' tech workforce grew by over 340,000 people in 2017 – a 2.8 percent year-over-year increase, according to Consumer Technology Association's (CTA)™ 2018 U.S. Innovation Scorecard.

The Scorecard evaluates all 50 states on quantitative and qualitative data – including average internet speeds, undergraduates earning advanced degrees and laws governing emerging technologies– to show which state policy environments are best at supporting innovation and entrepreneurship.

This year's Scorecard – CTA's fourth annual edition– reports 30 states experienced job creation. Here's a closer look at tech job growth in a handful of states across the country.

Virginia

The Old Dominion boasts the second-largest per capita tech workforce in the country – trailing only Massachusetts – thanks in part to its computer science industry, which is growing at four times the national average.

To ensure that Virginia students are ready to meet that demand, a Richmond-based non-profit is trying to make computer science education more commonplace in the state. Launched in 2014, CodeVA combines teacher training, district

outreach and legislative efforts to expand the state's computer science programs. So far, CodeVA's workshops – led by current Virginia school teachers – have trained more than 1,700 teachers.

In 2016, Virginia became the first state in the country to pass a law requiring every child in the state to receive K-12 computer science classes. In 2017, the state also passed a bill to require Northern Virginia Community College to offer computer science training and professional development opportunities for public school teachers.

Wisconsin

The state added more than 12,000 tech jobs last year and now ranks 10th in the nation – up one spot from its rank last year – for its tech workforce.

Fewer than 100 miles to the east of Madison, the city of Mount Pleasant is making state history with the largest development deal ever recorded in Wisconsin. Under the agreement, Foxconn Technology Group will build a \$10 billion flat-screen plant. The 25 million-square-foot facility will house up to 13,000 new jobs and produce liquid crystal displays.

California

While the Golden State fell slightly in the per capita rankings – from 9th in 2017 to 11th in 2018 – it still added over 86,000 new tech jobs to its largest-in-the-nation workforce. California aims

to continue its tech workforce dominance with programs that give students a leg up in STEM fields.

FabLab – a new education center and workshop in San Joaquin County – is equipped with laser cutters, 3D printers, milling machines and circuitry, and programming tools to give students of all grade levels hands-on experience in a variety of STEM disciplines. The San Joaquin lab is one of several scattered throughout the state. Others serve students in Sacramento, Los Angeles, San Diego and elsewhere.

Illinois

The state added more than 25,000 tech jobs and jumped seven other states to rank 12th in the nation for its per capita tech workforce.

Two new initiatives help keep Chicago students– of all ages – ahead of the curve in tech fields. Apple announced a citywide rollout of its Everyone Can Code program to teach public school students how to code with Apple's programming language. And the University of Illinois plans to build the Discovery Partners Institute– a \$1.2 billion research center for about 2,000 students and faculty – to enable students to work for local startups while conducting research.

To learn more, visit CTA at the Legislative Summit in the Exhibit Hall at booth number 726 or go to www.usinnovationscorecard.com

Marino has discovered that not everyone is as comfortable with his independent status as he is. “Oh, I’ve been called everything from a ‘horrible Republican’ to a ‘sorry excuse for a Democrat,’” he says with a laugh. What he can’t laugh off is the all-too-common assumption that being an independent means he doesn’t stand for anything. “I have some very strong views and beliefs; just because I don’t align them into a partisan box doesn’t mean I don’t have them,” he says. “Sometimes fitting those beliefs inside of a box means you’re not doing good by your district and your constituents.”

Marino isn’t calling for his colleagues to abandon their parties en masse; rather, he wants to see more members step outside their ideological constraints from time to time, especially when faced with tough issues.

“I just want people to be able to make independent decisions and be willing to engage people that think differently than they do,” he says, suggesting that legislators should start with the basics: getting to know their colleagues—who they are, where they’re from and who they represent. “From there,” he says, “you can start to understand what is important to them and to their district, and why they vote the way they do.”

Vermont Representative Robin Chestnut- Tangerman

For Chestnut-Tangerman, the Progressive Party’s caucus leader in the Vermont House, legislative success is all about exhibiting quality of character. “If you can prove you are principled and trustworthy, then you can attract people,” he says. “Even in politics.”

The state’s Progressive Party is currently the most successful third party in the United States (measured by the number of offices held at national, state and local levels). A fact that even Chestnut-Tangerman has a hard time believing, due to the party’s small size and local nature. With 23 officeholders, including 10 legislators, the lieutenant governor and a handful of local officials, the party’s recent success has forced Vermont to become something of a three-party state. Chestnut-Tangerman



puts the party’s success down to Vermont’s tradition of participatory democracy.

“We put a lot of store in the idea of the town meeting here, of true participatory democracy—you could say it’s part of our state mythology,” he says.

He argues that, unlike some other third parties founded on an innate mistrust of government, the Progressive Party is rooted in an inherent belief in the power of government when harnessed correctly.

Chestnut-Tangerman recognizes that Vermont’s political culture makes it easier for him and his Progressive colleagues to be elected to his state’s legislature than it is for independents and third-party members to be elected in their states. But that doesn’t mean being a successful legislator is a straightforward task.

“If you’re an independent or third-party member, it’s easy to feel—and, in fact, be—marginalized,” he says. “You just don’t have the structure or information provided to you that would be available as a part of the major parties.”

He strongly believes, however, that by presenting yourself as an individual of integrity, willing to fight when necessary but ready to collaborate when the time comes, anyone can succeed in the legislature, regardless of party label (or lack

“Politics really is personal, and if you prove you are someone people can trust, other members will want to work with you.”

—REPRESENTATIVE ROBIN CHESTNUT-TANGERMAN, VERMONT

thereof). “Politics really is personal, and if you prove you are someone people can trust, other members will want to work with you ... and, at the end of the day, that’s how you really make an impact.”

With both major parties polling unfavorably with more than half the public in the most recent Gallup surveys, it would be no great surprise to see an increase in the number of independent or third-party candidates elected in November.

The candidates who make it to the statehouse for the first time may often feel as if they are on the outside looking in. But if they consider the advice of Ackley, Marino and Chestnut-Tangerman, and use their lack of partisan attachment to build trust, foster friendships and serve as objective mediators, there is no reason they cannot effectively serve their districts while remaining outside of party lines. ■

Finding Common Ground

“The most important job we have as legislators is to ensure the safety of our children and our communities.”

HOUSE SPEAKER MICHAEL BUSCH, MARYLAND

Legislators are working across the aisle to keep students and staff safe at school.

BY BEN ERWIN

When the federal school safety commission was formed in early March in response to the shootings at Marjory Stoneman Douglas High School in Parkland, Fla., state lawmakers had already begun responding to the horrific event. It was the sixth school shooting of 2018, and it was only Feb. 14.

“The most important job we have as legislators is to ensure the safety of our children and our communities,” Maryland Speaker Michael Busch (D) said, echoing the feelings of many.

A shooting five weeks after Parkland’s at a high school in Lexington Park, Md., about 70 miles southeast of Washington, D.C., catapulted a package of school safety bills to the top of Maryland’s legislative agenda. The final legislation, signed by the governor on April 10, includes an array of strategies for ensuring the safety of students and staff.

“We have really done something very important for the state,” Senator Steve Waugh (R), a co-sponsor of the legislation, said. His district includes Great Mills High School, where the shooting occurred. Senate Bill 1265, or the Safe to Learn Act, outlines additional safety measures and appropriates \$10 million



House Speaker
Mike Busch
Maryland



Senator
Steve Waugh
Maryland



Students gathered at the Florida Capitol to promote school safety laws following the shooting in Parkland in February. Above right, some shared their personal experiences with Senator Debbie Mayfield, in her Capitol office.

annually to implement the changes in the act, including:

- School resource officer or adequate law enforcement coverage requirements.
- School emergency plans and drills.
- Infrastructural requirements.
- Threat assessment teams.
- Coordination of mental health services.

Ben Erwin is a research analyst in NCSL’s Education Department.



PHOTOS: AP IMAGES

Federal Commission

President Donald Trump formed a federal commission on school safety this year to identify meaningful policy recommendations to prevent school violence. Led by Secretary of Education Betsy DeVos, the commission is studying a range of topics, including: facility security, mental health services, coordination of law enforcement, threat assessment and school-based violence prevention strategies, positive behavior interventions, and the possible influence of video games.

DeVos is hosting a series of listening sessions, site visits and roundtable conversations across the country. In June they met in Lexington, Ky., where Senators Max Wise and Danny Carroll shared valuable testimony on state efforts there to prevent



Senators Max Wise and Danny Carroll, Kentucky

school violence. Carroll spoke from experience. A school shooting in his district killed two students and injured 18 others. Both men are on the Kentucky School Safety Work Group that Wise co-chairs.

“Many state legislators are deliberating on this very topic right now, formulating policy and plans unique to their situation. We know there is no one-size-fits-all approach,” says DeVos. The commission will release a final report by the end of the year.

The commission and other federal, state and local leaders are tracking nearly 350 state bills and resolutions through NCSL’s School Safety Bill Tracker. To learn more about this database, visit www.ncsl.org.

—Joan Wodiska

- Reporting requirements.
- Flexible new grant funding to meet district needs.
- Increased role and funding for the Maryland Center for School Safety.
- Development of a model policy.

A Bipartisan Effort

The act was the culmination of a bipartisan effort to enact comprehensive school safety legislation. It passed the House and Senate with more than 80 percent of the vote. The legislation shows that “both Democrats and

Republicans share a commitment to keeping students, their families and educators safe,” Senator Katherine Klausmeier (D), the primary sponsor of the legislation, said.

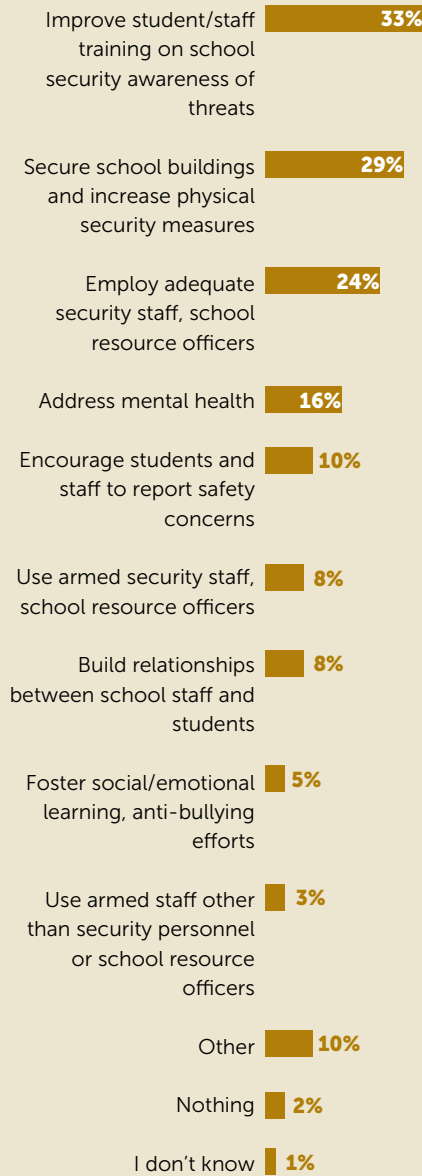
The effort “embodies the notion that politics is the art of the possible,” Senate President Thomas V. Mike Miller (D) said. “We passed a comprehensive school safety package because lawmakers from both parties were more concerned about making the process work and getting the policy right than scoring points with

Preventing School Shootings

The Education Week Research Center conducted a survey of 399 school-based resource officers in March and April 2018 on how to make schools safer. Here are the responses to some of the questions.

What could schools do to prevent future school shootings?

Percent of officers listing each action



Note: Responses were coded into all applicable answer categories. Individual items do not sum to 100 percent.



Senator
Katherine
Klausmeier
Maryland



Senate President
Thomas V. Mike
Miller
Maryland



Senate President
Joe Negron
Florida

ideological special interest groups.”

Statements of bipartisanship represented more than rhetoric. The substance of the final bill addressed the concerns of stakeholders and legislators on both sides of the aisle. Rachel Hise, a policy analyst for the nonpartisan Maryland Department of Legislative Services, described the effort by legislators and staff to develop comprehensive school safety legislation in the final weeks of the session as “mammoth.”

“It was a truly unique effort all the way around,” she said. “The speaker and the president agreed action needed to be taken. The legislative committees worked hard with staff to ensure that nothing was left out.”

In the bill’s early stages, legislators and staff collaborated with the Center for School Safety and local education agencies, as well as chiefs of police, other law enforcement organizations and mental health service providers, to determine what was already being done and identify areas of need. The inclusion of new, flexible grant funding and support from the Center for School Safety resulted from this collaboration.

Not Just Maryland

The Florida Legislature enacted a similarly comprehensive bill, Senate Bill 7026, which establishes the Marjory Stoneman Douglas High School Public Safety Commission and the Office for Safe Schools. At the bill’s signing, Florida Senate President Joe Negron (R) said, “We can never replace the 17 lives lost at Marjory Stoneman Douglas High School, but in their memory we can, and through this legislation we will, do more to prevent a senseless tragedy like this from ever happening again.”

The bill also supplies grant funding for student crime watch programs, sets vari-

ous gun control measures and allows qualified school personnel—classroom teachers excluded, except in rare circumstances—to serve as “school guardians” after undergoing comprehensive evaluations and extensive training.

Representative Jared Moskowitz (D), a Marjory Stoneman Douglas High School graduate, explained the rare successful bipartisan effort in Florida to Politico this way: “When you attend more than a dozen funerals and you’re dealing with grieving families, you have an all-hands-on-deck mentality.”



Representative
Jared Moskowitz
Florida

Different Approaches

Several other legislatures have addressed school safety concerns this year as well.

Legislators have enacted 26 bills and six resolutions in 17 states since Feb. 14. The Florida shooting, and the response of surviving students to it, re-energized the debate. But it didn’t start the discussion. In fact, of the 319 school safety bills considered this year, a third (109) were introduced before the Parkland shooting. These bills include a variety of approaches to the issue.

Law Enforcement Collaboration and Communication

About half the states considered bills encouraging or requiring collaboration and communication with local law enforcement.

- 88 bills or resolutions introduced
- 24 states
- Nine enacted or adopted

Developing Emergency Response Plans

Although most states already require school districts to develop emergency response plans, nearly half considered bills to augment existing procedures.

- 42 bills or resolutions introduced
- 21 states
- Nine enacted or adopted

Requiring Emergency Drills

Most states require drills for inclement

weather or fires, but more than a dozen considered active-shooter drills to prepare staff and students for the possibility of a school shooting.

- 28 bills or resolutions introduced
- 14 states
- Four enacted or adopted

Regulating and Training School Resource Officers

Besides addressing school resource officer training and hiring requirements, measures like Georgia’s Senate Bill 470 mandate the presence of a resource officer at all K-12 schools.

- 55 bills or resolutions introduced
- 20 states
- Five enacted or adopted

Strengthening Building Security

Proposals to “harden” school buildings—or beef up their security—include adding or improving metal detectors, alarm systems and reinforced doors.

- 43 bills or resolutions introduced
- 19 states
- 10 enacted or adopted

Increasing Access to Mental Health Services

These measures call for a mental health professional to be present in K-12 schools and require that teachers and counselors receive mental health training, collaborate with local mental health professionals or implement a mental health awareness curriculum.

- 23 bills or resolutions introduced
- 16 states
- Six enacted or adopted

Guns in Schools

Of the more than 200 bills or resolutions proposed by legislators in 24 states since the Parkland shooting, 56 addressed firearms at K-12 schools.

Fourteen states considered proposals to expand concealed carry rights in K-12

schools, while five states looked at proposals restricting these rights.

Arming school personnel was a key aspect of this debate. In 16 states, lawmakers considered a bill or resolution to arm, or explore the options for arming, school employees. In one state, Rhode Island, legislators considered a bill to prohibit schools from encouraging school personnel to carry firearms. Only Florida’s Senate Bill 7026 has been enacted.

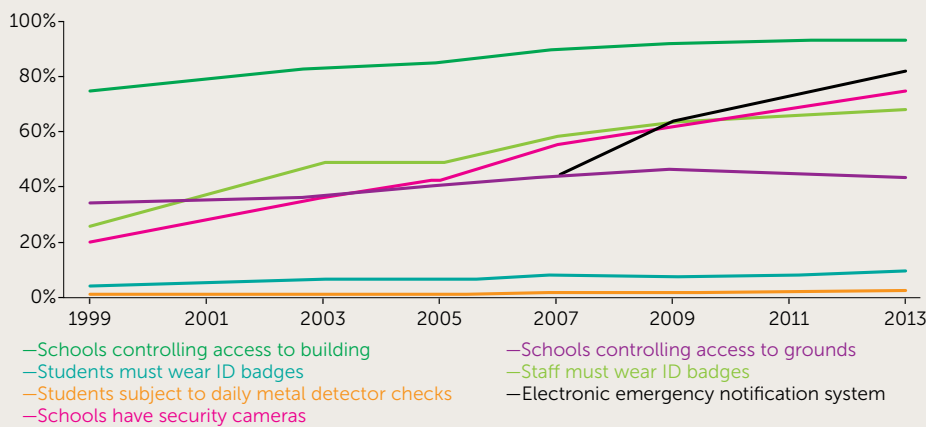
Currently, at least seven states—Florida, Idaho, Kansas, Missouri, South Dakota, Tennessee and Wyoming—specifically exempt school personnel from their ban on firearms on K-12 school grounds. For a school employee to carry a firearm on campus, these states require the employee to first get approval from a school authority, such as the school board or superintendent. Three states—Idaho, Kansas and Wyoming—include an additional requirement that the employee hold a concealed carry permit. Four states—Missouri, South Dakota, Tennessee and Texas—also require school employees to complete training programs, typically provided by a local law enforcement agency.

Florida’s Coach Aaron Feis Guardian Program, named for an instructor who was killed in Parkland, was enacted as part of SB 7026. It’s unique in that it limits which teachers can go through training and carry guns. Teachers involved exclusively in classroom work are not eligible for the program, but those who also perform other duties, such as coaching, and other school employees may participate. The program, which has extensive training and evaluation requirements, will be administered by the local sheriff.

In the months since the Parkland tragedy, with news of other school shootings occurring around the country, state legislators are finding common ground in their efforts to prevent school violence and hopefully ensure that the last school shooting remains the last.

High-Tech Security Increasing

The school security market has surged to a \$2.7-billion-a-year industry as schools install metal detectors, X-ray machines, entry control equipment, ID technology, video surveillance, and alarm and protection systems, according to a recent analysis by IHS Markit, a London-based firm that monitors and analyzes the world of technology. The next wave of products available to school districts could include facial-recognition cameras and impenetrable classroom doors, the firm says.



Source: IHS Markit, 2018, with data from U.S. Department of Education, National Center for Education Statistics, School Survey on Crime and Safety.

Go to ncsl.org/magazine and visit NCSL’s School Safety webpage for more information.

Pathway to Public Service

Legislative internships have launched many on their political journeys.

BY HOLLY SOUTH



would never have ended up in state government if not for the legislative internship,” says Adam Crumbliss, chief clerk of the Missouri House of Representatives.

Crumbliss’ internship with former Representative Gary Burton (R), a family friend and mentor, “encouraged me to get engaged and learn how state government impacts the lives of citizens.” He quickly learned that “most legislators and staff, irrespective of political or partisan belief, have a genuine desire to serve their fellow citizens.”

The experience gave him “an amazing opportunity to understand the inner workings of the process.” In fact, it changed his life. He was so inspired to rejoin the General Assembly that after college, instead of applying to law school, he went back to the Capitol.

Crumbliss’ case shows that when an internship program works well, everyone benefits: A student learns firsthand about the legislature and gets real-world work experience. A legislative office enjoys the help of an additional

staffer. And a legislature is strengthened by the commitment of a young adult whose appreciation for the institution, state government and public policy leads him to make a career of it.

Learning the Process

Highly regarded internship programs are built on a commitment from the legislature to the program’s success, a focus on career development and an emphasis on participation in the legislative process. The good ones tend to attract plenty of applicants.

Connecticut’s program, codified in state law in 1969, is administered by a bipartisan committee of senators and representatives who communicate its importance to their caucuses. Interns are engaged in all facets of the legislative process and are encouraged to attend any committee meeting, session or forum on issues of interest to them. They also participate with other students in a mock session. “Our goal is future leader development,” Lisa Roy, the program’s director, says. “We hope they are

Holly South is a policy specialist in NCSL’s Legislative Staff Services Program.



Left, Kentucky Representative Angie Hatton (D) discusses a bill with an intern. Above, mock sessions immerse interns in the legislative process.

inspired by what they see here, so they want to support good policymaking for the state of Connecticut.”

Roy says that because universities now emphasize experiential learning, legislatures face stiff competition for the best students. “In response,” she says, “we’ve expanded the career development aspect and are emphasizing that it’s a supported program—with training and workshops and a director on-site. We’re preparing a higher level of employee.”

Running an internship program is an opportunity to cultivate students’ appreciation for the legislature and to prepare the next generation. “What satisfies us,” says Sheila Mason, director of the Legislative Research Commission’s internship program

in Kentucky, “is seeing how many former interns go on to do government work.”

California’s Capital Fellows Programs consist of four individual fellowships in the state’s legislative, executive and judicial branches. They attract “a diverse group from throughout the state ... of graduate students interested in a career in public service,” Brian Aguilar, director of the Executive Fellowship Program, says. “Former fellows can be found throughout all three branches of government.”

The Legislature also includes several alumni of an internship program in the Office of the Chief Clerk.

“My internship morphed into a job opportunity,” Neva Parker, the California Senate Journal clerk, says. “I’ve been here ever since. I learned everything I needed to build a good career; from interacting with my coworkers to best practices for the work I do now with the Senate Journal.”

Her internship, she says, “led me to dis-

covering other areas of work I could do, some strengths I didn’t know I had, and opened up more opportunities for me than I thought I had when I was first entering the work world.”

Just Like Staff

Good programs offer interns the opportunity to interact with legislative leaders, executive branch and state agency personnel, and lobbyists to better understand state government. They get a chance to do constituent work, policy research and other duties of a legislative aide.

“There was nothing more energizing or satisfying than assisting a citizen by navigating the bureaucracy and finding a reasonable solution to a complex constituent problem,” Crumbliss says. He has supervised several interns himself, including three former interns now on staff at the Missouri House. “They each underscore the importance of interns in the legislative



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environment. I interact with several interns each session day, and can't imagine the Missouri Capitol without their eagerness, enthusiasm and assistance."

Legislators participate as lecturers in semiweekly intern seminars in Kentucky. Mason, who has led the program since 2000, gauges lawmakers' enthusiasm "based on the acceptance and respect they give to the interns." The most interested lawmakers see the interns "as part of staff" and "want to see students from schools in their district participating." Mason views the internship program as part of the legislative branch's role in civic education, "an opportunity for legislators to involve students in the legislative process and give them a feel for what it's about."

Legislative leaders have consistently supported Tennessee's Legislative Internship Program as both an education for students and a way to nurture potential state leaders. Christy Behnke, the program's director, says Tennessee is showcasing legislative work as a career and showing students "there are opportunities for growth, that there are leadership positions and a lot of opportunity."

Support from the Tennessee General Assembly includes funding for a designated administrator to serve as a resource for students and legislative offices, to supervise the academic program and to coordinate placements meaningful to an intern's professional development.

Besides working alongside legislators and staff, interns are also often required to reflect on their experience through coursework that complements their jobs in the statehouse. This may include a bill-tracking project, a policy paper or a field trip to observe policy in action.

Getting Them Oriented

Because this often is their first formal work experience, interns benefit not only from training in their specific job responsibilities, but also from an orientation that instructs them on legislative and workplace etiquette. Some programs provide professional development workshops on résumé writing and interviewing skills.

Orientation also should cover personnel policies at the statehouse.

Inappropriate behavior toward interns has made headlines over the past year,



Kentucky Senator David Givens (R) works with an intern in the Senate chamber.

and many states have since made changes to their policies. These include classifying interns as "legislative employees" in workplace harassment policies, prohibiting their attendance at after-hours or off-site events, encouraging them to report inappropriate conduct, and banning legislators and permanent staff from "fraternizing" with them.

Crumbliss played a central role in developing guidelines to address sexual harassment, internships and fraternization after discovering two Missouri lawmakers had crossed the line with interns.

"Every intern should have the same extraordinary experience I did, and these policies will enhance the ability of every intern to be respected and learn in an environment without harassment by those in positions of authority," he says.

Burdett Loomis, professor emeritus of political science at Kansas University and founder of KU's Topeka Internship Program, says that interns' roles need to be clearly defined.

"What's an appropriate job for an intern?" he asks. Ideally, the Legislature will clarify members' responsibilities toward interns: to ensure they do substantive work, are treated professionally and observe all parts of the process.

Behnke of Tennessee makes sure to address these issues with students and legislative offices alike. "If it's outside this work environment, the statehouse—for example, picking up someone's dry cleaning—then it's not [appropriate]. We're taking care of business here—and it's state business, not personal business."

And since there are always new legislators, there's a continual need for education about the role of interns.

The Measure of Success

A good internship produces a graduate who appreciates the value of representative democracy and understands the concepts and practical applications of legislating and governing.

Loomis views the experience as an important part of a liberal arts education and says that successful interns acquire an understanding of government "and the process of legislating and representation at a far more profound level" than their peers who don't intern.

Behnke sees the legislature's future in these programs: "There are so many baby boomers who will be retiring soon with their institutional knowledge in different areas. It's very important to prepare and have interested students coming in."

And, if internship programs can attract enough of them, the future of the legislative institution will be in good hands, indeed. ■

Tools for Yo

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Our Tote Bag

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- **News:** Many reliable organizations—The Associated Press, for example—offer free versions.
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Snacks

Stay fueled for success! A healthy diet can help you sail over most any legislative hurdle.





WALKIN' IN SUNSHINE

Nearly 6,000 pedestrians were killed on roadways in 2016, the highest toll since 1990, according to the Governors Highway Safety Administration. These deaths have a high concentration in Florida, a state that is taking innovative engineering approaches to decreasing the fatalities. The state transportation department uses mapping software to identify risk factors such as construction sites and poor lighting. Some of the changes have been subtle, such as decreasing lane width from 12 feet to 10 feet, which has proved to encourage safer driving, and flip-flop parking, which alternates parking sides based on the block, keeping speeds lower. "Terminated vistas," or large structures at the end of the roadway, also encourage drivers to slow down, and pedestrian bridges are being built faster than ever to give walkers a car-free path.

TOWARD COMPETITIVE ELECTIONS

Colorado lawmakers unanimously agreed on the details of two ballot measures that would overhaul the state's redistricting process. If voters approve the measures in November, the state constitution would be amended to explicitly prohibit gerrymandering. The Associated Press reports. The measures would set new criteria to ensure that district maps promote competitive elections while keeping communities of interest, such as racial and ethnic groups, and political entities, such as cities and counties, intact. Nonpartisan staff would draw the maps, which would then go to an independent commission for approval. As Colorado forges ahead, maps in Pennsylvania, Texas, Wisconsin and other states have faced legal challenges.



IT'S NOT COOL TO JUUL AT SCHOOL

As a growing number of teens use devices about the size of a USB drive to discreetly inhale nicotine vapors infused with mint, mango, caramel candy and other flavors, school officials are scrambling to respond. The rising popularity of vaping and of inconspicuous new inhalers, especially the Juul, has administrators and health advocates concerned that, although cigarette smoking among teens is down, many are still at risk of nicotine addiction. About 12 percent of eighth, 10th and 12th graders reported vaping in 2017, according to a University of Michigan study. But, according to a survey by the anti-tobacco advocacy group the Truth Initiative, 63 percent of Juul users ages 15 to 24 were not aware the vapor "always contains nicotine." The Food and Drug Administration has delayed implementing tighter regulations on the sales and marketing of e-cigarettes, which health advocates say could leave too much time for kids to pick up a nicotine habit that can be very tough to kick.



SANCTUARY FOR GUN OWNERS

With the state's Democratic-controlled legislature contemplating new gun restrictions, at least five rural Illinois counties have passed resolutions declaring themselves "sanctuary counties" for gun owners. "We want to make a statement. We don't want our Second Amendment rights to be stripped away from us," David Campbell, vice chairman of the Effingham County Board, told CNN. With language like that adopted by dozens of "sanctuary cities" to prevent local law enforcement from cooperating with federal authorities on some immigration policies, the resolutions say the counties might prohibit their employees from enforcing new gun control measures passed by state lawmakers. Among the bills being considered are age restrictions for certain weapons, a bump stock ban and a 72-hour waiting period on assault weapon sales. It's not known whether the resolutions could supersede state law.



Top 10 Egg-Producing States
 Iowa
 Indiana
 Ohio
 Pennsylvania
 Texas
 Georgia
 Michigan
 North Carolina
 California
 Arkansas

HENS' HAPPINESS

The U.S. produces 88 billion table eggs a year. As consumption grows, so does concern over the quality of life of the hens that lay the eggs—at least in some parts of the country. Cage-free hens now represent about 16 percent of U.S. chickens. But after lawmakers in California and Massachusetts enacted laws requiring that chickens be raised cage-free, 13 states sued, saying the laws violated the commerce clause of the U.S. Constitution. Nevertheless, Ohio, Oregon and Washington have banned traditional cages, and bills in Michigan and Rhode Island would also require cage-free production. Iowa produces the most eggs in the country. To protect its caged-chicken industry, lawmakers there enacted legislation that requires grocers participating in the federal food program for low-income mothers, infants and children to sell conventional eggs alongside cage-free options. It's estimated to cost farmers \$40 a chicken to convert to cage-free.

PROTECTING THE PEOPLE'S HOUSE

North Carolina lawmakers are the latest to step up statehouse security measures. All visitors to the Legislative Building, where the General Assembly meets, must now pass through metal detectors, though lawmakers and employees will bypass them, The Associated Press reports. Thirty-two states now have metal detectors at their statehouse entrances, according to NCSL research. North Carolina's \$1.3 million security upgrade also includes bag scanners, more monitors and strengthened parking garage entrances. Reluctant to limit constituents' access to the legislature, lawmakers long resisted adding any barriers at the statehouse. But they could no longer dismiss concerns about mass shootings and angry protests. "I am saddened that the world has changed and that these types of safety precautions have become necessary," said Senate President Pro Tem Phil Berger (R), who with House Speaker Tim Moore (R) approved the changes.



HARDENING THE ISLAND GRID

The U.S. Virgin Islands' ongoing recovery from Hurricanes Irma and Maria took a step forward in May, when residents of the island of St. John learned that they will soon have their own power-generating units. The island's electricity currently comes via underwater cables from the larger nearby island of St. Thomas. The new units, which can run on natural gas, propane or fuel oil, will be supplemented by a solar field system. Other recovery efforts on St. John include planning for a new school to replace the one severely damaged during last year's storms. The new campus eventually will be used as the island's primary hurricane shelter and will be stocked with drinking water and other supplies in case of emergency. The always volatile Atlantic hurricane season began June 1.



IN A PICKLE OVER POOCHES

California and Nevada have outlawed pet leasing, and legislation banning contracts "where dogs or cats are used as collateral" is pending in New York. As designer dogs—schnoodles, puggles, shibadoxies and more—have grown in popularity, so have rent-to-own agreements for pet lovers who don't have the cash to buy the sometimes-pricey pooches outright. But excited buyers who don't read the fine print can face onerous payments and harsh penalties. The Better Business Bureau found that if you bought a dog for \$2,000 through one company, your monthly payment could be as high as \$293 for 24 months, bringing the dog's final cost to more than \$7,000. And if you stop making payments, "the company has the right to take your animal back and ding your credit score." The lenders counter that the agreements let buyers "enjoy the pet that they have always wanted, when they wanted," as one company puts it.

STATEHOUSE SURPRISE

Workers made an interesting discovery while renovating Wyoming's Capitol.

BY KAE WARNOCK

Sometimes buildings surprise us. That was the case when Wyoming undertook a restoration of its Capitol in 2015. The original building was completed in two campaigns, in 1888 and 1890, and expanded in 1917.

Which era was the correct one to restore? The year 1917 was chosen as the “period of significance,” as preservationists describe it, because that expansion replaced the original Senate and House chambers in the 1890 portion of the building, and much of the historic fabric was thought to be lost. The only known paint finishes dated from the art deco period.

But the building had its own mysteries to reveal.

During preconstruction in 2015, the Capitol Rehabilitation and Restoration Oversight Group, which included the governor and members of the Legislature, hired MOCA Systems, a project management firm that has supervised restoration projects at state capitols across the country. The team examined the history of the building, including the 1888 and 1890 plans for the oldest portion of the structure. Those plans indicated that the Territorial House chamber was built in the center of the north side of the building. But where was it now?

The historic architectural plans helped uncover the building's forgotten past. The two-story room still existed but had been divided horizontally by the addition of a floor (and ceiling below) in the 1970s. While the new floor provided more office space, a small library and a committee room, it also badly damaged a chamber that holds great historical significance for Wyoming.

Besides being home to the Territorial House, the chamber was where the representatives and the Territorial Council (later the state Senate) met jointly as the Territorial Assembly.



During capitol “restorations,” two things are going on at once: 1) A building's systems (structural, mechanical, electrical and communication) are updated (not restored!) to current standards, and 2) Architectural elements and painted features are restored to appear as they would have in a particular era—sometimes the date of construction, other times in the style of a subsequent renovation. Many capitols were expanded and renovated several times before interest in historic preservation began.

In September 1889, the state Constitutional Convention convened in the chamber to draft and adopt a charter that reaffirmed women's suffrage rights, which had been included in Wyoming's territorial laws since 1869. In fact, the Capitol's national historic landmark status stems from the convention and the significant suffrage debates held in the chamber.

Even in 1889, the convention was recognized as historic. As the Cheyenne Weekly Sun put it that year: “Forty centuries of history personified, will also gaze upon and applaud the noble act by which Wyoming places herself in the forefront of all commonwealths in the world—by being the first to give equal rights and exact justice to woman in granting her the suffrage with all that implies in civil, religious and property privileges.”

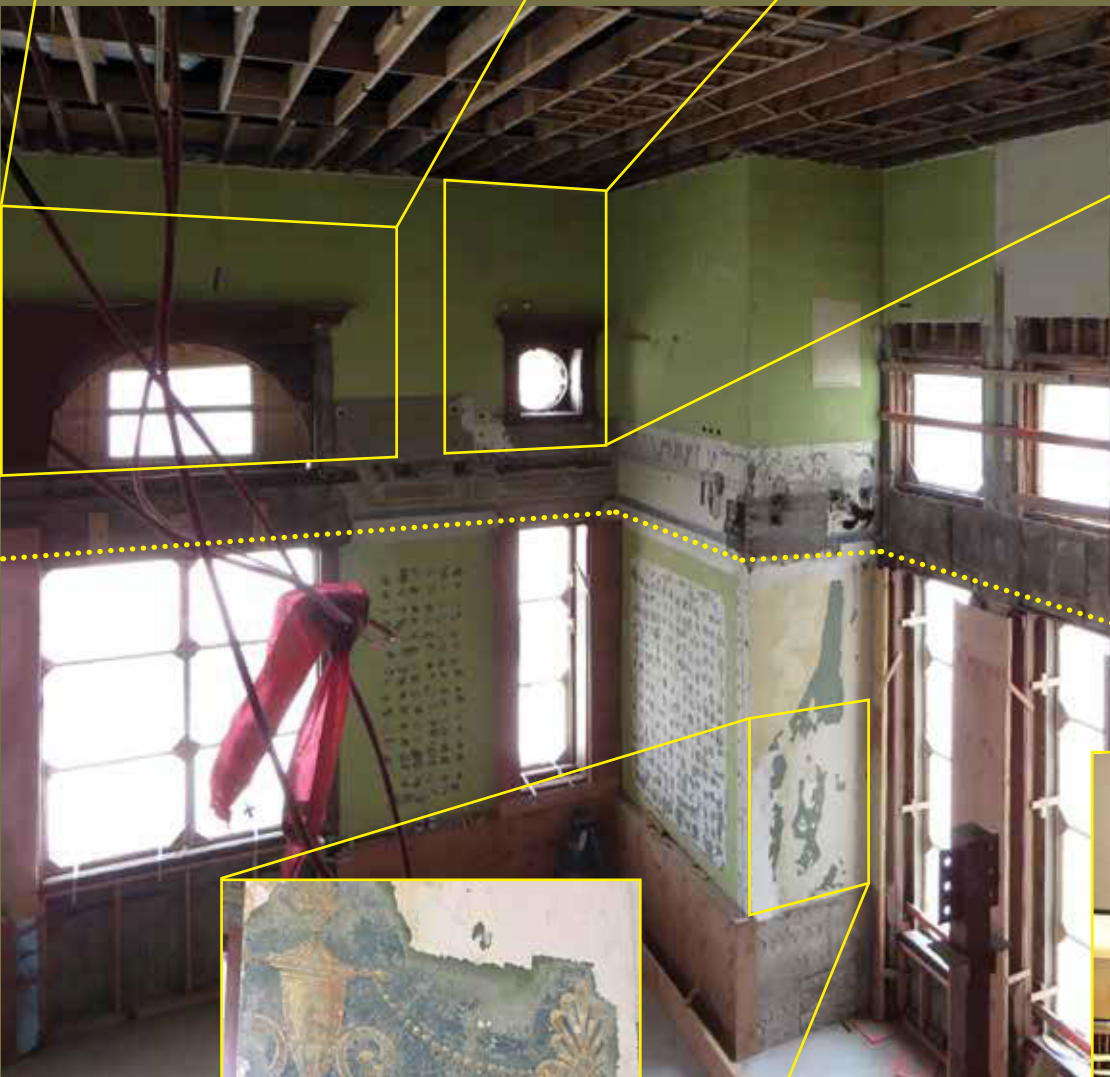
“How awe-inspiring that chamber is to stand in when you think of its pivotal role in women's suffrage in the state, nation and the world,” Wendy Madsen, special projects manager for the Wyoming Legislature, says.

When new legislative chambers were added

Kae Warnock is a policy specialist in NCSL's Legislative Staff Services Program.



Left and right, workspaces on the former upper level of the chamber. The floor-level windows had been at the top of the old chamber.



Left, the Territorial House chamber after removal of the floor installed in the 1970s. The dotted line shows the location of the ceiling in the lower offices.

Below, an office space on the lower level of the chamber, with the '70s-era ceiling and lighting still in place.



Right, the trompe l'oeil paint scheme discovered during restoration of the Territorial House chamber.





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A worker examines the trompe l'oeil cornices discovered during paint removal in the upper portion of the Territorial House chamber.

in 1890, the old chamber housed the state Supreme Court from 1890 to 1937. But, after the new floor was added in the 1970s, the chamber's historic past was almost lost. This forgotten, once beautiful, two-story space was overlooked in the original 2014 renovation design. However, the Capitol Rehabilitation and Restoration Oversight Group and MOCA knew that it was important to restore the newly "found" room. Although restoration of the elegant old chamber added to costs, other elements of the project were value-engineered to ensure the room's restoration.

The restoration gives the Wyoming Capitol a large, two-story committee room with a visitor's gallery. Fortunately, the original laylight (a horizontal ceiling panel of stained glass positioned beneath a skylight) and chandelier had been moved to another room in the Capitol and will be returned to the old chamber.

The chamber's discovery revealed hidden artistry—and a second mystery. Demolition of the 1970s floor revealed complex paint patterns beneath the plain white

paint. Paint restoration experts from Ever-Greene Architectural Arts were brought in to remove the layers of paint covering the original finishes.


What they discovered was astounding. The original blue, gold and rust paint scheme was applied in trompe l'oeil style. Meaning "deceive the eye" in French, trompe l'oeil creates the illusion, through the use of highly realistic detail, that images are three dimensional. It was used in the Wyoming chamber to make it look like the walls were decorated with expensive ornamental plaster.

Discovery of the trompe l'oeil and color scheme raised the question: Were the rest of the building's finishes done in the same style? Review of historic photos of the rotunda showed that indeed trompe l'oeil had been in the building as late as 1902. Additional paint studies and scraping in the 1888 and 1890 portions of the building revealed widespread use of the style. This recent discovery has changed the paint palette and restoration designs for the building's older sections.

"We have changed all of the corridors, rotunda and Territorial House chamber finishes to trompe l'oeil style painting," says David Harris Hart, executive vice president of MOCA. "Finding the Territorial House chamber and these beautiful finishes will forever change and enhance the Wyoming state Capitol."

Without the discovery of the older paint style in the chamber, the color scheme and feel of the Capitol would have been different. Would it have been wrong? No, but it would have reflected a different period in a building with a long history.

"This all came about, due to a desire on our part and the owner's [Wyoming] part to control costs and to respect the history and architecture of the building while providing more public space in the form of committee rooms," Hart says.

The restored paint scheme in the original part of the building honors the vision of Wyoming's founders at the time of statehood, paying tribute to the state's place in world history as the first to grant women the right to vote. 

Power in the Bank

Energy storage could flip the script on how electricity is managed.

BY DANIEL SHEA

Daniel Shea is a policy specialist in NCSL's Energy Program.

Electricity is a fleeting commodity. It must be consumed the instant it's generated. Supply must always meet demand, fluctuating up or down with the flick of a switch.

Since its inception, electricity's immediacy—driven by the inability to easily store it for later use—has set it apart.

However, all of that is changing as new technologies shift the energy landscape. It's now possible to store electricity: An electron can be generated and purchased at a certain price and a certain time, only to be sold at a different price and consumed at a different time.

In essence, it's the ability to hold onto something until it's most useful.

It's called energy storage. And it's coming off several big years.

A Bit of Policy, a Bit of Luck

A combination of supportive public policy, industry readiness and a bit of luck has caused a surge of interest in energy storage technology.

In 2016, a massive leak at the Aliso Canyon natural gas storage facility in Los Angeles threatened the reliability of the grid, leading the governor to declare a state of emergency and California regulators to rapidly approve around 100 megawatts of energy storage installations.

That's a lot of energy—as much as one-tenth of an average nuclear reactor's generating capacity or enough to power around 75,000 homes. The energy storage projects largely surpassed expectations, bringing attention to the technology's potential.

Lawmakers, too, became interested in the possibilities storage technology offers. “The development of energy storage technology and its long-term deployment [is a] critical component to energy cost reduction, system reliability, carbon footprint reduction and energy diversification,” Massachusetts House Minority Leader Bradley Jones Jr. (R) says.

In 2017, legislators in nine states enacted measures supporting the development of greater energy storage capacity, with several states enacting storage targets.



SOURCE: PORTLAND GENERAL ELECTRIC

That momentum has carried into this year. Currently, California, Massachusetts and Oregon have energy storage targets on the books, while Connecticut, Nevada, New Jersey and New York have directed state regulators to establish them.

New York Deputy Senate Majority Whip Joseph Griffo (R) says it's important that energy storage receives policy supports similar to those for renewable energy resources to help them “evolve and become more affordable.”

“The same support was afforded to solar and wind technologies in order to advance these renewable energy technologies and ultimately help reduce their overall costs,” Griffo says. “It is important to embrace a diversity of clean energy fuel sources and technologies.”

Other states have advanced different policies. Hawaii and Maryland enacted tax credits for energy storage, while at least



Minority Leader
Bradley Jones Jr.
Massachusetts



Senator
Joseph Griffo
New York



SOURCE: U.S. DEPARTMENT OF ENERGY

three other states—Maine, Minnesota and New Mexico—have considered tax credits or rebates.

Colorado, Louisiana and Virginia have passed measures that support storage, either by commissioning studies, funding demonstration projects, requiring storage to be considered in utility planning, or enshrining the right of utility customers to connect batteries to the grid.

Vermont Representative Laura Sibilia (I) believes energy storage is a “game changer, offering greater resiliency, efficiency and lower rates in the near future.”

Apparently, many legislators agree. Since 2017, lawmakers have introduced more than 70 measures in at least 18 states in support of energy storage development.

This year may prove to be the tipping point. In January, the Federal Energy Regulatory Commission directed grid operators to develop rules to enable energy stor-



Representative Laura Sibilia Vermont

age systems to participate more fully in electricity markets, allowing owners to be compensated for their full range of services.

This should allow energy storage systems to operate more profitably. And where there’s money to be made, investment follows.

Building Better Batteries

Energy storage is a kind of catchall term that describes a variety of technologies that all work very differently, but all take electricity and store it for later use.

The ability to store electricity has been around since the 1920s, when hydroelec-

Left, Portland General Electric’s Salem Smart Power Center includes a large-scale energy storage system.

Above, an artist’s rendering of a battery energy storage facility housing large batteries that can store electricity for use during peak hours.

Below, an energy storage system in Pullman, Wash., consisting of two “strings” of connected, 20-foot shipping containers. Each string has five containers: four housing DC batteries, one housing a power conversion system.



SOURCE: SCHWEITZER ENGINEERING LABORATORIES

ENERGY

tric facilities began controlling the release of water to generate electricity. Although pumped hydro is very reliable and facilities can last up to 60 years, it requires significant space and infrastructure.

New technologies—often called advanced energy storage—are easier to site and build and offer a variety of benefits, such as injecting the grid with extra capacity during peak demand.

“The primary benefits of bringing energy storage onto the electric grid are to relieve stress on the system and to provide storage for energy produced by intermittent renewable energy sources,” Griffio says. This makes the grid more flexible and reactive to system requirements.

In the past three years, advanced energy storage has more than tripled its utility-scale capacity to around 700 megawatts, according to the U.S. Energy Information Administration.

Currently, lithium-ion batteries rule the storage roost. These batteries—similar to the batteries in most smartphones—have

been the clear market leader over the past three years and accounted for more than 90 percent of new storage capacity in 2017.

Lithium-ion batteries have benefited from their ubiquity. Used in everything from handheld electronics to electric vehicles, they fuel an expansive tech industry that’s helped reduce their cost significantly.

A downside is that lithium-ion batteries typically need to be recharged every several hours. And like most smartphones, the constant charge-discharge cycling causes the batteries to degrade over time.

Other storage technologies, however, are arguably better suited for storing energy for use in grid operations—though they’re struggling to become competitive alternatives to lithium-ion.

A flow battery is a rechargeable battery that contains two chemical components dissolved in an electrolyte liquid that not only creates electricity but also recharges within the same system. Flow batteries can run for long periods, don’t degrade with recharging and can be instantly recharged

by replacing the electrolyte liquid.

Flywheel batteries store kinetic energy created by the rotation of an object and are well suited to provide the grid with standby capacity and frequency regulation.

Other chemical-based batteries and compressed-air storage technologies have also tried to carve out places on the grid.

Round Peg in a Square Market

The potential benefits of storing energy are easy to list, but harder to capitalize on.

Stored energy can fill in at times of peak demand and complement the variable output from renewables to provide a steady energy supply. It can also recharge on excess renewable energy and release it back into the grid when the sun isn’t out or the wind isn’t blowing. In fact, the manner in which energy storage allows utilities to get more renewable energy on the grid is a prime selling point.

“Storage is the key to allowing more renewables onto the grid to achieve our state’s goal of 100 percent renewable energy



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by 2045,” Hawaii House Majority Whip Christopher Lee (D) says. “It is probably the single largest leap in technology that’s going to enable lower costs for consumers and avoid the need for additional power plants and other grid upgrades that could otherwise cost consumers hundreds of millions of dollars.”



Representative
Christopher Lee
Hawaii

For Hawaii and other states and territories frequently exposed to natural disasters, the technology has significant energy security benefits. Not only does storage have the potential to build resiliency into the electric grid, but, in Hawaii’s case, it helps generate cheaper domestic energy by reducing the state’s dependence on imported fossil fuels.

Stored energy can also restart power in the event of widespread blackouts. And it can supply emergency power for critical facilities in the aftermath of a disaster, or provide services that support the smooth operation of the grid.

“We are as susceptible as Puerto Rico to the kinds of hurricanes and other weather events that could disrupt our electric grid and shut down power,” Lee says. “As a result, we look at energy storage as a solution to enable not only electrical backup but also to leverage existing renewable resources that are also resilient themselves to a greater degree on the electric grid.”

Energy storage projects will enable cost savings of about \$5 billion through avoided capital investments, Lee says.

“Balancing an electric grid like ours, which is the size of a large city’s but not connected to any other electric grids, means installing greater amounts of energy storage, which ultimately gives us a balanced grid at a cheaper cost,” Lee says.

Proving Its Promise

But the diversity and flexibility that makes energy storage so attractive has also proven limiting under the current regulatory and market structures.

Energy storage doesn’t fit into any recognizable package. It can both supply energy and consume energy, but due to the current design of energy markets, it hasn’t been able to fully capitalize on its ability to

provide several services—a concept called “value stacking.”

One recent report suggests that energy storage could provide up to 13 fundamental grid services, depending on how it’s deployed. Any one system might be able to provide two or three services, and going from one revenue stream to three can make the difference between a risky business and a smart investment.

“We are as susceptible as Puerto Rico to the kinds of hurricanes and other weather events that could disrupt our electric grid and shut down power.”

REPRESENTATIVE CHRISTOPHER LEE HAWAII

The industry’s challenge is to prove that storage can perform all those functions and remain cost competitive. Convincing grid operators and regulators that this new technology can deliver as promised is a tall task.

Texas regulators denied a recent push by a distribution grid owner to use storage as an alternative to transmission and distribution system upgrades. Despite the storage option coming in at about one-sixth the cost of the upgrades, regulators rejected the proposal because grid owners are prohibited from participating in the generation and sale of electricity—something a storage project would inevitably allow them to do.

Investigators are now trying to determine how storage should be treated in the state’s restructured electricity market.

This is what FERC’s order is designed to do: force markets to open up to the full range of energy storage capabilities, to force them to value versatility.

Bringing Down Costs

Although some of the recent surge in energy storage development has been

a result of public policy, the industry is working to address one of the main deterrents: cost.

Storage systems have dropped in price in recent years, and those reductions may accelerate. Advanced storage costs are expected to drop 8 percent year over year through 2022, according to the market analysis firm GTM Research. By that time, advanced storage should cost about the same as natural gas, the current benchmark for low-cost electricity.

In fact, recent deals may signal that this is already taking place in some areas. Arizona’s biggest utility, for example, recently chose a 65-MW solar farm paired with a 50-MW storage system to supply electricity between 3 and 8 p.m., during peak demand. The bid reportedly beat out natural gas proposals.

Colorado’s largest utility has received record-low bids for both solar-plus-storage and wind-plus-storage, the latter also proving competitive with the cost of natural gas.

What’s Next?

Arizona is currently mulling a proposal from the state regulator that would establish a 3,000-MW energy storage target by 2030—part of a “Clean Peak Standard.” This new mandate would require utilities to deliver higher levels of renewable energy during peak demand hours, which would encourage storing solar and wind energy for use when the weather isn’t cooperating. Massachusetts is considering similar legislation.

The industry’s forecast is sunny for the next five to 10 years, at least. Some analysts have predicted that, with market reforms and price reductions, advanced energy storage could reach 50 gigawatts in a decade, due to a combination of market service applications, transmission and distribution system investments, and behind-the-meter customer investment to complement solar installations.

Advanced energy storage is sure to grow and become an integral part of our energy infrastructure. And as that happens, state lawmakers will play a vital role in encouraging and regulating the technology’s development.

3 Things Legislative Evaluators and Auditors Want You to Know

BY BRENDA ERICKSON

What do legislative auditors and evaluators do? The short answer is that it varies. Across the country, our offices differ greatly in size, organization and responsibilities. Some have hundreds of staff; others have fewer than 10. Our work includes performance audits, program evaluations, policy analysis, sunset reviews, technology reviews, financial compliance audits, cost-benefit analyses and special projects.

Here's a closer look.

We take a behind-the-scenes look.

State legislatures set public policy, make laws, establish state budgets, raise revenue and oversee government operations, among other essential tasks.

To do all that effectively, lawmakers need information to help them make decisions—information that tells them whether, and in what ways, programs are necessary, working well or poorly, and why or why not.

Our offices were created to help the legislature carry out its oversight responsibilities. We research, audit, evaluate, analyze and review so we can provide valuable, unbiased, credible information to legislators.

“Our goal is to provide legislators with the information they need to hold agencies accountable for the use of public resources,”

“To find the truth in an age of information bubbles, we must move away from evaluating a claim based on its source and instead ask rigorous and skeptical questions about the evidence supporting the claim.”

Greg Fugate, audit manager with the Colorado Office of the State Auditor, says.

Think of us as “question askers” for legislatures, because to conduct our work, we have to ask a seemingly endless list of questions about government programs:

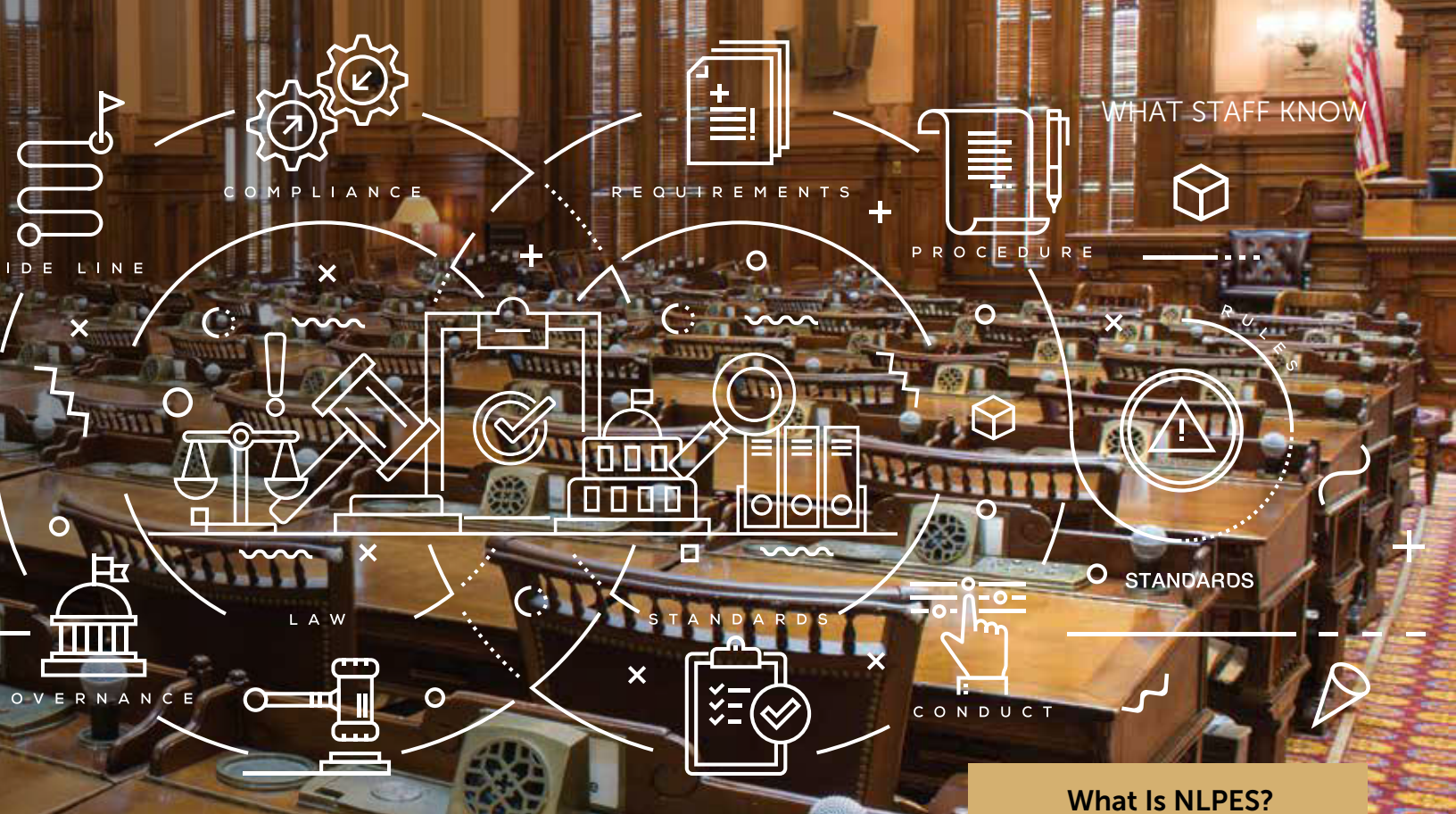
- What’s the purpose or public need?
- Why is it important?
- Is the purpose or need being met? If not, why not?
- Can the need be met more effectively? More efficiently? How?

We also might be asked to evaluate third-party information made available to legislators, raising questions such as:

- What relevant information is missing?
- What evidence supports the conclusions presented?
- What is the source of the information?

“During my 25 years of service to the Michigan Legislature, I have been fortunate to

Brenda Erickson is a program principal in NCSL’s Legislative Staff Services Program.



witness our audit efforts result in positive change for critical programs such as protective services for vulnerable adults and children, child care and early childhood education,” Melinda Hamilton, a division administrator with the state’s Office of the Auditor General, says.

We’re independent by nature.

Although our work informs the legislative process, we must be separate from the process. We need independence to conduct our audits and evaluations free from influence—even the perception of influence.

We execute our audits and evaluations according to standards and best practices, which may be internally or externally developed, generally accepted or color-coded—red, yellow or green. Our standards also require us to have a high degree of personal and professional integrity and objectivity. These characteristics increase the credibility of our reports.

“Being a performance auditor requires one to continually self-assess to identify relationships, affiliations and circumstances that could impair one’s ability to be impartial,” Shunti Taylor, audit manager with Georgia’s Department of Audits and Accounts, says.

We want legislators and the public to have confidence in our work. That foundation of trust is necessary for our work to have any utility.

It’s good to be skeptical.

The word “skeptical” comes from the Greek “skeptikos,” indicating a person who is “inquiring or reflective.” In modern usage, a skeptic is someone who doubts almost everything.

That’s us.

Exercising professional skepticism is necessary to our jobs. It helps us conduct our audits and evaluations appropriately. We apply it to make critical assessments of evidence and reach unbiased conclusions, and to remain alert to inconsistent conditions or information, all of which enhance the integrity of our work and its value to legislators.

In describing the importance of professional skepticism in our work, Linda Triplett, chair of the National Legislative Program Evaluation Society, recalled a statement made by a colleague.

“To find the truth in an age of information bubbles,” the colleague said, “we must move away from evaluating a claim based on its source and instead ask rigorous and skeptical questions about the evidence sup-

What Is NLPES?

The National Legislative Program Evaluation Society is NCSL’s staff association for employees of state legislative agencies engaged in program evaluation or performance auditing. The group provides training through webinars and meetings. NLPES members exchange ideas and information via a listserv and newsletter. NLPES also recognizes its members’ hard work and contributions through its awards program. For more information, go to ncl.org.

porting the claim.”

Every day in the legislature is different. Often, we know little about a particular program as we begin evaluating it. We enjoy the dual challenge of quickly becoming experts on a topic, then succinctly communicating our findings to lawmakers.

Our reward is knowing that the good information we provide is vital to the good decisions made in legislative chambers across the country.

What Staff Know is an occasional series dedicated to the little-known and sometimes misunderstood work performed by the more than 30,000 legislative staff employees in state capitals across the country.

How to Run a Better Election

Local election officials offer five points to consider.

BY PATRICK POTYONDY

If you want to know how to catch fish, you ask the old-timer who runs the bait shop right down the road from the lake. And if you want to know how to run a good election, you ask a local election administrator. In other words, you go to the source.

We've gone to The Canvass, NCSL's monthly elections newsletter, which has published interviews with more than 50 local election officials in the last six years. We've pulled out some of their best thoughts on our current voting system, and what it will take to make our elections run as efficiently, accurately and securely as possible. We present them here, in the officials' own words, along with policy options.

1. Replace Aging Voting Equipment.

Voting equipment across much of the country is wearing out as states and counties search for funding to replace outdated voting machines.

"One of our biggest challenges with running elections is money." —*Constabile*

"Money matters. Every day I speak to one county election commissioner or another, and in every conversation they bring up the fact they don't have enough money. And, by all accounts, elections have gotten very expensive." —*Burns*

"Small counties have limited funds. We never know what the costs are going to be." —*Oakley*

"Expectations are higher each election that we have preliminary results soon after the polls close, because almost everyone has a smartphone or tablet connected to the internet, but faster results require better equipment. It could be a half a million dollars just for our county—how do you pay for that? What we have works for now, but it's something we are thinking about and planning for."

—*Dolson*

"We looked at other jurisdictions and states to see what we could learn about getting the job done at the lowest cost to the taxpayer." —*Rawlings*

Our Panel of Experts

Joe Burns, deputy director, New York State Board of Elections

Lynn Constabile, elections director, Yavapai County, Arizona

Mina Cook, elections administrator, Hunt County, Texas

Jon Dolson, clerk, Sheboygan County, Wisconsin

Sue Ganje, auditor, Fall River and Oglala Lakota counties, South Dakota

Linda Lindberg, general registrar, Arlington County, Virginia

Alysoun McLaughlin, deputy director of the board of elections, Montgomery County, Maryland

Joyce Oakley, county clerk, election commissioner and register of deeds, Nemaha County, Nebraska

Laurence Pizer, town clerk, Plymouth, Massachusetts

Steve Rawlings, county clerk/auditor, Davis County, Utah

Policy options:

- Raise funds through fees on purchases of voter registration lists and Freedom of Information Act requests, or fines on election misconduct.
- Advocate for a direct appropriation from your state budget.
- Consolidate election dates to save money.
- Establish more centralized centers for early voting.
- Switch to all-mail elections.

2. Plan for a Full-Time Job.

Elections don't happen only on Election Day. They require constant thought, planning and work.

"Elections are a year-round activity—intergovernmental agreements for public safety, equipment, facilities for early voting and training—the list goes on." —*McLaughlin*

Patrick Potyondy is a Mellon-ACLS public fellow and a legislative policy specialist with NCSL's Elections and Redistricting Program.



"Our secretary of state called town clerks 'stewards of democracy,' which sent a chill up my spine. It's very meaningful work. There are no do-overs in elections—we have to get it right the first time." —Pizer

Policy options:

- Create a task force focused on specific election issues.
- Consolidate election dates to allow more preparation time.
- Enact year-round training for elections staff.
- Encourage young adults to serve as poll workers.

3. Make Security a Top Priority.

Local election officials are constantly thinking about how to make elections more secure, from the planning stage to execution.

"Ever since the [Help America Vote Act] went into effect ... we were required to have electronic voting machines, but we also kept paper, because it was important to us for the voters to have a choice. We have been addressing voter confidence issues ever since getting the new machines. But if you take the time to talk to voters and explain the testing we do and all the prep ... that happens before each election, they feel calm and satisfied that, yes, we are doing our jobs." —Cook

Policy options:

- Require two-factor authentication for access to voting data and offices (similar to providing a physical card and PIN at an ATM).
- Limit who has access to specific types of data.
- Offer cybersecurity training for all staff.
- Require pre-election logic and accuracy testing and postelection audits.

4. Invite Everyone to the Table.

Elections involve state-level legislation but local-level execution, all within federal parameters. Understanding who does what is no easy task.

"All governmental levels need to come together to create a coherent business model for election administration. When a government makes a change it needs to do it in the context of making it understandable to voters. If voters don't know their options, they can't take advantage of them." —McLaughlin

"Our challenge is finding locations to use as polling places because we are pretty much running out of county-owned facilities. We are using almost every facility there is in the county at this point that we can. So as our county board starts approving more growth, we work with the planning commission to see what the impact that might have on our polling places." —Lindberg

Policy options:

- Convene meetings with officials from all levels of government.
- Conduct training for government employees about elections rights and rules.
- Invite public officials to testify at committee hearings.



5. Talk to Us, the Locals.


Local election officials are eager to engage with legislators to ensure that elections run smoothly, securely and without surprises. Good communication is essential.

"We work closely with our county associations when it comes to legislation. We don't take things to the Legislature lightly. We want them to listen to us and give us the tools we need to run good elections—we wouldn't be putting it out there if we didn't need it." —Ganje

"Every clerk would love to have their legislators come and work the polls one time (and the whole day!) so they know what's involved on Election Day. ... I know there is a lot of demand at the top for different changes in elections, but you have to consider how it affects the people on the ground running the elections and, ultimately, the voter. There are many things that can affect elections that legislators may not realize." —Dolson

Policy options:

- Visit your local elections office and get to know the staff.
- Invite local officials to testify before committees.
- Build relationships and touch base after each election to ask how things are going.

Before you craft or help write another election bill, consider these suggestions. Elections are (always) just around the corner. Be prepared. 

Technology Tests Transparency

States are using technology to keep pace with the increasing volume and sophistication of requests for public records.

BY PAM GREENBERG

Tim Clemans calls himself the guy who keeps public records staff awake at night.

Clemans has sought millions of records from Washington state agencies, the University of Washington and local governments. He's a programmer who has also made many of those requests via bots—requests automatically generated by a computer program or script.

Clemans is just one of many who make similar requests, and bots are just one of many new technologies that are changing the ways requests are made. These trends, however, are making it more difficult for governments to respond. Technology might be the only answer.

Challenging Requests

Records requests can be expansive, vague, voluminous, even frivolous; yet governments still must respond, unless the information requested is specifically exempted by law. Examples abound: In Washington, a person calling himself “Mr. Public Requester” asked for all the data from the public cellphones of all Snohomish County employees—including photos, audio, video and even apps and operating system data.

In Texas, a House committee in 2016 heard about a requester, described as someone who “distrusts government,” who emailed 22,887 public information requests to Angelina County officials in one year.

Also in Texas, a three-person department spent 200 hours reviewing and redacting files, producing more than 2,000 copies of documents for a requester who never returned for the information and was never heard from again.

More commonly, commercial information brokers, researchers and watchdog groups request large volumes of data that they can analyze, reorganize or repackage. Some of these organizations also use bots and make frequent requests.



Some requests are just vague, making it difficult to know how to respond. Examples of these include, “Please provide all records mentioned in the March 25 [name of newspaper] article about [agency name],” or “I am requesting all your department’s records related to [topic].”



Representative
Terry Nealey
Washington

Washington Representatives Terry Nealey (R) and Joan McBride (D) in 2017 cosponsored a bill to help agencies deal with vague or excessive requests. “In this digital age,” Nealey said, “there has been an explosion of electronic public records requests for free, including from ‘vexatious requestors’—people who have little or no legitimate interest in the records themselves, other than to force agencies to spend

Pam Greenberg is a senior fellow in NCSL’s Legislative Staff Services Program.

Mind Your Exemptions

Every state has a public records law (aka Sunshine Laws or Freedom of Information Acts), many of which were enacted in the 1950s and '60s. Most were established with a presumption of openness—that is, that government information is public and should be accessible unless specifically exempted for privacy or other compelling reasons.

Legislatures have carved out exemptions to protect personal information, critical infrastructure data and cybersecurity strategies, and trade secrets or other proprietary or research data. The more the exemptions, however, the greater the complexity when records are requested. Records custodians must be trained and knowledgeable about what the law requires and must redact confidential information.

To address concerns about proliferating exemptions, Vermont this year enacted legislation specifying that any public records exemption that is enacted or substantively amended starting in 2019 will be repealed after five years unless the Legislature re-enacts it.

Oregon also passed a law this year requiring a subcommittee of the legislature to review public records exemptions, and consider retention, amendment or repeal of the exemptions.

precious time and limited resources trying to fulfill the requests.”

The legislation passed. Now, nonspecific requests for all or most agency records may be considered invalid. Agencies may also deny multiple, automatically generated bot requests from the same source within a 24-hour period if it causes excessive interference with essential functions of the agency. Agencies may charge a nominal fee for requests, and local governments can apply for grants to help pay for training to improve the management of records.

At least a dozen states have similar laws that address frivolous, harassing,



Representative
Joan McBride
Washington

redundant or unduly burdensome records requests, by allowing for special fees, for example, or by allowing agencies to refuse to comply with requests under limited circumstances.

Digital Records Exploding

The number of emails, texts and social media records generated by government officials and employees is increasing exponentially. The sheer volume of these records can make it hard to review them to determine which are public and whether and for how long they should be retained.

Government information resides in formats that might not initially come to mind when thinking of public records. For example, the vast amount of video foot-

age from police body cameras—public in many states—often puts a strain on data storage and retrieval capabilities. Requests for footage require additional personnel to select and download the videos, and to review every minute for possible redactions to protect the privacy of uninvolved bystanders.

Apps and cloud technologies also create new challenges, especially where records of individual officials are concerned. The messaging apps Snapchat and Confide, for example, are designed to be transitory. On Snapchat, pictures and messages are accessible for only a short time. Confide destroys messages after they've been read by the intended recipient.

Similar capabilities are now available in email. In April, Google announced a “confidential mode” for Gmail users—a way to set expiration dates on email and revoke previously sent messages. The new feature has come under criticism from open-government groups. The National Freedom of Information Coalition is urging Google to take steps to ensure that the “self-destruct” feature is disabled on government Gmail accounts and on emails directed to a government entity.

The coalition's executive director, Daniel Bevarly, said Gmail's self-destruct option is just one on a growing list of concerns about the abundance of third-party software and apps used by state and local governments. According to Mal Leary, the coalition's board president, “Technology that allows the self-destruction of official, electronic public communications is not promoting transparency, and under most state open-government laws is illegal.”

In Missouri, however, the state attorney general investigated then-Governor Eric Greitens' use of Confide to communicate with his taxpayer-funded staff and concluded that use of the app did not violate the state's sunshine law, but that its use for public business was “not a best practice.” (Greitens later resigned while facing an unrelated felony charge and possible impeachment during an investigation of claims that he tried to elude the state's campaign disclosure laws and to blackmail a former lover.)

Since Confide automatically deletes mes-



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sages after they're read, the Missouri opinion states, the app prevents public employees from exercising reasoned judgment about whether a communication must be retained. Moreover, "If a public employee were to receive such a communication via Confide, she would be unable to retain that communication as required by Missouri law." Missouri Representative Gina Mitten (D), assistant minority floor leader, sponsored a bill this year that would have made the use of Confide by state employees and officials illegal, but it never got a hearing.



Representative
Gina Mitten
Missouri

More Requests

Many state and local agencies report that records requests are increasing in number, though statistics are not readily available. A 2016 report by the Washington State Auditor's Office found that the number of state and local requests increased by 36 percent from 2011 to 2015, and that the cost of responding to the more than 285,000 requests in 2016 was more than \$60 million.

A Florida TaxWatch survey of the state's city and county managers found that about half said the volume of big data requests has increased in recent years. The organization also gave examples of what it called intentional misuse of public records laws. For example, one person in the small community of Cooper City, Fla., filed approximately 600 email requests in a one-year period, then sued the city for noncompliance when it had difficulty producing the records.

In Texas, the Open Records Division of the attorney general's office saw an average increase in records requests of more than 18 percent annually from 1989 to 2016, even when the average annual growth of the state's population was less than 2 percent.

Even states that do not receive many requests from residents have felt the impact from elsewhere. A recent study by the Pennsylvania Legislative Budget and Finance Committee found that a "relatively small number of agencies do receive a large number of requests, often for a

commercial purpose from outside of Pennsylvania, which could be exceedingly time consuming."

Unfortunately, records custodians sometimes see legitimate public records requests as frivolous or time consuming, especially agencies with limited staff and resources. The Pennsylvania report concluded that agencies consider some requests to be burdensome even when they require relatively little time to fulfill, especially if custodians have concerns about the type of request or who's making it.

As electronic records have proliferated, they've become more varied in format and more likely to reside outside of government servers. Some government offices and agencies contract with commercial services such as Gmail or Dropbox. Public officials are using personal devices, social media and personal cloud accounts for public business. This comingling of records can make it more difficult to track, find and retain records when requested.

In many states, it's the content of the record, not the format or where it's located, that determines whether it's public. In some states, laws expressly state that; in others, judges or attorneys general have issued opinions finding the same. That means public officials—or their legal staff—must review email correspondence to determine which are considered public record and to make sure confidential information is redacted before the emails are released.

New Systems Offer Solutions

A burgeoning industry is aimed at helping government respond to records requests more efficiently. New software applications, for example, can help organize and retain records according to specific schedules. Software can capture requests, route them to the appropriate staff, manage deadlines, redact certain words or phrases from documents automatically, keep track of fees, and more. There's also software that automatically archives and retains email for whatever period is required by law. Governments that can't afford these new tools, however, are left with manual methods and paper-based responses.

Endless information is available by typ-


ing a few words in a web search engine, and government records are going online, too. Open data portals and taxpayer transparency websites are available in every state. But a few state and local governments are taking an even more proactive and streamlined approach. They make full records requests and responses available online, or they allow requests to be searched and submitted online. For example, Utah's state-wide Open Records Portal has an online form with guidelines about how to make a request. It also allows users to review their request and track its progress.

In California, agencies that post public records on the web can refer requesters to the website where the record is posted, instead of responding individually.

It might seem counterintuitive that a request for electronic records such as emails, for example, might be met with a stack of paper copies of messages. But some requests are still fulfilled only on paper. About half the states, however, now have laws that require information to be released in the same format in which the record is maintained. In other states, court decisions or attorneys general's opinions have interpreted statutes to mean the same. Iowa law goes further: It prohibits a government body from acquiring data processing systems for public records if the system would impede the ability to examine or copy a record.

On the Horizon

New consumer apps and innovations raise the public's expectations for near-instantaneous service when seeking information from government. And government is gaining ground by taking advantage of some of those very innovations and tools. On the horizon, artificial intelligence holds promise as a way to comb through and categorize records already online, and to create conveniences like automatic email alerts when new information becomes available.

Whether the records requests are coming from Tim Clemans and his bots or giant information brokers, state legislatures will play a pivotal role in ensuring that new technology is used to maintain transparency. 

Strategies for Resolving Conflict

BY MARTIN BROCK AND HOLLY SOUTH

If such a thing as a conflict-free work environment exists, the legislature most certainly is not it.

Political environments, especially, invite differences of opinion, debate and disagreement. It's what the legislative process is all about: fleshing out ideas and issues. Conflict (that is, civil conflict) is expected in legislative chambers, but not within legislative staff offices. High-tension, stressful work environments need to be monitored; ideally, conflict can be de-escalated before it causes permanent rifts between colleagues, legislators or the public.

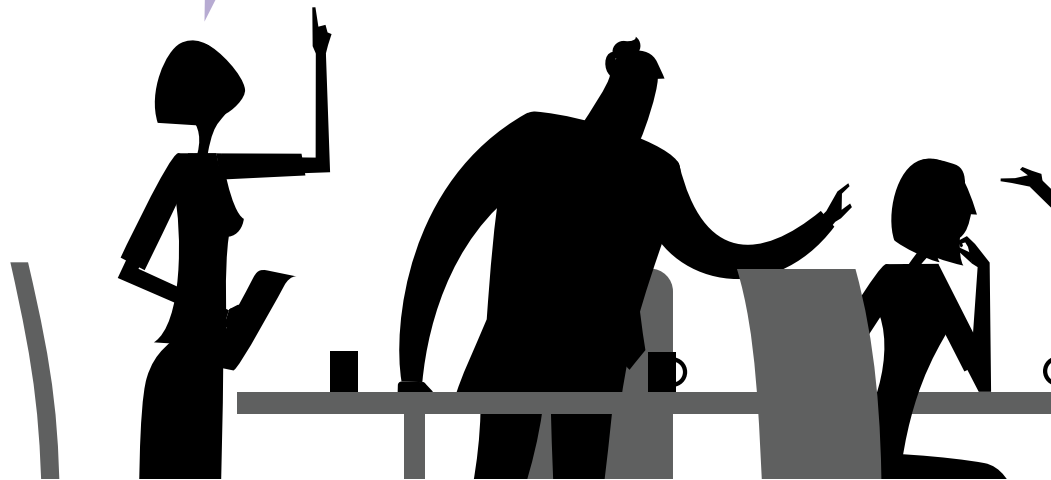
Conflict, whether it's out in the open or simmering beneath the surface, is a distraction that can harm productivity. It can dampen career satisfaction and accelerate staff resignations. It can also be expensive. "Every unaddressed conflict wastes about eight hours of company time in gossip and other unproductive activities," according to research by VitalSmarts, a Utah-based corporate consulting firm.

The legislature is a haven of mixed, sometimes strong opinions on contentious topics. Difficult coworkers and constituents come with the territory, with differing political ideals often fueling emotions. This passion can lead to heated conflict.

Carrie Maulin, chief clerk of the Idaho House of Representatives, says things can get especially stressful in election years. "When [legislators] have to get out and run their campaigns and need stuff done, things get very emotional."

That stress inevitably trickles down to staff.

Martin Brock is chief of legislative police for the North Carolina General Assembly and vice-president of the National Legislative Services and Security Association. This article was written with support from Holly South, a policy specialist in NCSL's Legislative Staff Services Program.



The Art of Listening

Whether you are resolving a conflict between individuals, or someone is arguing with you directly, the way to de-escalate the situation is to remain calm and rational. Let the other person air his or her grievances, all while remaining respectful—because your response will either escalate or defuse the situation.

Practicing effective conflict resolution is vital to supporting the legislature's mission: promoting the common good of the citizens of the state. You can start by listening. Lore Christopher, director of human resources for the Oregon Legislative Assembly, has mediated a conflict or two in her 21 years there. Her office policy in these situations is to be quiet, listen and

What Is Emotional Intelligence?

"The rules of work are changing. We are being judged by a new yardstick, not just by how smart we are, or by our training and expertise, but also by how well we handle ourselves and each other."

Psychologist Daniel Goleman, author of "Working With Emotional Intelligence," coined the term "emotional intelligence" and defined its related terms this way:

- **Self-Awareness:** the ability to recognize your emotions (including their source and how they affect your behavior) and to identify each as either a strength or a weakness.
- **Self-Management:** the ability to control your emotions.
- **Social Awareness (Empathy):** the ability to sense, understand and react to the feelings and needs of others—and to appreciate others who are different from yourself.
- **Relationship Management:** the ability to build rapport and collaborate with others.

Emotional intelligence, sometimes referred to as an emotional quotient (EQ), is becoming a high-value soft skill in today's organizations. In its 2016 report "The Future of Jobs," the World Economic Forum says emotional intelligence will be one of the most in-demand workplace skills by 2020.

Learning to Empathize

Empathy goes a long way in easing tensions, avoiding conflict and diminishing differences. But how do you learn to empathize? There are plenty of exercises on the Internet to build your empathy muscles. Here are a couple from LiveChat100.com

OLD WOMAN/YOUNG WOMAN



This classic exercise uses optical illusions to illustrate how we can all look at the same image but we see different things. Show this image to a group of people and ask what they see. Some will see the profile of an old woman looking down while others see a young woman with a button nose looking to her far right. One image, two interpretations. One problem, two versions of the right solution.

THE DRESS



This went viral a few years ago. Like the old woman/young woman exercise, it shows us that people can see the same thing differently. Show your team a picture of "The Dress" and ask them what colors they see. Is it blue and black or white and gold?



let the other party "just run with it," she says. "We don't write anything down [at first], we just listen."

During a confrontation with a colleague, she advises, "Be present, listen and give them respect—for preservation of the relationship. You don't have to win the battle. It is not easy to do, but it is the smart thing to do!"

In New Hampshire, a clause in the Constitution grants citizens the right to petition for redress of grievances. Clerk of the House Paul Smith fields a lot of phone calls and visits because of this right. "Just having someone hear you out can make a difference," he says. "I talk to them to figure out what their issue is because they can petition until they're blue in the face, but if they don't have any sort of resolution in mind, there's nothing we can do." He cites karma as part of his willingness to spend time listening to an upset constituent. "Everybody who works in government has to have some sense of altruism," he says. "It's ultimately about helping people, your fellow citizens."

In difficult situations, Maulin says, "I try as best I can to listen to what they

say and not respond. I know myself well enough to know that whatever words I use at that moment are not ones I'll be happy about later."

The value of listening is to "recognize the stress point," says Peter Capriglione, director of information systems at the North Carolina General Assembly. An issue like a computer crash, printing difficulties, or a voting system malfunction may not be stressful to someone working in IT who knows how to fix it, but any of those could cause a great deal of stress to someone less knowledgeable. Be empathetic; try to understand the situation from their point of view.

"Smile, listen and resolve," Capriglione advises. "Nine times out of 10 it is really not as bad as it may seem."

It's Not All About You

Stressors, of course, aren't limited to office-related issues. Any number of personal problems—family, financial or health—can contribute to conflict in the workplace. Your colleagues may or may not reveal these during a disagreement, but because you never know what others are

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dealing with in their personal lives, simply empathizing can go a long way toward de-escalating a heated exchange. Often, people just want someone to hear them out.

Maulin compares it to her experience raising two children. “Your kids frustrate you to the point where you just want to throw your own tantrum,” she says.

An adult tantrum may reflect stress in a person’s life that has nothing to do with you. Conflicts with constituents are rarely personal. The target generally is your position, not you.

Christopher reminds herself, “These people do not define you. You cannot control the situation, the other person’s actions or reactions. But you have control of what you say, how you react and how you feel.”

It’s helpful to recognize when you’re being affected by your own negative emotions. But understanding and controlling your feelings—using your emotional intelligence—are among the most challenging skills to master.

How you react to what the other party is saying during an emotional or heated conversation is critically important, Christopher says. With a coworker, your response could color future interactions with him or her for a long time.

“If it’s a colleague, you’ll have to continue to deal with this person,” she says. “Ask, How do we move forward? What do you need from me so that we can continue to work together? Then it’s up to you to translate what they tell you into something you feel you can accomplish.”

For Maulin, that means “getting the facts. If I’m wrong, I’m absolutely willing to accept it—though it’s not easy. But [I try] to understand the facts and then come back and talk to that person at a later date.”

North Carolina House Principal Clerk James White approaches workplace conflicts as learning opportunities. He tries to “welcome and accept constructive criticism” as part of resolving these situations with colleagues.

Regardless of the source of the conflict it’s important to strive to control your emotions, de-escalate hostility and negativity, and seek the most optimal solution: preserving your working relationship with col-

NCSL’s “Model Code of Conduct for Legislative Staff”

The National Conference of State Legislatures adopted this code to guide the conduct of legislative staff in their service to their state legislatures and the public.

In Article 3, “Obligations of Legislative Staff Members to Each Other,” for instance, Section 1 says: A trustworthy legislative staff member treats all fellow legislative staff members with respect and appreciates the pressures they work under and the difficulty of some of the choices they must make.

It continues: Because legislative staff members are in the best position to understand the circumstances of other legislative staff members and to know the obligations they are under, they have a strong obligation to be considerate of each other.

Section 2 says: A trustworthy legislative staff member supports the efforts of fellow legislative staff members to meet their obligations and perform their work and is willing to operate as part of a team when appropriate.

Comment: For a staff member to fail to support a colleague, or to work against a colleague’s efforts to perform his or her work, is to lessen the ability of the staff as a whole to perform its work for the legislature. Staff members often work on opposite sides of an issue or for legislators who oppose each other, but this does not require that they seek to harm a colleague’s reputation, question his or her motives, or affect the terms of his or her employment. Indeed, because staff members depend on each other for assistance and support, the obligations to be honest, discreet, candid, objective, competent, diligent and fair apply in their relations to each other as well as in their relations to legislators.

To read the entire code, visit nctl.org.

leagues. A successful resolution will direct staff energy and time away from conflict and toward the work of the legislature.

“The key piece,” Christopher says, “is to listen to the other person, seek to understand what they need from you, and figure out a way to preserve the relationship.”


Finding a Balance

Ideally, says Carolyn Hunt, director of human resources for the North Carolina General Assembly, staff are made aware before they accept employment that stressors aren’t limited to their specific job duties. “Will they manage the stressors or will the stressors manage them?” as she puts it.

But how do you manage stress? “Setting firm boundaries between my work and nonwork time and getting regular exercise help me keep my life in balance and reduce stress when the legislature is in session,” says Julia Covington, reference librarian for the North Carolina General Assembly.

Her colleague Anthony Aycock agrees. “I rarely check work email when I’m at home,” he says. “In fact, I can’t get work emails on my phone. It’s part of my effort to maintain work-life balance. If you don’t have balance, you’ll become a victim of

stress, especially in a high-stakes environment like a legislature.”

To avoid becoming a stress victim, Portia Palmer, clerk of the Florida House, recommends getting outside the bubble of the legislature regularly and doing anything related to books. “Tai chi, my daily devotional and switching to decaf” help as well, she says. 

Answers to the Mason’s Manual quiz on page 57.

1. B. Section 4
2. C. Section 181
3. B. Section 415-2
4. B. Section 561-1
5. C. Section 729.
6. C. Section 207-5
7. A. Section 782-2
8. C. Section 472
9. C. Chapter 21, Sections 214-216
10. A. Section 252

If you answered all 10 correctly, consider yourself a parliamentary whiz; if you scored eight or nine correctly, pat yourself on the back; but if you got only seven or fewer right, you might want to order a copy of Mason’s Manual from NCSL today.

ELECTED OFFICIALS ARE IMPROVING THE LIVES OF AIRPORT WORKERS



"Even though I work two jobs at the airport, I don't have health care, sick days, or vacation time. The worst part about it is I have to stay in a hotel because I'm not paid enough to afford my own place to live."

Niecea Davis, *Cabin Cleaner and Wheelchair Attendant at Denver International Airport*

No matter where we come from or the color of our skin, most of us want the same things—to be able to work to provide for our families and live a good life. Yet that is out of reach for too many working people at our nation's airports. Four in ten airport workers—the majority of whom are people of color and immigrants—go hungry because of low pay, while they helped top US airlines make over \$13 billion in profits.

States can hold airlines to high standards and turn airports into engines of prosperity.

Each year airlines take \$13 billion in public subsidies, including \$1 billion in state-level jet fuel tax breaks. Elected leaders from coast to coast are stepping up to make sure airlines invest back in our communities by supporting good, union jobs that allow working people to afford a roof over their heads and food on their tables. With your support, 120,000 airport workers have won raises and 25,000 have won a union with SEIU.

Let's make sure ALL airport workers can soar with good, union jobs.



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How Does Your State Score?

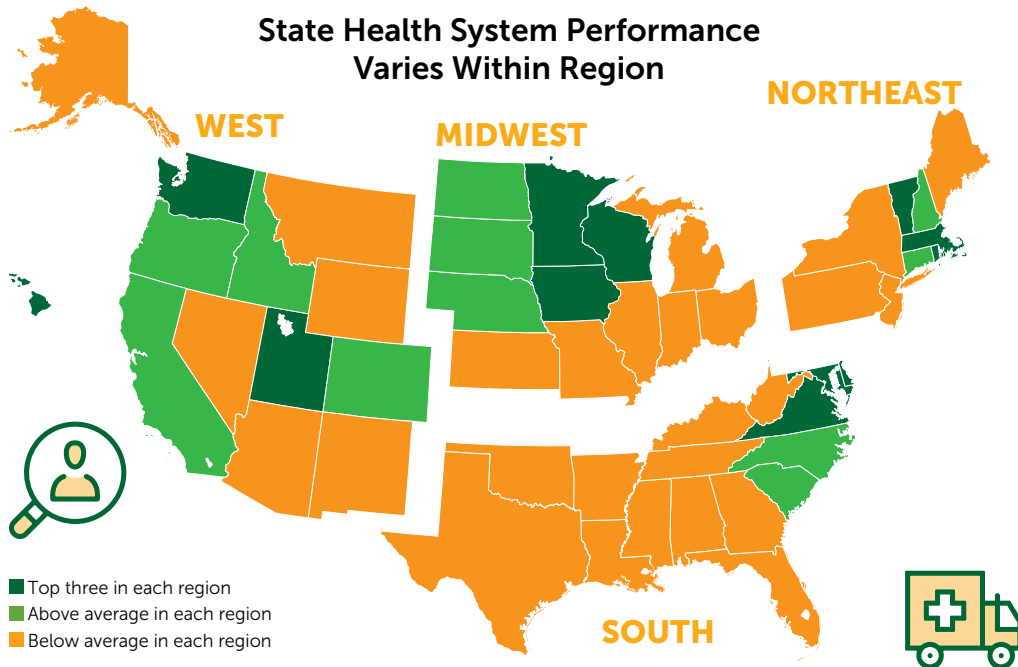
With states facing ever greater pressure to restrain costs and improve access to health care, policymakers have a new resource to gauge how their state compares over time and with others. In its May 2018 “Scorecard on State Health System Performance,” the Commonwealth Fund uses recently available federal data (generally from 2015 or 2016) to assess states on 43 performance indicators grouped in five areas: access and affordability, prevention and treatment, avoidable hospital use and cost, healthy lives, and disparities.

Overall, the scorecard found that most state health systems improved between 2013 and 2016, with Arkansas, Louisiana, New York, Oklahoma and West Virginia showing gains in the greatest number of indicators. For example, 23 states reported fewer hospital readmissions of older adults within 30 days of their discharge; 28 states showed improvement in the number of adults with mental illness who received treatment; and 32 states reduced the rate of adults who smoke. Still, premature deaths are on the rise, with deaths from suicide, alcohol, opioids and other drugs at an all-time high. The combined death rate from suicide and substance abuse increased by 50 percent.

Four major trends emerged in the 2018 scorecard:

- Rising death rates, high levels of obesity and gaps in care are pressing challenges for states.
- Regional differences in performance persist, as do within-state disparities.
- Many states are not getting good value for their health care dollars.
- States made progress in areas where they targeted their efforts.

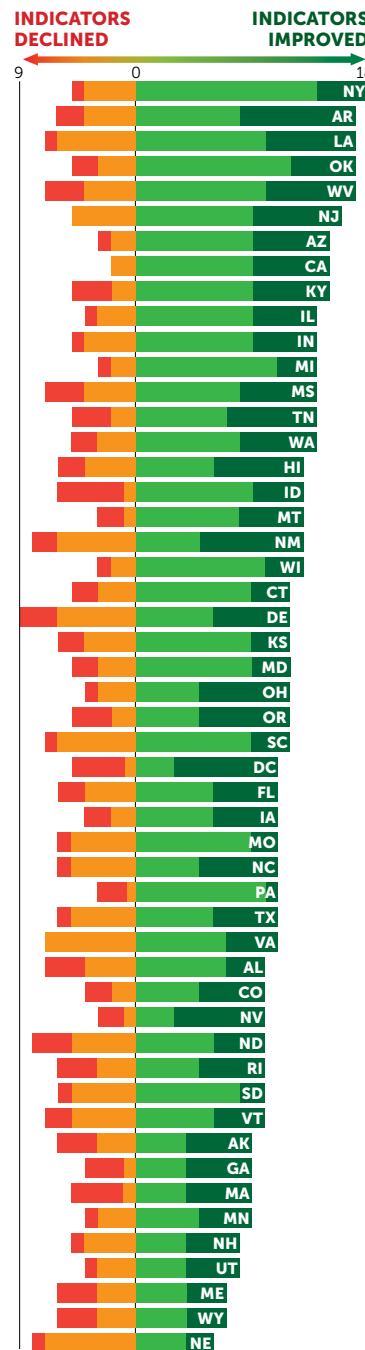
—Colleen Becker



Top 5 Most Improved



More Improvement Than Decline



- Greatly improved
- Improved
- Declined
- Greatly declined

Source: “Scorecard on State Health System Performance,” The Commonwealth Fund, May 2018

When the Rules Aren't Enough

To be effective, you need to know—and play by—established parliamentary procedures.

BY BRENDA ERICKSON

What happens when a legislature has an unusual conflict? Or when something unforeseen happens, or there's procedural ambiguity?

As parliamentary bodies, the 50 state and five territorial legislatures have procedures that serve as blueprints for operating. But legislative life can be unpredictable.

Things happen.

Normally, presiding officers turn to several sources—state constitutions, chamber rules, state statutes—when interpreting procedures. But these don't cover every parliamentary nuance that a chamber may face.

Most chambers plan for this by adopting a backup parliamentary manual, which helps cover issues not addressed by a chamber's own rules. There's no requirement that chambers do this, of course, and at least seven have not.

When questions arise, 77 legislative chambers turn to Mason's *Manual of Legislative Procedure*. It was written specifically for state legislatures and addresses issues and problems typical of that environment. It also includes citations to other parliamentary manuals and court decisions, adding to its authority. But it's not the only guide.

Most Americans don't know that, among his many talents, Thomas Jefferson was a renowned parliamentarian and wrote *Jefferson's Manual*. It serves as an additional source of parliamentary advice in 14 chambers.

Then there's *Robert's Rules of Order*, an especially popular guide outside the legislature. Lawmakers often are familiar with it from their previous experiences in civic and private organizations, the very groups Henry Martyn Robert was targeting while writing it. Three chambers use it.

Other guides include *Cannon's Precedents*, *Cushing's Manual*, *Hinds' Precedents*, *Hughes' American Parliamentary Guide*, *Reed's Parliamentary Rules* and even the U.S. House and Senate rules.

The Man Behind the Manual



Paul Mason, as chief assistant secretary and parliamentarian of the California Senate, quietly made his mark on the world of state legislatures when he wrote his first "Manual of Legislative Procedure" in 1935. Mason's hobby was the legislative process—he wrote his master's thesis on the topic, published a book on the California Constitution and developed a guide for presiding officers in the form of questions. That guide is believed to be the precursor to today's *Mason's Manual of Legislative Procedure*—the No. 1 resource for state legislative rules and procedures. Mason updated his manual six times. Before his death in 1985, he assigned its copyright to NCSL and requested that the manual be continually updated and reprinted, which is done roughly every 10 years by the 16-member *Mason's Manual Commission*. It's used in more than 75 percent of the nation's legislative chambers.

In ordinary times, a chamber's rules will be sufficient to help legislators make good decisions in an orderly manner. But events aren't always orderly—or ordinary. Turning to a backup manual may be beneficial, not only to address the problem at hand, but also to honor and preserve the institution itself.

Brenda Erickson is a program principal in NCSL's Legislative Staff Services Program.

RULE ON!

Think you know your chamber’s parliamentary particulars? With rules and procedure at the heart of the legislative process, it’s best to brush up on them from time to time. Take this little quiz gleaned from Mason’s Manual to see how much you know!

1. The rules of legislative procedure:

- A. Cannot be altered
- B. Can be derived from custom, usage and precedents
- C. Aren’t generally followed

2. How many motions are available for use by a legislative body?

- A. 40 to 60, depending on the size of the body
- B. 101
- C. An unlimited number

3. A substitute bill is:

- A. A new, original introduction
- B. A form of an amendment
- C. A temporary replacement

4. A legislative body may discipline members:

- A. Never—that power lies solely with the executive branch
- B. As it deems it appropriate
- C. Only when there’s trouble in paradise

5. The enacting clause:

- A. Is located above the signature line for the governor
- B. Is added to legislation once approved by both chambers
- C. Is required for a new law to be valid

6. The motion to adjourn:

- A. Can be made only when there is a quorum
- B. Is always in order
- C. Cannot be reconsidered

7. A joint session:

- A. Requires the senate and house to merge into one body
- B. Can be convened only by the governor
- C. Cannot meet longer than one week



8. The motion to reconsider:

- A. Requires a minute of silent reflection
- B. Can be amended
- C. Cannot be amended

9. A motion to recess:

- A. Terminates a meeting upon approval
- B. Is subject to debate
- C. Is out of order when a quorum is absent

10. A parliamentary inquiry is:

- A. A request for information
- B. The same as a motion
- C. An investigation into a member’s conduct on the floor

You can find the answers on page 53.



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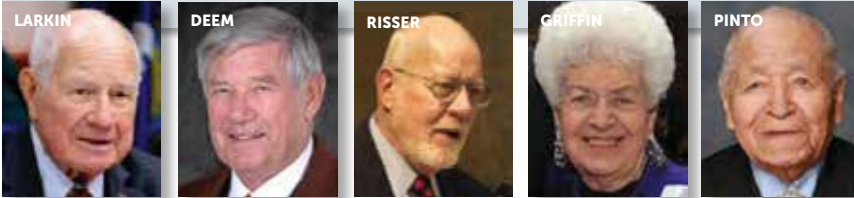




NEWSMAKERS

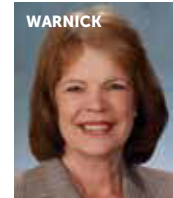
NEW YORK SENATOR WILLIAM LARKIN (R) RETIRED AT THE END OF THIS YEAR'S SESSION

AFTER NEARLY FOUR DECADES of service, which began in 1978. He is 90 years old, but wasn't the only nonagenarian serving in a state legislature. West Virginia Representative Frank Deem (R) is also 90; Wisconsin Senator Fred Risser (D) is 91; New Hampshire Representative Mary Griffin is 92; and New Mexico Senator John Pinto (D) is the oldest, at 93.



"I'd sure like to see it become more viable for farmers. I think it's something that we need to have a discussion with the Department of Agriculture about."

Washington Senator Judy Warnick (R) on the state's hemp production, from the Capital Press.



"I think probably that most states are going to make money off of Husker football, but Nebraska won't be."

Nebraska Senator Paul Schumacher (R) on the state's decision to not allow illegal sports betting, in the Omaha World Herald.



"I am ready to lead with the training of an engineer, the heart and passion of an educator and the courage and instinct of a public servant."

California Assemblywoman Luz Rivas (D) after winning a special election in June to replace a former member accused of sexual misconduct, in the Los Angeles Times.



SENATOR KAY FLOYD (D) IS THE FIRST WOMAN IN OKLAHOMA HISTORY TO LEAD A SENATE CAUCUS.

First elected to the Senate in 2014, Floyd will serve as the minority leader for the next session. Although she is running for re-election this fall, she will run unopposed for the District 46 seat.

KEN LEVINE IS RETIRING AS DIRECTOR OF THE TEXAS SUNSET ADVISORY COMMISSION

after 37 years with the Legislature. An expert on legislative oversight, Levine has evaluated almost every area of state government. He chaired NCSL's National Legislative Program Evaluation Society and served on the Executive Committee, the Legislative Staff Coordinating Committee and the Legislative Effectiveness Committee. In 2017, he received NCSL's Legislative Staff Achievement Award.





MINNESOTA SENATE PRESIDENT MICHELLE FISCHBACH (R) HAS RESIGNED TO TAKE THE OATH AS LIEUTENANT GOVERNOR. First elected to the Senate in 1996, she became the first woman in state history to serve as the chamber's president in 2011. Hers will be the only Senate seat up for election in November, along with the governor's seat and the entire House.

"We need to change our culture and adapt to changing times when 'no means no' doesn't work."

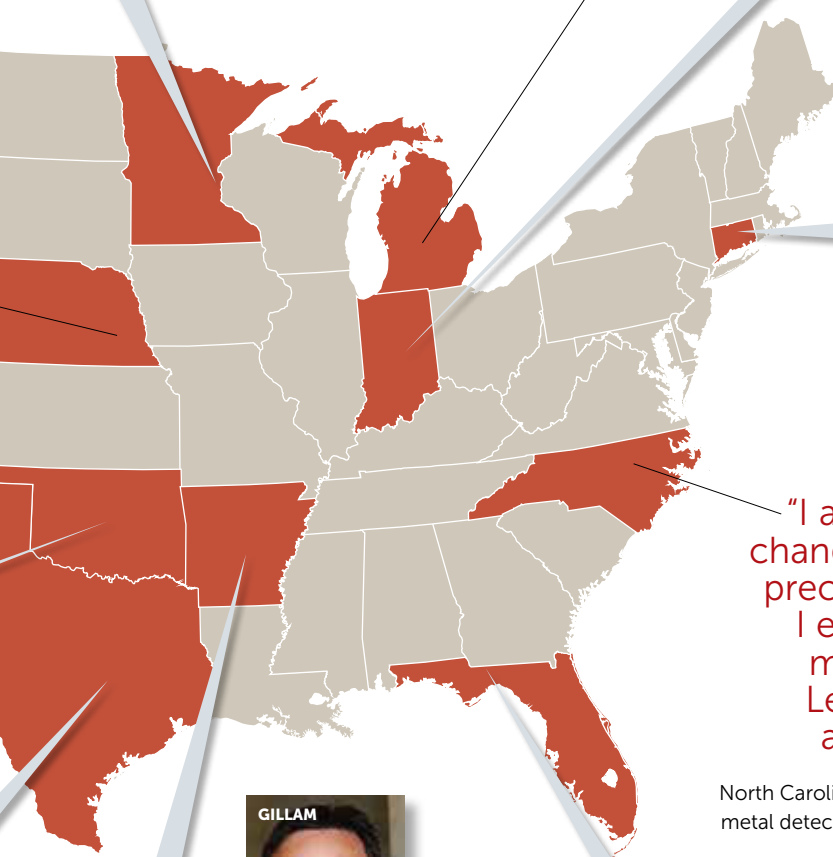
Michigan Senator Curtis Hertel (D) on his proposed bill to mandate lessons on affirmative consent, or "yes means yes" policy, in Michigan public schools to combat sexual abuse, in the Detroit Free Press.



INDIANA SENATE REPUBLICANS SELECTED RODRIC BRAY (R) AS THE CHAMBER'S NEW PRESIDENT PRO TEMPORE. Bray will replace the current pro tem, David Long, who is retiring from the legislature. "I am delighted to see the selection of Senator Rod Bray as the pro tem-elect," Long said. "Rod is a man of the highest integrity and character, and I believe he is more than ready to take the reins."



JIM TRACY IS RETIRING AFTER 45 YEARS OF SERVICE TO THE STATE OF CONNECTICUT. He began his career at the General Assembly in 1973 as a supply room clerk in the Office of Legislative Management. He rose through the ranks and for 35 years was the office's personnel manager, a role that established him and his legislature as national leaders in legislative administration. He became the agency's executive director in 2012.



"I am saddened that the world has changed and that these types of safety precautions have become necessary. I expect our staff will continue to make every effort to ensure the Legislative Building is accessible and welcoming to the public."

North Carolina Senate President Pro Tem Phil Berger (R) on the addition of metal detectors, bag scanners and other measures as part of a \$1.3 million security upgrade, from The-Dispatch.com.



ARKANSAS SPEAKER JEREMY GILLAM (R) IS RESIGNING TO BECOME THE DIRECTOR OF GOVERNMENTAL AFFAIRS and external relations at the University of Central Arkansas. Gillam, first elected to the House in 2010, is completing his second term as speaker. Representative Matthew Shepherd (R) was elected speaker-designate in March.

FLORIDA SENATE PRESIDENT JOE NEGRON (R) WILL RESIGN IN NOVEMBER WHEN HIS LEADERSHIP TERM ENDS, rather than serve out the remaining two years of his term as senator. He said he wants to honor the state's limit of two consecutive four-year terms. The Florida Senate Republican Caucus unanimously selected Bill Galvano (R) as the Senate president-designate for the 2018-20 term.



2018 Legislative Staff Achievement Awards

The following legislative staff were recognized for excellence in service to legislatures. Congratulations to all!

American Society of Legislative Clerks and Secretaries (ASLCS)

- Yolanda Dixon, first assistant secretary, Louisiana Senate
- Susan Furlong, chief clerk, Nevada Assembly

Leadership Staff (LSS)

- Sheron Violini, deputy secretary for operations, California Senate

Legislative Education Staff Network (LESN)

- Patricia Walker, staff, Senator Lyman Hoffman, Alaska

Legislative Information and Communications Staff (LINCS)

- Jeff Fossett, video communications specialist, Kentucky Legislative Research Commission

Legislative Research Librarians (LRL)

- Juan Carlos Ortega Cruz, librarian, Legislative Library of Puerto Rico (posthumous)
- Maine State Law and Legislative Reference Library

National Association of Legislative Fiscal Offices (NALFO)

- Joel Michael and Steve Hinze, Minnesota House Research Department
- Stephanie Morrison and Sam Schaefer, Montana Legislative Fiscal Division

National Association of Legislative Information Technology (NALIT)

- Legal Services 2.0 Project Team, California Office of Legislative Counsel
- Virginia Division of Legislative Automated Systems

National Legislative Program Evaluation Society (NLPES)

- Gary VanLandingham, Florida
- Colorado Office of the State Auditor

National Legislative Security and Services Association (NLSSA)

- Lisa Macaulay, associate sergeant at arms, Wisconsin Senate
- Rick DeLeon, sergeant at arms, Texas Senate

NCSL Standing Committees

- Rachel S. Gudel, director, Legislative Education Study Committee, New Mexico
- Julie Pelegrin, deputy director, Legislative Legal Services, Colorado

Research, Editorial, Legal and Committee Staff (RELACS)

- Sharon L. Eubanks, director, Legislative Legal Services, Colorado
- Lilli Hausenfluck, chief editor, Division of Legislative Services, Virginia

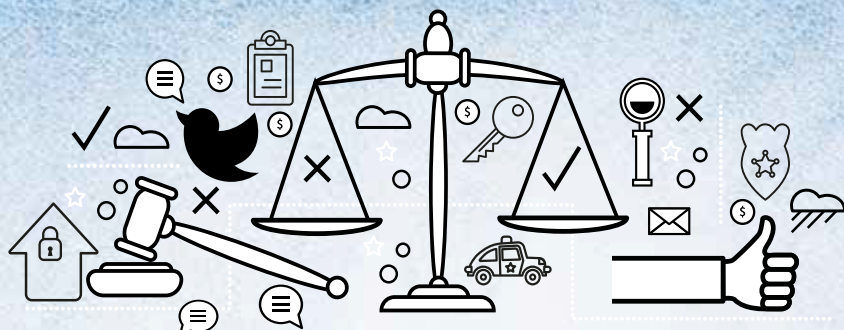


Juan Carlos Ortega Cruz, librarian at the Legislative Library of Puerto Rico, died late last year. A former journalist and federal employee, he embodied the spirit of librarianship and hometown pride. His contributions to LRL and NCSL were recognized in this year's awards.



LINCS, NALIT Salute Massachusetts General Court, NCSL's 2018 Online Democracy Award Winner

Congratulations to the Massachusetts General Court. Its website was honored for staying current with an impressive design and a welcoming look and feel. The site's graphically pleasing budget tracking feature makes the budget process transparent and easy to understand. The selection committee also praised how the site highlights the most popular laws and bills and generates a list of similar bills. Other noteworthy attributes include the website's accessibility to those with disabilities and the "My Legislature" feature, which encourages citizens to explore the site and follow specific bills, hearings and legislators.



YES, NO, MAYBE SO

ETHICS IN THE WORLD OF LEGISLATURES



Do legislators have a right to privacy?

Most people don't immediately associate privacy rights with government ethics.

In the hundreds of statutes, academic articles, news stories and recordings of committee testimony I've reviewed, only once or maybe twice has privacy been mentioned, and even then only in passing. Common ethics topics include conflict of interest prohibitions, lobbyist regulations and financial disclosure rules, but not privacy.

It's not surprising, however, that a public official might think about privacy rights when required by ethics disclosure laws to make considerable amounts of personal financial information public. Ethics laws in some states require legislators to release information about debts owed, property

owned, gifts received or given, client lists and similar details on their family.

My parents taught me growing up that it was uncouth to discuss financial matters outside the family. They are not alone in thinking personal money matters should remain private. Broad support for banking privacy laws and the public outcry over financial data breaches, for example, seem to support the idea. Most people do not want their financial information freely available for any stranger to find.

Officials have challenged various financial disclosure requirements on privacy grounds for decades. Judges have considered claims that the laws unconstitutionally intrude into private affairs more than is justified by any public purpose. Critics have also argued that mandatory disclo-

sure rules improperly restrict the right to seek or hold office when they exclude violators from the ballot. Some have further asserted that intrusive ethics laws discourage qualified candidates from running or serving in the legislature.

While courts have largely acknowledged that a right to privacy extends to legislators, that right is generally weighed against the state's interest in a transparent government. Rules that exclude candidates from the ballot for withholding information have been found constitutional when they're sufficiently tailored to achieve a legitimate state interest without unduly limiting the ability of candidates to run for office or for voters to be represented.

Although disclosure requirements generally have been upheld, overly broad statutes have been invalidated in a few cases. An ethics rule might be unconstitutional if the interest in privacy outweighs the government's interest in exposing or minimizing possible conflicts of interest, such as when particularly intrusive requirements apply to family members, or if candidate-doctors are compelled to disclose sensitive patient information.

Some state constitutions have more robust privacy protections than others. Disclosure requirements may be permissible in one state but unconstitutional in another. However, no state can violate the privacy guarantees of the U.S. Constitution, which sets a sort of minimum threshold for how far these rules can go. As a result, financial disclosure laws must not violate either the federal Constitution or the constitution of the state in which the law exists.

Legislators have a right to privacy, but the constitutional protections only define the far boundaries of what is lawful. Within that wide range of what can be done, states take different approaches based on the demands of constituents and the cultures of individual states.

—Nicholas Birdsong

Nicholas Birdsong is a policy associate with NCSL's Center for Ethics in Government. Is an ethical dilemma keeping you up at night? Let Nicholas know. Email him at nicholas.birdsong@ncsl.org.

Anthony Rendon

Speaker, California Assembly

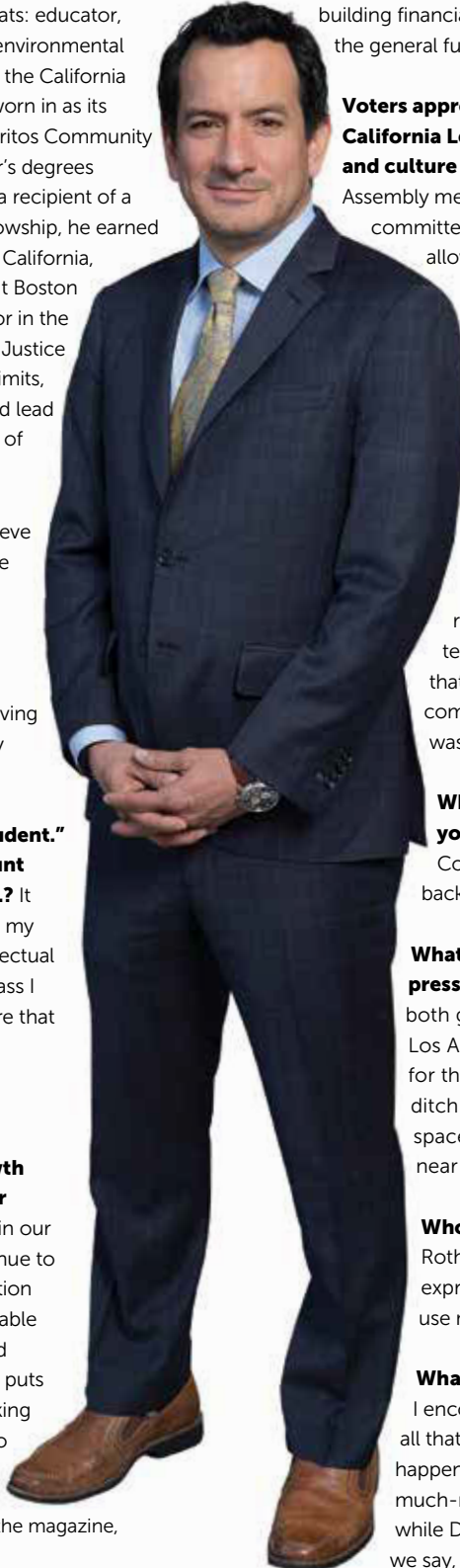
Anthony Rendon has worn many hats: educator, nonprofit executive director and environmental activist, to name a few. Elected to the California Assembly in 2012, Rendon was sworn in as its 70th speaker in March 2016. He attended Cerritos Community College before earning bachelor's and master's degrees from California State University, Fullerton. As a recipient of a National Endowment for the Humanities Fellowship, he earned his Ph.D. in philosophy from the University of California, Riverside and completed postdoctoral work at Boston University. Rendon served as adjunct professor in the Department of Political Science and Criminal Justice at Cal State Fullerton. Under expanded term limits, Rendon, who won't term out until 2024, could lead the Assembly for eight years with the support of his party.

What is your leadership philosophy? I believe in empowering my colleagues to pursue issue areas they are passionate about. That often means taking a "hands-off" approach toward guiding policy in the house. Instead, I try to provide committee chairs the opportunity to drive policy proposals as they see most fit. Giving power to my colleagues gave us a historically successful session last year.

You've described yourself as a "terrible student." What turned it around? How do you account for your success, including earning a Ph.D.? It was all about finding a passion. I never found my high school classes very interesting. My intellectual curiosity wasn't sparked until a philosophy class I took in community college. That spark lit a fire that kept me going all the way to a Ph.D.

California is now the world's fifth largest economy. What are the main factors that contributed to the state's economic growth and what can other states learn from your experience? California has shown investing in our people is key to economic growth. We continue to support our world-class public higher education system, successfully implemented the Affordable Care Act to cut our uninsured rate in half, and created a state earned income tax credit that puts more money back in the pockets of the working poor. We've managed to do all that while also

Jane Carroll Andrade, a contributing editor to the magazine, conducted this interview.



building financial reserves of upwards of \$17 billion, larger than the general funds of 34 states.

Voters approved increasing the term limits in the California Legislature. How is that impacting the work and culture of the Assembly? I managed the campaign for an Assembly member who served as chair of three different policy committees in his six years in the Assembly, the maximum allowed under old term limits. There's no way you can really master complex policy areas in such a short amount of time. Changing term limits to allow legislators to serve 12 years in one house has made a great difference. Now, we have the time to get into the fine details of policy and really gain expertise in them.

What was the worst job you ever held and what did it teach you? After finishing high school, I started working at a distribution center for a grocery store chain. I was assigned to the refrigeration unit, going in and out of freezing temperatures stocking frozen food. Let's just say that experience quickly spurred me to enroll in community college classes in hopes of a career that wasn't *that*.

What would surprise people most to learn about you? My first job was in the arts at the Museum of Contemporary Art in Los Angeles. I fully intend to go back to the arts after my time in politics.

What do you do for fun, to de-stress from the pressures of the Legislature? I like to read and run—both get my mind off of the job. Running along the Los Angeles River, in particular, provides inspiration for the work we're doing to restore the concrete ditch you saw in "Grease" to an actual river with open space and recreational opportunities for those living near it.

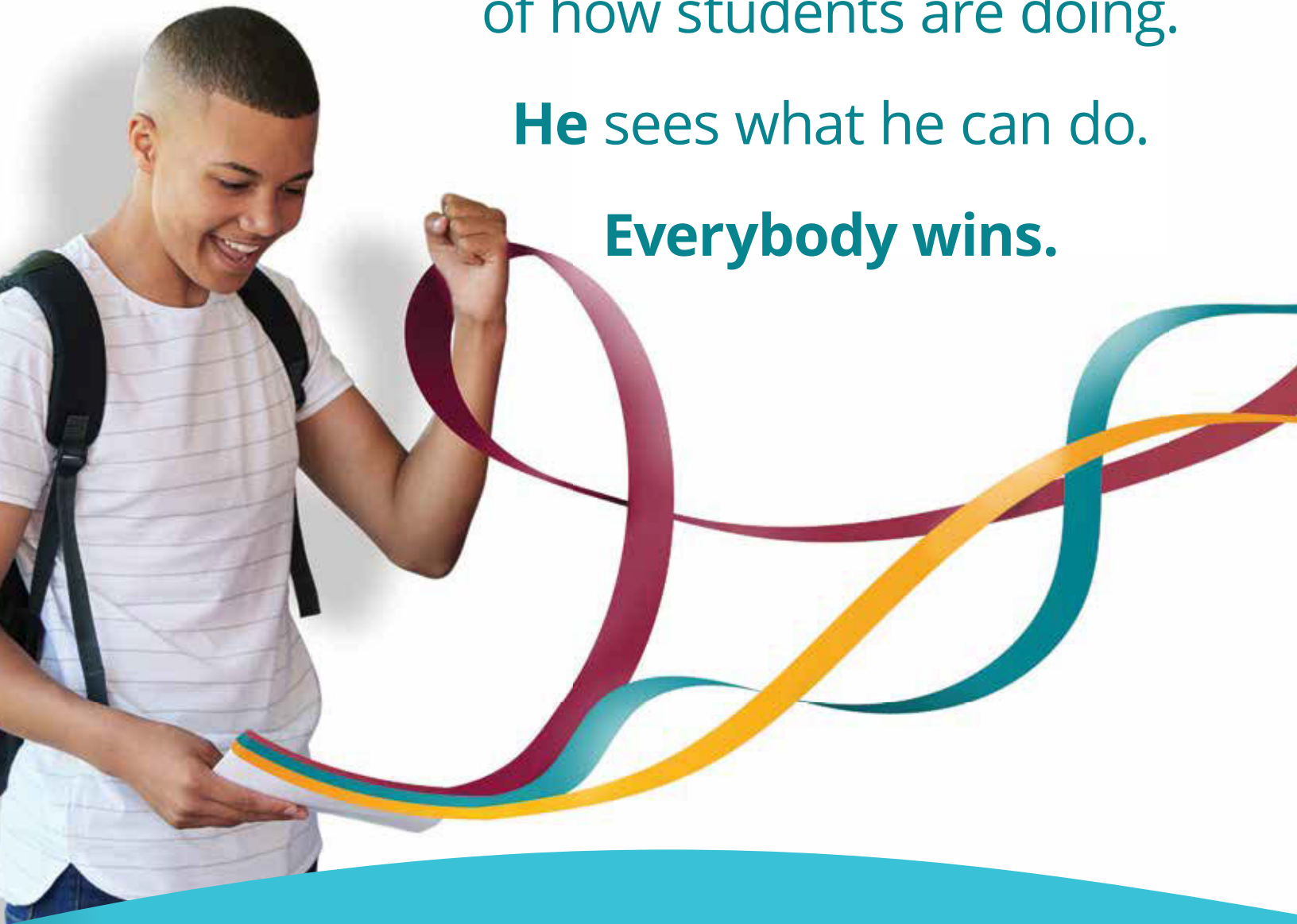
Who is your biggest role model? The painter Mark Rothko. Beyond his remarkable life story, Rothko expressed ideas, not objects, in his paintings. We could use more discussions of ideas in politics, too.

What final words would you like to share? I encourage legislators around the country to look at all that we're doing here in California versus what's not happening in Washington, D.C. For instance, we passed a much-needed \$52 billion infrastructure package last year, while D.C. continues to talk about doing something. As we say, the best resistance is governing well.

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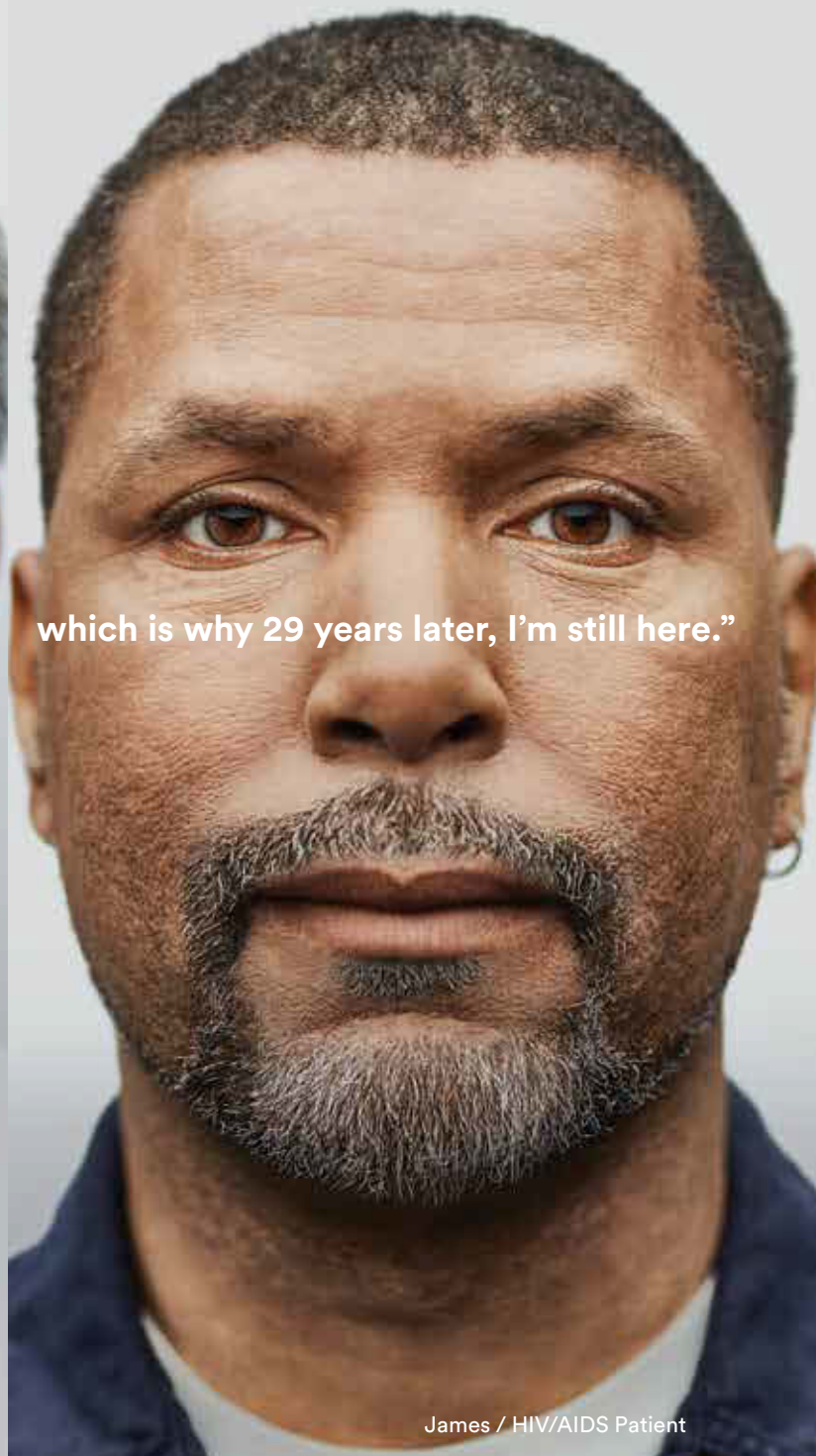


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which is why 29 years later, I'm still here."

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