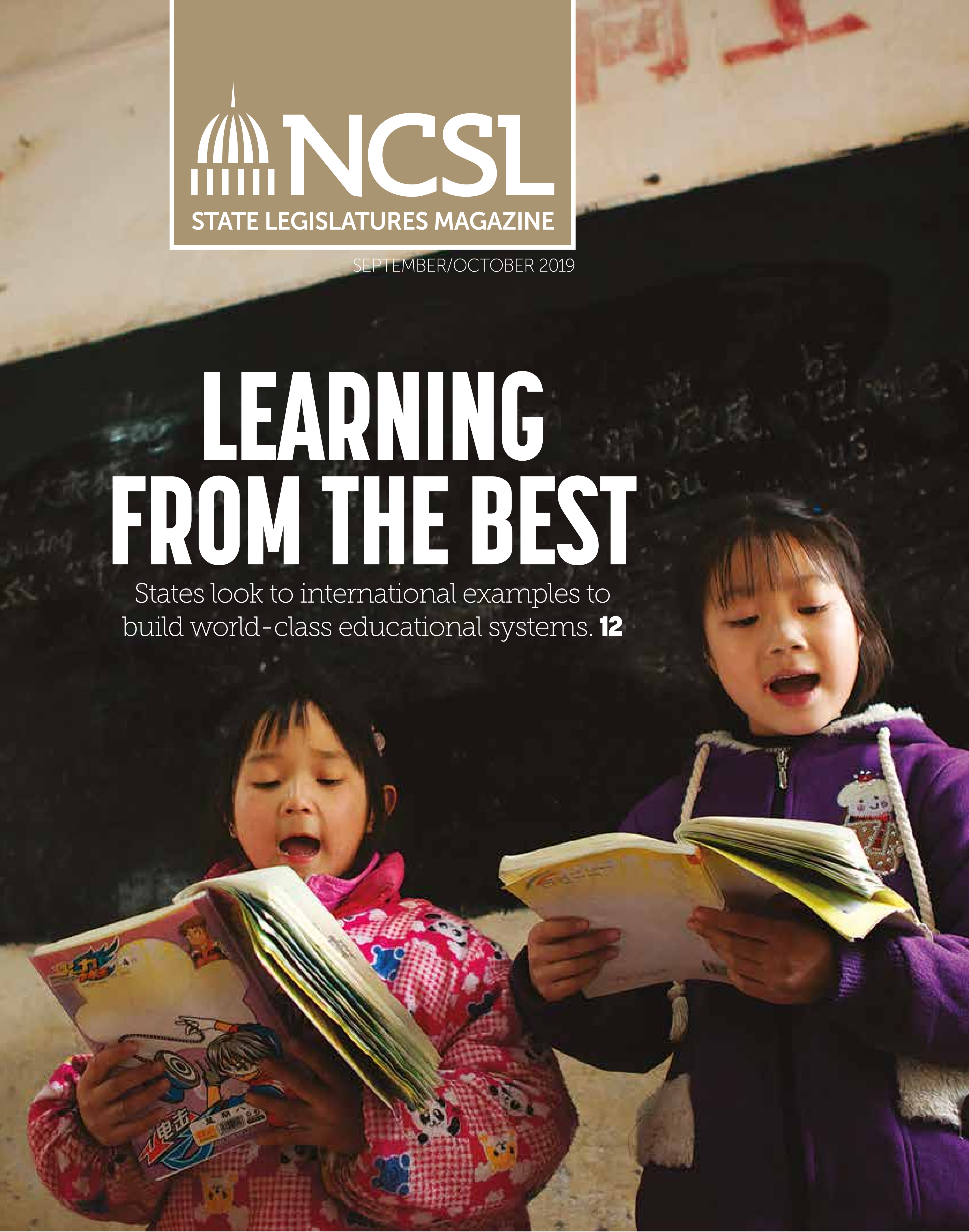
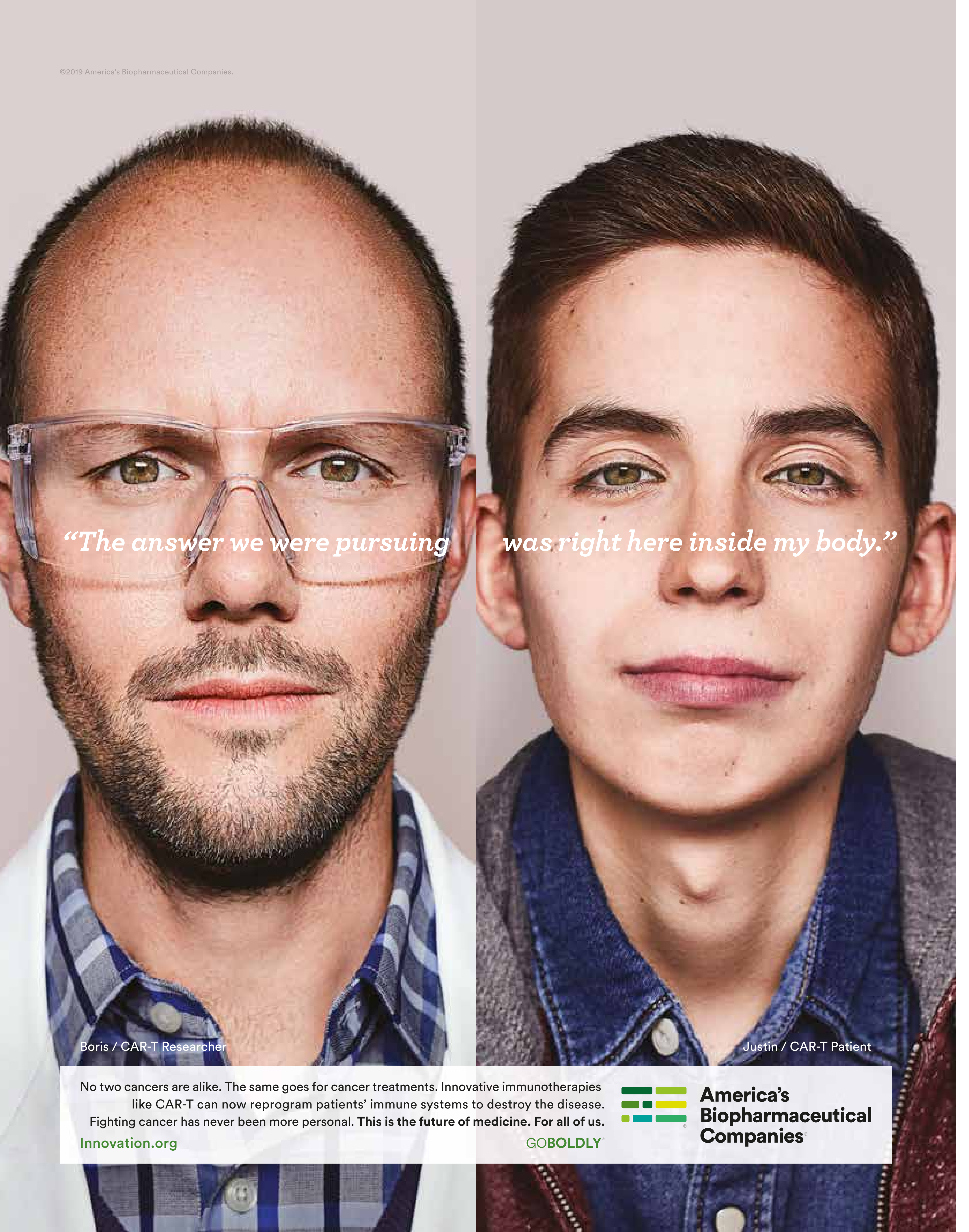
NCSL
STATE LEGISLATURES MAGAZINE
SEPTEMBER/OCTOBER 2019



LEARNING FROM THE BEST

States look to international examples to build world-class educational systems. **12**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NCSL
STATE LEGISLATURES MAGAZINE

September/October 2019 Volume 45 | No. 5

FEATURES

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DEPARTMENTS

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Meet New Officers Robin Vos and Martha Wigton

PRESIDENT

Robin Vos

Wisconsin Speaker Robin Vos was inspired by President Ronald Reagan and former Wisconsin Governor Tommy Thompson to get involved in government while he was in high school and college. After serving 10 years on the Racine County Board, he was elected to the Wisconsin Assembly in 2004. He is now in his seventh term and has served as speaker since 2013.

"I first became active in NCSL because I thought more Republicans should be part of it," Vos says. "As I became more involved, I realized NCSL is more than just an organization providing resources for state legislators. It provides opportunities to network and make friendships that transcend political party and geographic regions."

Vos says NCSL's greatest strength is the essential role it plays in Washington, D.C., "by being a voice for states at the federal level." He believes NCSL has an even greater role to play given society's current political polarization.


Robin Vos and Martha Wigton

"NCSL has done an excellent job bringing political parties together at a time when some legislators would rather score political points than work across the aisle," he says. His goal as president is to bolster NCSL's bipartisan reputation to ensure that legislatures remain strong, coequal branches of state government where people work together to solve tough policy problems.

"NCSL provides a neutral zone," he says, "where Democrats and Republicans can debate the issues and bridge the political divides to benefit our legislatures, our respective states and ultimately our country as a whole."

Vos hopes the organization will remain an important bipartisan influence in state legislatures during his presidency. "I have always thought that people of good faith can come together and find solutions on an issue without compromising their ideals," he says.

Vos has a national reputation as an effective legislator. His staff describe him as determined, hardworking, intelligent, strategic and thoughtful.

A year from now, Vos says, NCSL will "make an even greater impact on legislatures across our country" by listening to its members, making enhancements and delivering essential services.

"I'm looking forward to a wonderful year ahead."

—Stacy Householder and Julie Lays

STAFF CHAIR

Martha Wigton

Originally a junior high school English teacher, Martha Wigton directs the Georgia House Budget and Research Office. "It's not my chosen career, but it's everything I've ever wished for in a career," she says after nearly 30 years working for the legislature. A

FROM THE EXECUTIVE DIRECTOR

NCSL Is a Legislator's Greatest Ally

There's a saying, "If you've seen one legislature, you've seen one legislature." They're all very much alike, and yet they're all very much distinct. Just think: Each state has different processes, bills, schedules and more. But no matter where you go, people in these institutions are all getting together and tangling to solve problems.

Over the past 30 years I've spent at NCSL—from my first days as an eager intern to my recent appointment as executive director—I've fallen in love with the work this organization does to strengthen our nation's legislatures.

I believe in the work we do, the talented group of people who work here and the importance of our culture of collaboration and innovation over partisanship and divide.

Washington continues to be incapable of coming together to solve issues, but, as nearly any state lawmaker will tell you, the vast majority of legislative votes are bipartisan. And I can't wait to build on our mission to be your greatest ally in working together to strengthen the legislative branch of state government.

One great place to start: State Legislatures magazine. This issue has a little something for everyone—from our cover story on world-class education systems to school finance conundrums and tax incentive debates. These topics and the bipartisan policymaking that surrounds them are vital to NCSL and our ability to, you guessed it, come together, tangle and solve problems that matter to us all. Enjoy.

Tim

"I'M SUCH A FAN OF NCSL'S ABILITY TO BOLSTER STAFF."

Martha Wigton, NCSL staff chair

volunteer summer job stuffing envelopes for a legislator running for lieutenant governor evolved into a full-time job after that campaign ended successfully, taking Wigton from the classroom to the Capitol.

Over the years, she's served in several roles in both chambers but found her calling in the House when incoming Speaker Terry Coleman asked her to join his staff. Coleman chaired the Appropriations Committee for 12 of his 34 years in the House and had mastered the appropriations process.

"He knew where every dollar was. … It was a great opportunity to learn at the foot of the master." She learned well: The House honored her in 2017 with a resolution recognizing "her unyielding service to the Georgia General Assembly along with her boundless leadership, budgeting and advisory skills."

Her work is not without its challenges, however. Wigton is frustrated by the "sheer lack of understanding of what we [staff] do and how well we do it." She's also troubled by the widespread "myth of government being wasteful," because "we're so good at doing more with less."

As NCSL's staff chair she hopes to change that narrative. She's excited about the possibilities of empowering staffers across the country through NCSL. "I'm such a fan of NCSL's ability to bolster staff through genuinely exceptional training opportunities."

Staff are the foot soldiers fighting to regain the public's confidence in government. "We can only do that," she says, "if we're trained well and have expertise in our area, and NCSL gives us that."

—Holly South

Stacy Householder is NCSL's director of leadership, training and international programs; Julie Lays is the editor of State Legislatures magazine; Holly South is a policy specialist.

Trends

William H. Farquhar Middle School in Olney, Md., is LEED Silver-certified.

EDUCATION

K-12 Energy Efficiency Moves to the Head of the Class

It takes energy to run a school. Literally. America's K-12 education sector spends more than $6 billion a year on energy costs, according to the U.S. Department of Energy. That's more than annual expenditures on all learning materials, including textbooks and computer equipment.

At least six states have now enacted laws requiring the use of energy efficiency measures in public schools. Several laws require that new construction or major renovation projects meet updated efficiency and sustainability standards, or adhere to a rating system such as LEED, developed by the U.S. Green Building Council. Maryland's 2017 School Facilities Act, for example, directed the state's Green Building Council to create guidelines to ensure that new K-12 facilities would be LEED Silver certified.

A couple of states have gone further. Hawaii lawmakers passed a 2016 bill requiring public schools to reach net-zero energy status by 2035, combining high efficiency with on-site renewable energy generation. This year, the Virginia General Assembly enacted similar legislation, requiring new and renovated school buildings to be energy-positive, generating more electricity than they consume.

Other states have instead used incentives to encourage the use of energy-efficient or renewable technologies in school buildings. As part of a 2019 omnibus energy bill, Maine lawmakers created power purchase agreements for solar energy in newly constructed schools. In New York, a 2016 bill formed a collaboration among the state's power authorities, utilities and school administrators to increase energy-efficient projects throughout the public K-12 system.

The push toward energy efficiency can support other policy goals as well. California's Clean Energy Job Creation Fund, established in 2018, not only supports clean-energy and energy-efficient projects in public schools, but also creates local jobs. Hawaiian lawmakers hope that 2018 legislation authorizing spending for efficiency upgrades will keep classrooms cool enough to foster better learning and improved academic success.

While the policies differ by state, the benefits of energy efficiency improvements in schools are universal. The Energy Department estimates that reducing energy consumption by just 20% can yield more than $3 billion in savings—money that can instead be spent educating students. To learn more, check out the agency's Better Buildings initiative, which offers resources for K-12 schools.

—Kate Bell, intern in NCSL's Energy Program

HEALTH CARE

The Best Medical Billing Surprise Is No Surprise

After falling off a ladder, Jerry was taken by ambulance to a hospital within his insurance network. Over the course of 10 days he had surgery and received care from six different doctors, along with X-rays and an MRI.

After returning home, he was surprised to receive bills for thousands of dollars on top of his $5,000 deductible. No one told him that even though the hospital was in the network, the doctors and the lab weren't. The billing company told him to appeal to his insurance carrier to pay the bill. If the company refused, however, he would be responsible for the charges.

Jerry's experience is not unusual. Surprise billing, known in the industry as balance billing, affects all demographics. In fact, 18% of all emergency visits and 16% of in-network hospital stays had at least one out-of-network charge, according to a Kaiser Family Foundation survey. In addition, 4 in 10 respondents said they had received an unexpected medical bill in the last 12 months; 1 in 10 reported receiving a surprise bill from an out-of-network provider. And, according to another report in the journal Health Affairs, 1 in 5 patients received care at an emergency department outside their provider's network.

No One Is Immune

You can incur charges even before you get to the hospital. Transportation provided by land or air ambulances can lead to enormous out-of-network bills. A 2014 study found that 26% of ambulance trips were considered outside the patient's private insurance network.

Health insurers limit their networks to help control costs. But if there are not enough in-network doctors and services, patients are likely to need out-of-network health care, especially in an emergency.

The National Association of Insurance Commissioners, which oversees carriers, created a model act for state lawmakers to

iSTOCK

use as a road map for protecting patients against balance billing. To date, Colorado, Georgia, Hawaii and Maryland have adopted the NAIC model act.

Currently, nine states have comprehensive consumer protection laws against surprise billing, while another 16 have partial protections in place, according to researchers at the Georgetown University Center for Health Insurance Reform. The laws vary by state but generally:

- Prohibit balance billing.
- Extend consumer protections to include both emergency department and in-network hospitals.
- Apply to all types of insurance.
- Prohibit consumers from being held responsible for any extra charges.
- Set reimbursement standards on how much insurers should pay providers.
- Establish a process for resolving disputes between providers and insurers.

A Federalism Factor

States' rates of surprise billing vary as well. According to the Kaiser foundation, emergency care for people with large employer coverage resulted in at least one out-of-network charge 38% of the time in Texas, but only 4% of the time in Nebraska, Alabama and Mississippi.

Variations in rates and laws are why some call for federal action. State laws also do not apply to the roughly 60% of insured Americans enrolled in "self-insured" health plans, which are regulated by the federal Employee Retirement Income Security Act.

Congress is considering several bills. Some support an independent dispute resolution system that would allow doctors and insurers to negotiate out-of-network payment disputes. Others want to use a benchmarking approach that would limit what insurers can charge patients and set reimbursement rates. The Trump administration has pledged to support surprise billing legislation. Now it's up to Congress to decide which way to go.

—Colleen Becker, policy specialist in NCSL's Health Program

TELECOMMUNICATIONS

States, Industry Take on Robocalls

Your phone rings. You don't recognize the number but you pick up anyway. Sure enough, you hear a recorded message instead of a live person.

Hello, robocall.

The average person gets about 15 such calls a month. Nearly 5 billion of these so-called unsolicited commercial communications were made in July 2019 alone, the YouMail Robocall Index estimates.

In August, AT&T, Sprint, Verizon and nine other telecommunications companies joined the attorneys general of all 50 states plus the District of Columbia to announce a new pact to eliminate illegal robocalls.

Their agreement, which is set out in a list of anti-robocall principles, includes call-blocking technology that will be merged into the phone networks' existing infrastructure, at no charge to customers. The technology, known in the industry by the acronym SHAKEN/STIR, will allow a phone network receiving a call to verify that the phone number is legitimate before it reaches the customer.

Arkansas, Kentucky, Nebraska and North Dakota enacted legislation to restrict caller ID spoofing, while Tennessee and Virginia increased penalties for using false caller ID information. New Hampshire amended its prohibition on automated telephone dialing systems that use call blocking. Nationwide, at least 140 bills and resolutions related to robocalls were pending as of June 30.

—Heather Morton

ELECTIONS

2019 Preview

The national news media are fixated on next year's presidential and congressional races, but in less than two months voters in five states will weigh in on legislative and gubernatorial contests, providing an early reading of the nation's political mood.

Four states—Louisiana, Mississippi, New Jersey and Virginia—will have legislative races Nov. 5, with Kentucky, Louisiana and Mississippi also holding gubernatorial elections. Of the nation's 7,383 state legislative seats, 538 will be up for election.

If there's drama on election night, it's likely to be in Virginia. Republicans control both chambers of the General Assembly, but by tight margins—just 21-19 in the Senate and 51-49 in the House. If Democrats flip both chambers, Virginia would become the 14th state government under Democratic control. Republicans currently control 22 states.

Polling data in the three states with gubernatorial elections suggests the races will be competitive. Louisiana will hold a first round of voting Oct. 12 and a runoff Nov. 16, if necessary. In Kentucky, incumbent Governor Matt Bevin (R) faces a stiff test from Attorney General Andy Beshear (D). And Mississippi Lieutenant Governor Tate Reeves (R) squares off against Attorney General Jim Hood (D).

Beyond choosing candidates, voters will decide on 23 ballot measures this fall. Louisianans will vote on four measures during their October primary. The rest go to voters on Nov. 5. Nineteen of the measures would amend state constitutions, four propose statutory changes. Two of the measures—both from Washington state—are citizen initiatives. The remaining 21 were referred by legislatures.

Texas, with 10, has the most—and the most heartwarming. Lawmakers are letting voters decide whether to let county law enforcement dogs retire with their handlers when their service is over.

—John Mahoney and Theresa Nelson

Do You Take Your Energy 'Clean' or 'Renewable'?

The debate over how to reduce carbon emissions across the energy sector has increasingly turned on two words: "renewable" versus "clean."

After all, while most renewables are clean, clean isn't necessarily renewable.

It's a small, technical distinction that will have substantial, real-world effects on how the electric grid transforms in the coming decade as states consider upping the amount of electricity that must come from these resources. This year, lawmakers have been particularly active, with close to a dozen states debating and setting targets at or near 100%.

Hawaii—a state that is highly dependent on imported fossil fuels for electric generation—was the first to push the envelope to 100%. The Legislature passed a law in 2015 requiring 100% of its electricity to come from renewable resources by 2045. This includes wind, solar, hydroelectric, geothermal and biomass. Maine and Puerto Rico recently passed 100% renewable power targets for 2050, while the District of Columbia set the same requirement for 2032.

Discussions elsewhere, however, appear to be moving increasingly toward "clean" energy standards. California, New Mexico and Washington all passed bills in the past 12 months that require 100% carbon-free electricity by 2045. New York requires the same by 2040. Nevada established a voluntary 100% carbon-free goal for 2050. And Illinois, Minnesota, New Jersey, North Carolina and Wisconsin debated similar requirements.

Clean energy standards focus primarily on carbon emissions. They tend to aim for "carbon-neutral" or "carbon-free" electric systems. Washington's recently enacted law, for example, sets a 2030 carbon-neutrality target, which would allow utilities to offset remaining carbon emissions by purchasing renewable energy credits or paying a fee through 2045, at which point all electricity would have to come from carbon-free resources.

These policies will determine which resources utilities choose to invest in.

Not all carbon-free resources are defined as renewable under state laws. Hydroelectricity provides a little more than 20% of the nation's carbon-free power, but its status as a qualifying renewable resource varies by state. Meanwhile, nuclear power, which provides around 55% of the carbon-free power in the U.S., does not qualify as renewable. Nuclear and hydro, however, do qualify under recently passed clean energy standards in California, Nevada, New Mexico, New York and Washington.

On the flip side, not all renewables are carbon-free. Most states with renewable portfolio standards include biomass as a renewable, and some also include landfill gas. Both of these produce carbon and other emissions, fueling an ongoing debate.

To confuse matters further, there's the question of energy storage and advanced battery systems. A battery is itself carbon-free, but if it's charged by electricity from a coal- or natural gas-fired plant, that electricity has a carbon footprint. And, depending on the technology, its materials may not necessarily be renewable.

These distinctions are important but not necessarily pressing. There are a lot of legislative sessions between now and 2045, and it seems inevitable that changes will be made as the grid transforms and new technologies arise.

It's worth noting that a clean energy standard does not weaken renewable standards. The conversation has simply turned increasingly carbon-centric. Even in state clean energy standards, the renewables goal is a central pillar. California's bill requires 60% renewable power by 2030. New Mexico's is up to 80% by 2040. And Nevada and New York require 50% and 70%, respectively, by 2030.

So, while the conversation over clean versus renewable is ongoing, it is by no means exclusive.

—Daniel Shea, policy specialist in NCSL's Energy Program

HIGHLIGHTS: NASHVILLE SUMMIT

NCSL's 45th annual Legislative Summit in Nashville had it all, from engaging, full-house policy sessions to country music legend Dolly Parton talking about her Imagination Library project, which distributes books to kids. Oh, and she sang. You can find recorded sessions and other resources at ncsl.org. And plan now to join us next year in Indianapolis, Aug. 10-13.

NEW OFFICERS: top left, Wisconsin Assembly Speaker Robin Vos became NCSL's 47th president; top right, outgoing president Illinois Senator Toi Hutchinson greets Vos, who will serve until next year's Summit in Indianapolis; above, outgoing Staff Chair Jon Heining, general counsel for the Texas Legislative Council, passes the gavel to Martha Wigton, director of Georgia's House Budget and Research Office.

ON BEING MOORE, left: Wes Moore, a combat veteran, Rhodes Scholar, White House Fellow, business leader and author of "The Other Wes Moore: One Name, Two Fates," spoke about transformational leadership.

Summit 2019
By the Numbers

6,567
Attendees

1,238
Legislators

1,122
Staff

220
Exhibitors

120
Sessions

23
Hotels used

SUMMIT EXHIBIT HALL AND SESSIONS, clockwise from above: Every booth in the Exhibit Hall was filled, and many exhibits, like this one on virtual reality, drew enthusiastic crowds; country music legend Dolly Parton spoke about her Imagination Library project, which has distributed nearly 125 million books to kids 5 and younger; presidential historian John Meacham said that, even in turbulent times, “History has the capacity to bring us together”; U.S. Senator Lamar Alexander of Tennessee urged lawmakers to simplify the student loan application process; the audience at one of this year’s many standing-room-only policy sessions.

2019 Legislative Staff Achievement Awards

NCSL recognizes the following legislative staff, who have demonstrated excellence in supporting the work of their legislatures and strengthening the legislative institution. Congratulations to this year's recipients!

American Society of Legislative Clerks and Secretaries (ASLCS)

- Brad Hendrickson, secretary, Washington Senate
- Erin Gillitzer, records and journal clerk, and Ted Blazel, sergeant-at-arms, Wisconsin Senate

Leadership Staff Professional Association (LSPA)

- Aurora Hauke, chief of staff and legislative budget and audit committee aide, Alaska Legislature
- Christie Getto Young, chief of staff to Senator Sal DiDomenico, Massachusetts Senate

Legislative Education Staff Network (LESN)

- Ben Leishman, finance manager for public and higher education, Office of the Fiscal Analyst, Utah Legislature

Legislative Information and Communications Staff Association (LINCS)

- Erica Shorkey, deputy communications director, Senate Democratic Caucus, Iowa General Assembly
- Tim Bommel, photojournalist, Missouri House of Representatives

Legislative Research Librarians Staff Association (LRL)

- Catherine Wusterhausen, assistant director, Legislative Reference Library, Texas Legislature

National Association of Legislative Fiscal Offices (NALFO)

- Patrick Goldsmith, director, House Fiscal Division, Louisiana Legislature

National Association of Legislative Information Technology (NALIT)

- House Technical Support Services, Hawaii Legislature
- Mendora Servin, information technology manager, Legislative Data Center, California Legislature (retired)

National Legislative Program Evaluation Society (NLPES)

- Outstanding Achievement Award: Ken Levine, Sunset Commission, Texas Legislature (retired)
- Excellence in Evaluation Award: Louisiana Legislative Auditor Office

National Legislative Services and Security Association (NLSSA)

- Tim Hay, sergeant-at-arms, Florida Senate
- David Sauceda, sergeant-at-arms, Texas House of Representatives

Research, Editorial, Legal and Committee Staff Association (RELACS)

- Mark Cutrona, director, Division of Research, Delaware General Assembly
- Revised Statutes Title 12 Recodification Team, Office of Legislative Legal Services, Colorado General Assembly

Standing Committees

- Jonathan Ball, director, Office of the Fiscal Analyst, Utah Legislature
- Lonnie Edgar, principal analyst, Mississippi Joint Legislative PEER Committee

On Record

Conversations with national leaders

DOLLY PARTON'S IMAGINATION LIBRARY

'The Book Lady'

Dolly Parton opened the 2019 Legislative Summit in Nashville, Tenn., with an onstage discussion of her Imagination Library project, which distributes books to children each month until they turn 5.

Parton talked about books, her dad, women in the workplace and her seemingly boundless energy in this interview with State Legislatures magazine.

What's the most surprising thing that's happened to you as a result of the Imagination Library project?

Well, how big it has grown and how fast, and how much people have really taken to it. ... Now it's like up to 125 million [kids]. So that's a wonderful thing.

Your dad was the inspiration for this. Can you tell us a little about him?

Well, my dad, like so many country people, the hard-working people, especially back in the rural areas, my dad never had a chance to go to school because he had to help make a living for the family. And so, Daddy couldn't read and write. That always bothered him.

So when I got ready to start the program ... I thought I'm going to do this for my dad and I'm going to bring him along with me to help me with that. So, he got to live long enough to see it really take off and start doing good, and so he loved it when the kids called me the Book Lady. He was prouder of that than saying that my daughter's a star: 'My daughter's the Book Lady.'

NCSL

Dolly Parton onstage at the 2019 Legislative Summit in Nashville.

I saw "9 to 5" in 1980 and think of you being in the #MeToo movement before it was cool. What do you think about women's role in the workplace now?

Well, you know, I never was hindered by the fact of being a woman. I just always had a lot of confidence in myself and I grew up with my mom and five sisters, my aunts and my grandmothers—very strong women that really kept it all going. And it never crossed my mind that I couldn't do anything that anybody else could do.

My first RCA album was called "Just Because I'm a Woman," and I wrote that song back in 1966 and it was: My mistakes are no worse than yours just because I'm a woman, and it talks about like how men want to ... get out and they run around and they do whatever, and when they want to get married they want an angel. Well, it's not like that.

All these songs that I wrote that were empowering women—I'm glad that I did that and it's still holding up today.

I've read that you read about 50 books a year. Where do you find the time?

I love books and I'm not a big television person. I read while other people watch TV. You always find time to do the things you love. But I read myself to sleep at night. If I wake up in the middle of the night and can't get back to sleep, I read myself back to sleep. When I wake up in the morning if I'm really into a book, I finish that before I get up.

If you could invite three authors, living or dead, to dinner, who would they be?

Well, that's an interesting question because I love all the great writers. I love the classics. ... Lee Smith is my favorite Southern writer and we got to be friends, so I'd definitely invite her because we would have good things to talk about. And if I was going back to the old ones ... probably Charles Dickens. I love all of his things, but I love "A Christmas Carol," and I love it so much that I have written a musical called "A Smoky Mountain Christmas Carol," and Scrooge is a man in the Appalachians that runs all the coal mines. It's about all the poor Appalachian people. ... It's going to be touring probably this Christmas.

James Patterson writes a lot of gore and mystery, but I love his books. I'd like to ask him how he and Bill Clinton got together to write a book together—like to see if he might be interested in writing one with me.

You've written several books. Do you think of yourself as an author, country music star or legend?

Well, I'm an entertainer and, of course, I love my songwriting more than anything else. But I'm just kind of the whole package. I'm not great at any of it, but I'm good enough ... but I'm great enough at all of it to make it all work.

This interview was conducted by Ed Smith, NCSL's director of content, and has been edited for length. The full interview is available at www.ncsl.org/magazine.

EDUCATION

LEARNING FROM THE BEST

States look to international examples to build world-class educational systems.

BY MICHELLE EXSTROM

Maryland felt the urgency. With more than 60% of its graduating high school seniors unable to read at a 10th grade level or pass a basic algebra test, the danger of doing nothing was undeniable.

Despite the state's generous funding for education, student performance on international tests was mediocre, with a significant, persistent achievement gap between white students and those of color. Struggling students in poor schools had little additional support, and teachers were paid well below their peers in other professions.

So the legislature and governor convened a work group, the Commission on Innovation and Excellence in Education. Charged with creating a world-class education system, the commission's chairman, William Kirwan, a former University System of Maryland chancellor, described the group's work as "potentially the most important thing I have ever been involved in."

The bipartisan commission of 25 policymakers and stakeholders wanted to determine where its education system fell short and what needed to change. Commission members engaged state and local policymakers, teachers, and business and community leaders in the process and held public hearings and community meetings across the state, getting input from thousands of residents.

"Every state in the union should go through this process," says Maryland Delegate Maggie McIntosh (D), chair of the House Appropriations Committee and a commission member. "Until you get all of the policymakers and stakeholders together and truly study the gaps, you won't realize the inefficiencies and ineffectiveness of your current system and how you can fix it."

The commission partnered with the National Center on Education and the Economy, which painstakingly compared the state's policies, practices and funding with those of the world's highest performing countries and states, including Finland, Ontario, Shanghai, Singapore, Massachusetts, New Hampshire and New Jersey. Finally, the commission considered the best practices from around the world identified by NCSL's education study group in its report, "No Time to Lose."

Students gather on a university campus in Leipzig, Germany. The country ranked 13th in the world in science, reading and math, according to the 2015 Program for International Student Assessment—or PISA. The United States ranked 31st. A bipartisan NCSL study group found that top-performing countries, despite varying economic, political and cultural characteristics, share common elements.

A National Concern

Maryland is not alone. Most U.S. state education systems continue to fall dangerously behind their global counterparts in a number of international comparisons and on our own measures of progress.

U.S. 15-year-olds ranked 30th among teens from 70 countries on the 2015 PISA test, the most recent cross-national report on educational progress. Specifically, U.S. teens ranked 40th in mathematics, 24th in reading and 25th in science, trailing behind their counterparts in China, Estonia, Russia, Poland and Vietnam, among others. The PISA—short for Program for International Student Assessment—was created by the Paris-based Organisation for Economic Co-operation and Development and tests 15-year-olds' abilities in those three subjects every three years.

In addition to reading, math and science, students were tested in collaborative problem solving in 2012 and 2015 and global competence in 2018. (It's interesting to note that U.S. students performed much better in collaborative problem solving than would be expected based on their other scores.) PISA results for 2018 will be available in December.

A separate assessment of U.S. fourth and eighth graders in 2017—the National Assessment of Educational Progress, aka "The Nation's Report Card"—reflected similarly lackluster results: Fewer than 40% of fourth and eighth graders were proficient in math, and only 35% were proficient in reading.

National averages, of course, don't reflect significant differences among states and population groups. Achievement rates were even lower for students of color, for example.

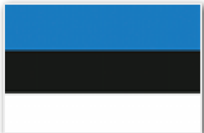
The results are troubling, especially in the current, ever-evolving world economy in which our young workers may no longer be competitive for future jobs—jobs created right here in our own states.

Study Group Looks Worldwide

In response to these concerns, NCSL formed the bipartisan International Study Group, made up of veteran legislators and staff who were interested in improv-

High Performing Systems Studied

ALBERTA, CANADA



ESTONIA

FINLAND

HONG KONG, CHINA

ONTARIO, CANADA

ing their education systems. Twenty-eight members convened in 2014 to study 10 of the world's top education systems. They wanted to know what aspects of those systems could be applied in our states to improve students' learning. Seeing that Estonia, Poland and Taiwan had achieved rapid improvements in their PISA scores, they felt our states—from Arkansas to Maryland to Wisconsin—could surely do the same.

After five years of study—with members visiting most of the top countries—the group discovered that, despite widely varying economic, political and cultural characteristics, world-class educational systems share four common elements:

- A strong early-education system, with extra support for strugglers.
- A reimagined and professional teacher workforce.
- A robust career and technical education program.
- A comprehensive, carefully designed system.

The group published these and other findings in the 2016 report "No Time to Lose: How to Build a World-Class Education System State by State." Its main message: We know what works in high-performing countries. If we get to work now and apply these principles in our states, we can quickly turn this around, just as the high-performing countries have done.

No Silver Bullets

The four common elements are not just random strategies. They complement each other and fit into a comprehensive reform effort. Learning opportunities, for example, are improved when students arrive at school ready to learn. Setting high standards for students does little unless they have highly effective teachers. Raising entry standards for teacher education institutions gets us nowhere if we do not also make teaching an attractive career choice.

This kind of consistent, well-designed reform is rare in the United States, which has sought silver-bullet solutions without setting decisive goals and creating thoughtful, coherent systems, as the high-performing countries have done.

Average PISA Scores in Mathematics, Science and Reading, 2015-16

1.	Singapore	551.7
2.	Hong Kong	532.7
3.	Japan	528.7
4.	Macau	527.3
5.	Estonia	524.3
6.	Canada	523.7
7.	Taiwan	523.7
8.	Finland	522.7
9.	South Korea	519.0
10.	China	514.3
11.	Ireland	509.3
12.	Slovenia	509.3
13.	Germany	508.0
14.	Netherlands	508.0
15.	Switzerland	506.3
16.	New Zealand	505.7
17.	Denmark	504.3
18.	Norway	504.3
19.	Poland	503.7
20.	Belgium	502.7
31.	**United States**	**487.7**

States' piecemeal approaches, for example, include increasing teacher pay without requiring better teacher preparation programs or decreasing class sizes without also restructuring teachers' time.

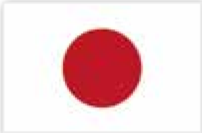
Following the release of "No Time to Lose," legislators and staff in the study group—and others convinced of the message—dove deeper into the details of each of the four elements. They met with world leaders on early education, teaching, and career and technical education to learn just how other countries' systems and governance structures worked. They held hearings and convened work groups of educators and policymakers to discuss whether their states could apply lessons from the world's best.

In its report, the study group issued this challenge: "As state policymakers, it is our responsibility to provide our citizens with a world-class education. We cannot let another generation settle for anything less. Our future workforce, national defense, economic vitality and democratic foundation depend on our ability and willingness to get this done.

"If we assemble the best minds in policy and practice, implement what we know works, and commit ourselves to the time, effort and resources needed to make monumental changes, we can once again be among the best education systems in the world."

Report Inspires States to Act

Arkansas, Colorado, Indiana, Kentucky, Maryland, Montana, Nevada, New Hampshire, New Mexico, North Dakota, South Carolina, Washington, West Virginia and Wisconsin have all hosted legislative hearings on international compari-



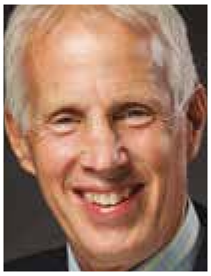
JAPAN

POLAND

SHANGHAI, CHINA

SINGAPORE

TAIWAN



"BUSINESSES ... ARE BEGGING FOR A SKILLED WORKFORCE, AND WE HAVE TO MODIFY OUR SYSTEM TO RESPOND. THIS ISN'T EDUCATION VERSUS THE ECONOMY—THEY ARE ONE IN THE SAME."

Representative Robert Behning, Indiana

"WHILE WE STILL WANT AND NEED A COMMISSION LIKE MARYLAND'S, WE'VE MADE GOOD PROGRESS WITH ADDITIONAL INVESTMENTS WHERE WE KNOW IT MAKES A DIFFERENCE."

Senator Mimi Stewart, New Mexico

sons in education.

But Maryland has taken this challenge the furthest.

David Driscoll, Massachusetts' former education commissioner, says Maryland's commission has achieved what few states have: a cogent plan that brings together the elements that could substantially improve student achievement, respect for educators, opportunities for young children, and career needs for high school graduates. "Throw in coordinated provisions for governance, attention to at-risk kids and school leadership opportunities, and you have a real chance at true reform in education," he says.

The commission issued an interim report with a call to action in January this year.

"The commission's recommendations create for Maryland a once-in-a-generation opportunity to set a bold course and create a bright future for the state and its citizens," the report stated. "The question that remains is, Does the state have the will, discipline and persistence to make it happen? We believe it must."

The commission sponsored legislation—a 10-year "Blueprint for Maryland's Future"—this year that will fund full-day prekindergarten for low-income 3- and 4-year-olds; set higher standards so that all students are ready for college or a career after high school; and create a strong accountability system to oversee its recommendations.

The bill was enacted with a promise to raise the state's early childhood, primary and secondary education systems to world-class standards.

"Garnering as much support for this effort as possible over the next 10 years of implementation will be crucial," commission member McIntosh says. "This work is the root of the future of the economy in Maryland, and everyone, including our business community, has a big stake in this effort."

The effort, according to Kirwan, the commission's chairman, will enable Maryland to have an education system as good as any in the world. "I think we could be a model for the country," he says. David Hornbeck, former superintendent of Philadelphia schools, agrees. "Over more than 40 years," he says, "I have worked with governors, legislators, educators and corporate leaders in 22 states to develop specific policies and funding to promote systemic education change. Without a doubt, the Kirwan commission's recommendations are the best."

Time to Think Big

"No Time to Lose" has emboldened those once content to tinker with their systems and hope for better results to think big. Lawmakers in Colorado, Indiana, Nevada and New Mexico have used the report to inform their councils, direct their discussions and set their goals.

"We should be clear about 'No Time to Lose,'" says Anthony Mackay, CEO and president of the National Center on Edu-

On Their Own

In 2015, Massachusetts, North Carolina and the U.S. territory of Puerto Rico participated in the PISA tests as separate U.S. entities.

Math	Score / World Rank
Massachusetts	500 / 20
North Carolina	471 / 39
U.S. average	470 / 40
Puerto Rico	378 / 68

Science	Score / World Rank
Massachusetts	529 / 6 (tie)
North Carolina	502 / 20 (tie)
U.S. average	496 / 25
Puerto Rico	403 / 65 (tie)

Reading	Score / World Rank
Massachusetts	527 / 2 (tie)
North Carolina	500 / 17 (tie)
U.S. average	497 / 24
Puerto Rico	410 / 60

cation. "This publication has not only had an impact in these and other states, it's been shared with our international colleagues, who believe the work is superb, and they in turn are using it in their own jurisdictions."

An informal partnership in Indiana—the governor, legislative leaders, and the state's policymakers, workforce leaders and philanthropists—is developing youth apprenticeships and new graduation requirements for career and technical education. The goal is to create strong career paths in K-12 and postsecondary education. Several of the state's teacher-preparation programs also are adopting international best practices to improve teacher salaries, build teaching career ladders and create one-year teacher residency programs.

"Businesses in Indiana are begging for a skilled workforce, and we have to modify our system to respond," Indiana Representative Robert Behning (R) says. "This isn't education versus the economy—they are one in the same. We need to build seamless systems and governance structures to support a system of lifelong learning."

In 2017, New Mexico's Legislative Education Study Committee teamed with international experts for a two-year examination of "No Time to Lose." With the state adjusting to a new governor and education secretary and facing a lawsuit claiming students did not have the opportunity to receive a sufficient education, Senator Mimi Stewart (D), a member of NCSL's study group, wanted to ensure that her fellow committee members were familiar with the four elements of high-performing systems.

THE COUNTRIES OUTPERFORMING THE U.S. HAVE REDESIGNED THEIR ENTIRE SYSTEMS TO ACHIEVE THE SUCCESS THEY ENJOY AND ARE NOW TURNING THEIR ATTENTION TO PREPARING THEIR STUDENTS FOR THE FUTURE OF WORK.

By 2019, the Legislature was ready to act. Lawmakers invested $500 million in increased teacher salaries, scholarships and loans, improved early-education and extended learning opportunities, targeted at-risk youth programs, career pathways for high school students and improved career and technical education.

"Because of the study and work with educators and other stakeholders, everywhere I go in New Mexico people are talking about 'No Time to Lose,'" Stewart says. "While we still want and need a commission like Maryland's, we've made good progress with additional investments where we know it makes a difference."

Tough Comparisons

Considering their states' differences in history, tradition, culture, government, population and heterogeneity, many lawmakers balk at comparing the U.S. as a whole with other countries. It's often more realistic to compare countries with individual U.S. states because of similar sizes and governance structures.

Many states still have systems of elementary and secondary education designed to meet the needs of the mass-production industrial economy of a century ago. The same was once true of the world economies the U.S. now competes against. Many jobs could once be done by workers with a seventh or eighth grade level of literacy. But no longer. Advancing automation and competition from low-wage countries have increased the demand for higher skilled workers.

The strategies most states have used to improve their education systems have simply not led to broader academic gains. A few states and districts have found some success, but the country as a whole has not.

In the meantime, the countries outperforming the U.S. have redesigned their entire systems to achieve the success they enjoy and are now preparing their students for the future of work. Our competitors offer virtually all their students the high-quality education once reserved for a small elite. This is the challenge that the U.S., through individual state actions, must meet.

And meet soon. The clock is ticking.

There is no time to lose.

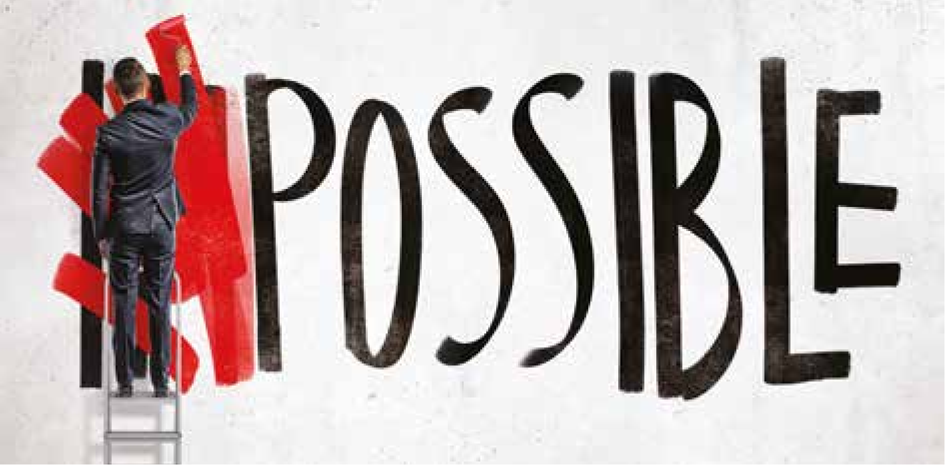
Michelle Exstrom directs NCSL's Education Program.

SCHOOL FINANCE

MOVING MOUNTAINS

Six things to consider when updating your K-12 school finance formulas.

BY DANIEL THATCHER



Twenty-five. That's the average age of states' education funding formulas—the complex math used by states to determine how much money each school district gets to spend on teachers, textbooks and the like for the school year. Yet, while much changes in 25 years—demographics, educational priorities, state economies, the cost of living, what's hot on the Top 40—it may be easier to move a mountain than to update, let alone replace, a funding formula. Many states have tried in recent years. Only a few have succeeded.

What obstacles did they face? And what lessons can other states draw from their experiences?

We're Talking Big Amounts

To appreciate the difficulty of changing education funding systems is to appreciate the scale of the endeavor. For the 2018-19 school year, legislatures appropriated more than $345 billion for K-12 education, by far every state's largest budget item. Local governments, for their part, raised an estimated $332 billion. Federal revenue added another $53 billion, for a grand total of $730 billion. For comparison, that's $44 billion more than the entire U.S. Department of Defense budget in FY 2019.

Owing to the magnitude of states' education spending, any legislative proposal calling for a funding increase can incite sticker shock.

The California Legislature, for instance, increased its spending by an estimated $18 billion over eight years to replace its 40-year-old funding formula in 2013. And in Illinois, lawmakers committed $336 million in new state money to make changes in the state's funding formula for the 2017-18 school year.

The potential cost of replacing a funding formula is just the beginning. (There may also be a price tag attached to the status quo. See the sidebar: "The Cost of Education.") The next hurdle comes with the politically fraught division of state revenue across school districts. The call for a new funding formula, after all, often comes from school districts agitated by either a perceived lack of fairness in the existing formula or an inability to raise additional revenue from their own sources.

Regardless of the amounts, there remains the compelling quest to ensure that all money, be it from state or local sources, is working where it is most needed to benefit all students. So how did these two states, and others, move mountains? They took different paths, but the initial pressures and conditions compelling them to move are remarkably similar. Six themes are highlighted here.

1. The Locals Have It. The localized nature of education politics is one common pressure. Attending public schools gives most Americans their first and most intimate contact with government. As students turn into parents, their experiences as school children, along with deeply held opinions, make them experts on school policy. When legislative proposals contradict parents' experiences, a hailstorm of criticism may occur.

Retired Colorado Senator Norma Anderson (R), who steered the adoption of a new funding formula in her state in 1994, notes that the most parochial issue legislatures face is public school funding. She cites a familiar adage: "All politics is local; school politics is localer."

2. External Stimuli Bring Change. The equilibrium among policy decisions, budgetary commitments and interest-group politics is so powerful that unusual circumstances may be necessary to permit legislators to tip this balance in a meaningful way. An economic or educational crisis, for instance, or litigation challenging a state's funding system, often compel legislative responses.

The Great Recession led to major disruptions in education funding that still reverberate today. Local schools have 116,100 fewer jobs than at the beginning of the recession. In many states, the recession also blew up the careful balance between state funding and restrictions to local funding designed to mitigate the sometimes major differences in per pupil spending between rich and poor school districts. Where they could, richer districts overrode local revenue-raising restrictions to make up for decreases in state spending.

As state economies emerged from the recession, so too did calls for increases in education spending, evidenced by the #Red4Ed teacher movements in Arizona, Colorado, Kentucky, Oklahoma, North Carolina and West Virginia.

Elsewhere, 25 state courts have ruled that the statewide education funding system violates their state's constitution and requires legislative fixes. In each instance, legislatures were compelled to produce bills to right the constitutional wrongs.

3. Change Requires a Legislative Focus. Lawmakers with legislative focus have the technical and political know-how, resources and political will to work through the budget process and get results. Focus involves working with the handful of members who control or substantially influence educational policy—including "the one with the gavel"—and with sufficient evidence to make the case for change. This is not easy in term-limited settings.

Illinois Senator Kimberly Lightford (D) embodies legislative focus. "I can finally say I am proud of the education funding strategies in Illinois after a decades-long battle," she says.

4. Coalitions and Consensus Can Work. Creating the opportunity for change by building an external coalition is as important as generating specific policy proposals. In some contexts, gubernatorial leadership is key. In all contexts, change is facilitated when there is consensus among administrators, school boards, teachers unions, and student and parent organizations. If taxes are on the table, business representatives must be there, too.

5. Avoid Creating Winners and Losers. The public's interest in improving students' learning sometimes conflicts with the narrower interests of politically vocal constituents or organized groups. In peddling a narrative suited to their interests, these groups are more likely to promote the perception that shifting money around will create winners and losers.

For instance, proposals to change the funding formula may result in some school districts receiving more state money than others. If a politically powerful district perceives this proposal as a net loss to its budget, it may move to quash the proposal, even though it benefits other long-neglected districts in the state. Proposals that include new state money, like those in California and Illinois, can alleviate these negative perceptions. Including all interested stakeholders early in development of the funding formula is also helpful.

6. Compromise Is Part of the Process. Every state can claim a diverse range of school districts, each with a unique set of characteristics affecting their budget needs. Shifting student populations, concentrations of poverty, eroding tax bases, lack of access to labor markets, remoteness and even topography—all these pull on district budgets. Crafting a new funding formula requires listening to the needs from every corner of the state and adjusting—or compromising—accordingly. Ultimately, compromise often requires altering the initial policy proposal.

If changes are phased in over time, they may alter the practical effect of what can be accomplished long term.

For instance, if a new formula is designed to improve greater funding fairness among rich and poor districts, a wealthy school district, which may have been enjoying a disproportionate share of state aid under the existing formula, may have to give up claim to some of that aid. The district's reduction in state aid can be implemented over the course of several budget cycles. Drawn-out implementation essentially holds the district harmless to the policy change.

Hold-harmless provisions may be used as a carrot to bring reluctant districts to the table, but they can sometimes frustrate other worthy objectives, like funding fairness. Education economists are not always keen on them, either. Balancing the interests of all school districts against the

Agents of Change

Since the 1990s, at least 30 states have made major changes to the way they fund K-12 education. To cull observations and possible lessons from its work with legislatures, NCSL collaborated with Jacob Adams, the former director of the School Finance Redesign Project, to interview legislators who shepherded school funding changes through their legislatures. The initial interviews were conducted more than 10 years ago. NCSL has done additional interviews in the years since and identified many more themes and lessons than the six highlighted here. For more, email Dan at daniel.thatcher@ncsl.org.

"I CAN FINALLY SAY I AM PROUD OF THE EDUCATION FUNDING STRATEGIES IN ILLINOIS AFTER A DECADES-LONG BATTLE."

Senator Kimberly Lightford, Illinois

policy objectives of a new formula lies at the heart compromise.

The Mountain Range Ahead

Education funding innovations require new policy tools that serve both fiduciary and student learning goals. Legislators apprehensive about changing education funding commonly raise concerns over fiscal transparency and accountability. Why add new money or change how it is distributed if we do not have good data on where existing money flows or how it's being spent?

Next year, lawmakers will have some data to answer these questions. A provision of the federal Every Student Succeeds Act goes into effect this school year requiring states to report the per-pupil expenditures of federal, state and local money for each school in the state. The per-pupil expenditures must also include actual expenditures on personnel salaries. Observers hope this new requirement will lead to a clearer understanding of where the money is (or is not) going.

Studying education funding redesign and policy innovations—and broadcasting those findings with legislative colleagues and the public—sets up states and school districts to take advantage of future opportunities, regardless of the short-term prospects for change.

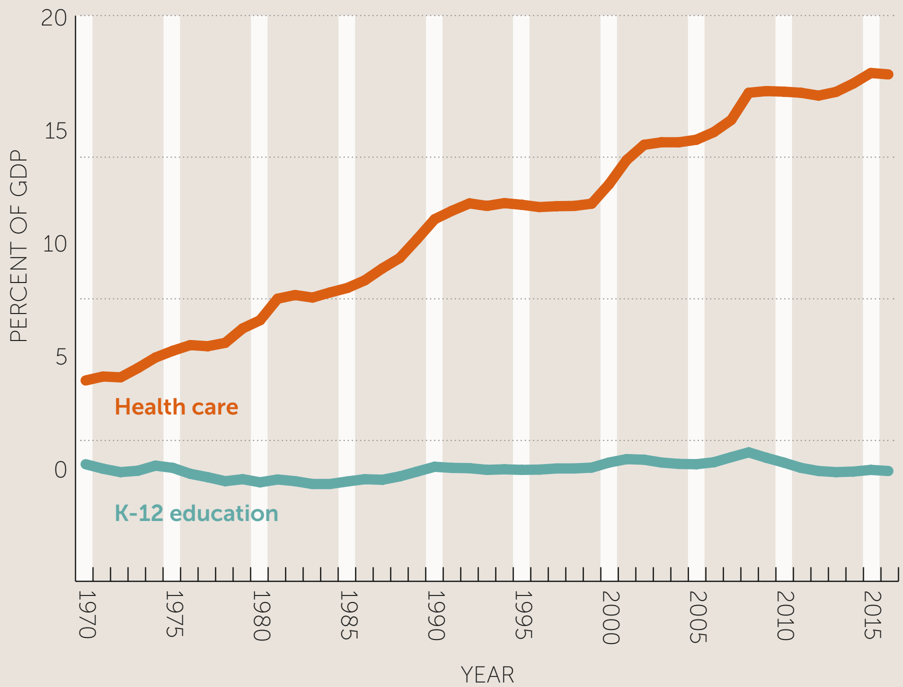
Before California replaced its funding formula in 2013, it benefited from a multiyear "Getting Down to Facts" project, which hired top researches to study what was working in state education funding systems around the nation. Many of the project's findings formed the basis of the state's new funding formula.

Acquiring the kind of knowledge California did, creating a logical sequence of policy proposals and preparing for the next crisis are a few of the steps lawmakers can take to create legislative opportunities to move the seemingly immovable.

Knowing the steps to take won't make the job of changing easy, but it's a start.

Daniel Thatcher is a director in NCSL's Education Program.

Health Care and Education Spending in the United States
1970-2016



Source: Bureau of Economic Analysis, 2019; National Center for Education Statistics, 2019; U.S. Centers for Medicare & Medicaid Services, 2018

The Cost of Education

Among the costs associated with K-12 education are those of providing it and those of not providing enough of it. Data reliably can tell us what it costs to provide it. The United States spends, on average, 4% of its GDP on K-12 education (compared with nearly 18% on health care).

Trickier is estimating the broader societal costs when education is underprovided. Recently, researchers have looked at the question differently by estimating long-term economic gains that accrue from strategic investments in K-12 systems.

A 2015 analysis of longitudinal data from states that retooled their funding formulas to target low-income students suggests that, for these students, 10% greater funding over all 12 grades can lead to:

- Half a year of additional educational attainment.
- 20% increased odds of graduating high school.
- 17% increase in family income.
- 6% decrease in incidences of poverty.
- 10% internal rate of return based on these investments targeting low-income students.

Other research estimates the benefit to state economies if they boost student achievement. At the low end, gross domestic product could increase an estimated $32 trillion nationally over the course of students' working adult lifetimes by bringing all students to basic proficiency levels (as measured by the National Assessment of Educational Progress). On the high end, if all states performed at the same level as Minnesota—the "Lake Wobegon effect"—the estimated increase would be $76 trillion.

—Daniel Thatcher

EDUCATION

Leaders, Please Report to the Principal's Office

Today's principal is less a school boss and more a supportive leader.

BY ASHLEY IDREES

It's easy to remember our favorite teachers, but can you recall a favorite principal?

Despite its importance to a school's success, a principal's work is not always visible. Principals' responsibilities run the gamut from administering budgets, overseeing facilities and coordinating fire drills to monitoring student achievement and supporting the teachers who might become a student's favorite.

Traditionally, the principal's role has been to project authority, assert power and carry out discipline. Today, principals are synonymous with leadership, instructional support and student advocacy. They are responsible for all who enter their buildings and are expected to create and maintain an environment and culture reflective of their school's mission.

Leadership matters, and good principals have a direct, positive correlation to student learning and growth, as research from The Wallace Foundation has shown. But, at a time when school leaders are needed more than ever, principal turnover is increasing.

Turnover Hurts Kids

As a recent MIT study explains, low-achieving and high-poverty schools tend to have higher rates of principal turnover. "Given research linking leadership turnover to negative impacts on student performance, policy attention to strategies aimed at keeping effective principals in high-need environments may yield large dividends," the report stated. For the sake of their students, it's imperative that leaders in high-needs areas get the support they need to stay on the job.

The MIT study shows that, with a focus on best practices, appropriate hiring and placement, and supportive evaluation, districts can mold leaders who transform schools, enhancing the growth of teachers and students alike. If principals are supported from the start of their training through their leadership in practice, they are more successful. And when they succeed, they are less likely to leave their jobs.

"I think effective leadership is key," says North Carolina Representative Hugh Blackwell (R), a member of NCSL's Education Policy Working Group. "Teachers deserve a leader who understands what is needed in the classroom and a leader who can support them in appropriate instruction. With this strong support system, teachers are motivated and enabled to lead their students to successful educational outcomes."

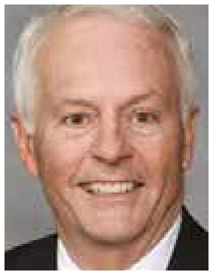
Principal Pipelines

To develop leaders with those skills, The Wallace Foundation, one of the leaders in educational research, launched the five-year, $85 million Principal Pipelines Initiative in 2012. The goal was to improve school principals in six cities and large urban counties, from New York to Denver, by instituting reforms in training, hiring, mentoring and review. The foundation then commissioned the Rand Corp. to evaluate and report on the success of the initiative.

Among the findings detailed in Rand's new report, "Principal Pipelines: A Feasible, Affordable and Effective Way for Districts to Improve Schools":

- After three or more years, schools in the initiative with newly placed principals outperformed comparison schools with newly placed principals by 6.22 percentile points in reading and 2.87 percentile points in math.
- Newly placed principals in the initiative were 5.8 percentage points more likely to remain in their school for at least two years and 7.8 percentage points more likely to remain in their school for at least three years than newly placed principals in comparison schools.
- The initiative had statistically significant, positive effects on achievement in elementary and middle schools and some evidence of positive effects for high schools.

Among the initiative's most effective tools, Rand found, was the Leader Tracking System, a set of webpages with dashboards and other tools to inform management decisions on training, hiring and evaluating school principals. Besides cataloging information on principals' experience, performance and competency, the tracking system can forecast vacancies, determine ideal enrollment sizes for district-run principal-training programs, monitor the diversity of hiring pools and provide feedback to university programs on graduate placements.



"TEACHERS DESERVE A LEADER WHO UNDERSTANDS WHAT IS NEEDED IN THE CLASSROOM AND A LEADER WHO CAN SUPPORT THEM IN APPROPRIATE INSTRUCTION.

North Carolina Representative Hugh Blackwell

Notably, researchers found the Principal Pipeline Initiative to be cost-effective. "[F]or every $100 spent per student attending the district over five years on [principal pipeline] reforms, district-wide student achievement increased by between 1 and 2.4 percentile points in reading and about one-third of a percentile point to 1 percentile point in mathematics," according to Wallace Foundation estimates.

Building a Pipeline

Schools and districts following the concepts of the Principal Pipeline Initiative can:

- Adopt standards of professional practice and performance (such as the Professional Standards for Educational Leaders) and use those standards in shaping policies related to school leader preparation, hiring, placement and support.
- Offer preservice preparation via university partners, nonprofit partners or in-house programs that align with the district's leadership standards and competencies. The district would play a substantial role in shaping the programs. Preparation would include on-the-job training and a long-term clinical experience.
- Use a selective hiring and placement practice to match principal candidates with school vacancies, aligning candidates' capabilities with the district's standards for school leaders.
- Align evaluation and support for novice principals to standards. Systematically assess principals' instructional leadership capabilities over their first three years on the job and provide feedback and support so they can meet expectations.

Next Steps

State legislators can help by adopting the Professional Standards for Educational Leaders. To date, 12 states have adopted the standards. Providing clear standards for educational leaders will help states prepare and retain school leaders, which will in turn foster the continued growth and success of the educators and staff they lead.

"Being a school leader is a lot like directing an orchestra," says Colorado educator Courtney McAnany, who has a doctorate in school leadership and policy studies. "You have to treat each stakeholder as an individual, while still guiding them toward the same goal. The global view of the leader works to bring each of the individual specialists into harmony. As a teacher you are so strongly focused on your content and the success of your students that you may not see where other teachers are struggling or where student behavior in other areas is faltering. It is the job of the leader to support all aspects of the school community in order to bring the vision and mission into reality."

Ashley Idrees is a policy specialist in NCSL's Education Program.

ANIMAL WELFARE

States Ban Wild Animal Shows

The pressure brought by People for the Ethical Treatment of Animals and other groups succeeded in getting the Ringling Bros. and Barnum & Bailey Circus to retire its performing elephants in 2016. But state and local restrictions on the use of wild animals in performances continued to increase, and Ringling shut down its circus for good in 2017, citing high costs and falling attendance. New Jersey was the first, in 2018, to enact a statewide ban the use of wild animals in circuses; Hawaii quickly followed suit. Advocates hope Congress will be the next to act. Bills in both chambers would prohibit the use of wild animals in traveling circuses across the U.S. More than 40 countries have similar bans.

VERMONT

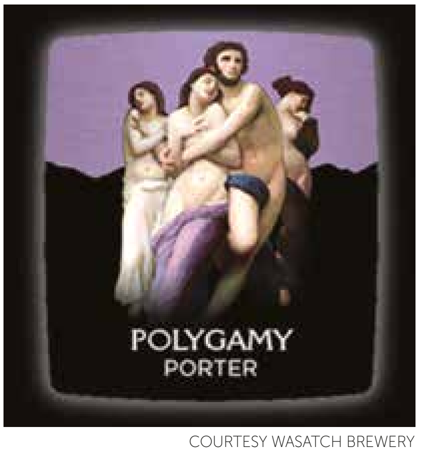
Seeing Green at the Capitol

A sharp-eyed visitor spotted what appeared to be marijuana plants in the flower beds in front of the Vermont Statehouse. After some inspection, Capitol Police found 34 immature plants they said were either hemp or marijuana. They weren't sure because the plants were too young to differentiate. Testing would answer the question, but the department has no plans to do that because it doesn't have a criminal case. Possession of small amounts of marijuana for recreational use is legal in the state. Vermont was the first state to legalize recreational marijuana through the legislature rather than by ballot in 2018; it legalized medicinal marijuana in 2004.

BEER NAMES

Glib Forward, With Regrettable Aftertaste

A clever beer name—Smooth Hoperator and Baby Got Bock are classics—can make a good brew even more appealing. But it can also lead to trouble, if unintentionally. A Texas brewer offended Marshall Islanders by naming one of its beers Bikini Atoll, after the site of extensive U.S. nuclear testing from 1946 to 1958. Bikini remains uninhabitable because of high levels of radiation, and islanders are still dealing with health problems decades later. North Carolina is preventing a Utah brewer from selling its Polygamy Porter in the state because it says the beer's name and its label art promote an unlawful act. The Texas brewery has stated it did not intend "to mock or trivialize the nuclear testing" but also said it take would "no further action in this matter." The Utah brewery has said it would consider legal action to appeal North Carolina's decision.



COURTESY WASATCH BREWERY

COLORADO

Keep Calm and Play Fetch

Tough day at the capitol? If you were in the Colorado Statehouse last session, you could drop by the Senate Leadership Office—the one with the "Office Dogs at Play" sign on the door. Gary, Sven, Annabelle, Lulu and Queso all are excellent listeners and require only a friendly scratch or belly rub in return. The office is the shared workspace of Senators Lois Court, Faith Winter and Kerry Donovan, and the pups are theirs or those of various aides. The cuddlesome canines are companionable with lobbyists, lawmakers and assistants alike. "You look at that little guy and it's very difficult to stay angry and unhappy," one lobbyist said.

COSTUME DRAMAS

Enough With the Offensive Outfits

Native communities and activists for indigenous women scored a victory this summer when an Arizona lingerie company removed Native American-themed costumes from its website. Activists had worked for years to get the company, Yandy, to stop selling outfits that include leather fringe, beaded headbands and headdresses. They consider the use of such elements to be not only culturally insensitive, but also a potential danger to Native women. Some researchers and scholars have linked the hypersexualizing of indigenous women to their much higher than average risk of sexual assault.

NEW YORK

New Law Is Cat's Meow

New York is the first state to ban the declawing of cats, a procedure that has saved many a cat owner's furniture but that advocates say can be cruel and painful. The measure was opposed by a veterinarians' group, which views declawing as "a medical decision, not a legislative decision." Vets who perform the procedure for nonmedical purposes now face a $1,000 fine. "It's a wonderful day for the cats of the state and the people who love them," Assemblywoman Linda Rosenthal (D), the bill's sponsor, said. At least three dozen countries and several U.S. cities, including Los Angeles, San Francisco and Denver, already ban cat declawing. Other states are considering similar prohibitions.

LABOR

STAYING IN THE GAME

With record low unemployment, it pays to help injured and ill workers get back to work quickly.

BY JOSH CUNNINGHAM

When a hang glider crashed on a Colorado mountainside in 1990, Tom Young, a firefighter from a nearby town, arrived to assist in the rescue operation. As fellow first responders treated the critically injured pilot at the scene, Young secured the wrecked glider from being sucked up into the rotors of the hovering rescue helicopter. But a sudden gust of wind caught hold of the glider and dragged Young down the mountain. A large rock brought his tumble to an end, breaking his neck in the process.

In a matter of seconds, Young's life changed forever. The 29-year-old husband and father of two young children would spend the rest of his life paralyzed from the neck down. His initial thoughts were far from his job as he struggled with what this new reality meant for his family.

"I didn't know how I was going to be a father," he says.

As depression set in, Young's wife, Linda, suggested he go back to work. "You're 29 years old and you still have a lot to offer," he recalls her saying. "That was the turning point," Young says. He started looking into whether he could go back to his old job. After two and a half years of physical recovery, navigating workers' compensation and Social Security Disability Insurance benefits and securing some creative workplace accommodations, Young returned to the fire department in his pre-injury administrative position—minus the daring mountainside rescues.

Staying on the Job

In the blink of an eye, anyone can experience an injury or illness serious enough to affect their ability to continue working. At least 4.6 million American workers are injured on the job every year, according to the National Safety Council. Keeping them on the job, if possible, benefits not only the workers but also their employers and communities.

With unemployment at its lowest point in generations and a record number of unfilled jobs, losing a productive employee can be costly. In fact, health-related work absences cost businesses as much as $230 billion annually, including an estimated $60 billion in lost productivity, according to the Occupational Safety and Health Administration.

Given this unprecedented job market, employers and policymakers are seeking ways to help injured employees stay in the workforce.

When injured or ill workers are off the job for a year, their chance of returning to the workforce drops to 32%. At two years, the likelihood of working again falls to just 5%. Without employment, many of these people exhaust temporary cash benefits from workers' compensation or short- and long-term disability insurance and turn to federal income-based support programs like Medicaid, the Supplemental Nutrition Assistance Program, Social Security

COURTESY TOM YOUNG

Captain Tom Young, a Colorado firefighter left paralyzed by an on-the-job injury, at his office. "My whole mental outlook on life has taken a complete turn since I went back to work," he says.

By the Numbers

4.6 million

Number of American workers injured on the job annually, according to the National Safety Council

32%

Likelihood of an injured or ill worker who's been off the job for a year returning to the workforce

5%

Likelihood of working again after two years off the job

Disability Insurance, and the Supplemental Security Income program.

For nearly a century, employers, insurance providers and policymakers have defined workers' injuries and illnesses in two ways: as either work related or not. When injuries and illnesses occur outside of work, patients must pay for treatment on their own. The federal Family and Medical Leave Act protects their jobs, albeit without pay, for up to 12 weeks. The Americans with Disabilities Act may further protect some from losing their jobs. But often employers are free to terminate workers unable to return to their jobs once FMLA protections expire.

iSTOCK

The strict income limit for those receiving disability benefits—sometimes called a benefits cliff—can create a financial disincentive to return to work.

The Benefits 'Cliff Effect'

The federal Social Security Disability Insurance program offers cash benefits to workers who become so severely disabled they are unable to perform basic work activities. Applicants must show the Social Security Administration that their disability prevents them from doing any work for at least 12 months. Benefits are based on the number of years a worker paid Social Security taxes and total income earned over his or her lifetime.

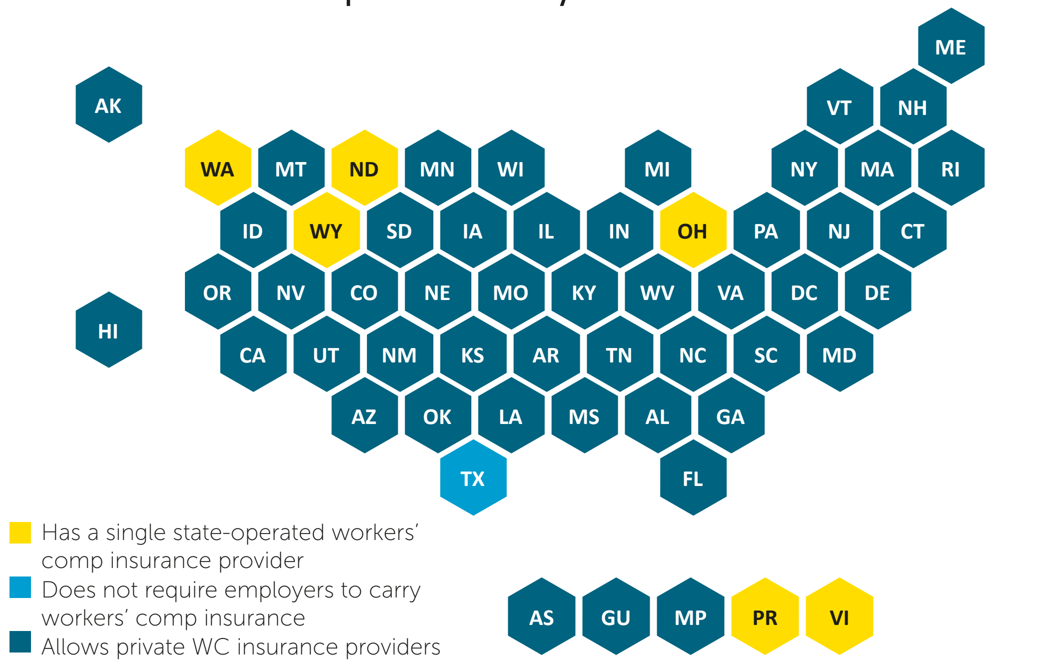
Although SSDI is a vital safety net for people who have no other means of earning a living, the strict income limit—sometimes called a benefits cliff—creates a financial disincentive to return to work. Unless a secure, high-paying job becomes available, going back to work for many SSDI recipients is simply not a financially viable option.

SSDI should not be confused with the federal Supplemental Security Income program, which gives cash benefits to low-income seniors and people with disabilities. SSI does not require recipients to have a work history or to have paid Social Security taxes. If SSI recipients find work, they do not lose their benefits unless their income surpasses the program's monthly income cap.

Tom Young, a Colorado fire captain whose on-the-job injury left him paralyzed, faced the SSDI cliff effect as he considered returning to work.

"It made me really nervous because I didn't know how long I was going to be able to work," he says. "I was in severe pain. I would have to reapply if for some reason I wasn't able to work anymore."

Insurance Provider Requirements Vary



Source: NCSL, 2019

Work-related injuries fall under an employer's workers' compensation insurance policy, which covers treatment costs and provides partial wage-replacement benefits for time off without pay. Depending on the health condition, the treatment and benefits may last several years.

Workers' compensation is one of the nation's oldest social insurance programs. Influenced by German sickness and accident laws from the 1880s, the states' adoption of workers' compensation spread quickly, beginning with New York in 1910 and ending with Mississippi in 1948. Except for federal employees, military personnel and a handful of specific professions, there are no federal laws or regulations governing workers' comp; instead, each state has independently developed its own policies.

States Call the Shots

All states except Texas require employers to carry workers' compensation insurance. State officials also determine who can offer insurance and whether larger companies may self-insure their employees. Covered benefits and benefit levels vary state to state. Four states and two U.S. territories have a single state-run workers' compensation insurance provider. Other states allow employers to purchase coverage through private companies.

Workers' compensation is designed to benefit both employee and employer by providing reliable insurance coverage and reducing legal costs. Previously, workers injured on the job had to prove employer negligence to recover lost wages, medical expenses and other damages. Today, protections guarantee these benefits, and more, regardless of fault. In exchange, employees surrender their right to sue their employer.

An injured worker is covered under the jurisdiction of the state where an injury occurs, regardless of where the employer is located. This has become increasingly challenging for multistate businesses that must comply with the unique laws of each state.

A typical workers' compensation claim involves a cast of characters, including the injured worker, the employer, physicians, insurance claim managers, state regulators and caseworkers, and lawyers for all the above. After an injury, the employer files a claim with the insurance provider who then covers the costs of all related medical treatment and reimburses the worker for a portion of lost wages.

In the rare cases when an injury or illness permanently ends a person's ability to work, the insurance provider must pay a permanent disability benefit. In most cases, however, workers are classified as having a partial disability—meaning they can still work, but not at their previous level and wage. States vary on how they define partial and total disability.

Plenty of Flexibility

The limited federal role in workers' compensation gives states plenty of flexibility in crafting their laws.

Washington state created regional Centers of Occupational Health and Education in the early 2000s to advise and train health care professionals in treating and rehabilitating injured workers. The centers' mission is to ensure all stakeholders—injured worker, employer, health care professionals and others—are focused on a unified goal: getting injured workers back on the job as quickly as possible. The training incorporates three best practices of occupational health:

- Managing workers' compensation insurance claims efficiently.
- Creating treatment plans that outline an injured worker's abilities and work restrictions.
- Developing plans to overcome barriers preventing an injured worker returning to work.

Through early intervention and coordinated care, the COHE program has produced impressive results, including lower medical costs and a 26%

reduction in the number of injured workers moving onto SSDI benefits. Washington's approach has proven particularly effective in treating lower back and neck pain and other musculoskeletal disorders—conditions that account for roughly two-thirds of all years lived with a disability nationally.

Another approach is offering employers incentives to retain injured workers or hire those forced to leave previous jobs because of an injury or illness. Under North Dakota's Preferred Worker Program, employers who hire "preferred" workers—those certified as having permanent medical restrictions—are not required to pay the premiums on their salaries for up to three years. The program, which was created by lawmakers in 2001, offers other incentives, including paying for wage replacements and reimbursing for the costs of modifying workplaces. North Dakota is the state's sole workers' compensation insurer, giving the state more control over employer insurance premiums and other employer incentives.

What's Ahead?

As of May this year, 7.3 million jobs remained unfilled. That's over a million more than the number of unemployed people looking for work. It's not just employers and policymakers seeking ways to keep injured workers on the job. The federal government is showing interest as well. In 2018, the U.S. Department of Labor launched the RETAIN Demonstration Projects, awarding funds to eight states—California, Connecticut, Kansas, Kentucky, Minnesota, Ohio, Vermont and Washington—to develop ways to keep people injured on or off the job engaged in the workforce. If successful, these states can pave a path toward comprehensive changes in how employers, insurers and workers adjust to unexpected injuries and illnesses.

Twenty-nine years later, Tom Young, the injured firefighter, continues his work with the fire department in Golden, Colo., where he's achieved the rank of captain. Through the support of his employer, his workers' compensation insurance provider and, most important, his family, Young works nearly full time managing 10 employees and overseeing the city's public access TV station.

He's grateful for the assistance he's received but also that he can still contribute.

"Being on the system isn't always the best," he says of collecting public benefits. Being able to return to his old job made all the difference. "My whole mental outlook on life has taken a complete turn since I went back to work."

Josh Cunningham is a program manager in NCSL's Employment, Labor and Retirement Program.

Mental Health and Workers' Compensation

"Mental health injuries are difficult to see when looking at someone, unlike a broken leg or injuries from a fall," Debbie Plotnick of Mental Health America says. Still, a mental illness can leave a person unable to work at full potential.

Most state workers' compensation laws allow coverage for certain mental health conditions, but often workers must conclusively show that their condition resulted directly from abnormal working conditions. In practice, this can be very difficult to do.

Psychological conditions, such as work-induced stress, are rarely covered in workers' compensation statutes. In fact, some states prohibit mental health claims, unless the condition resulted from a related physical workplace injury, such as when a worker who sustains a head injury is diagnosed with a traumatic brain injury.

"More likely and harder to document is stress over time that results in depression and anxiety due to working conditions, such as bullying or sexual harassment or a toxic work environment," Plotnick says.

She encourages employers to make mental health accommodations in the workplace.

"Just as an employer would make allowances for an employee going to doctors' appointments or to engage in rehabilitation, so too should therapy and other supports be afforded to employees with a mental health need," she says. "Other accommodations may include flexible working times or working from home as a permanent or temporary accommodation."

In recent years, states have given more attention to mental health coverage for first responders suffering from post-traumatic stress disorder. Florida and Minnesota enacted legislation in 2018 granting a presumption that a PTSD diagnosis in a first responder is work related if there is no history of the condition prior to the worker's employment. This makes it easier, faster and more affordable for a first responder with PTSD to receive treatment. At least 13 other states have considered similar legislation.

California compensates workers for psychiatric injuries but sets a higher threshold for these claims than for a physical injury.

A worker must:

- Be diagnosed with a mental disorder by a licensed psychologist.
- Demonstrate that actual events of employment were the predominant cause of the psychiatric injury.
- Have been working for his or her employer for at least six months.

Additional attention to mental health care is inevitable as long as mental illness remains one of the greatest health care challenges in the country.

—Josh Cunningham

TAX POLICY

TAX BREAK TUG-OF-WAR

Despite mixed results, states persist in using tax incentives to lure big employers from their neighbors.

BY JACKSON BRAINERD

When it comes to politics and policy, the economy is always a top priority. How to generate job growth and develop prosperous communities are perennial questions. And the policy options are vast. Changes to education, infrastructure, the environment, wages and work hours, the criminal justice system, pensions, health care and tax policy all can affect economic development.

Despite the breadth of the economic development umbrella, however, the term itself is often associated exclusively with business tax incentives. Most state economic development offices are charged with recruiting or retaining businesses, and they rely on tax incentives to accomplish the goal. In their efforts to spur growth using these incentives, states and local governments forgo between $40 billion and $70 billion in revenue annually.

The incentives come in different forms: breaks or credits on property, sales or income taxes; issuance of tax-exempt industrial revenue bonds or low-cost loans; sale of underpriced land; customized workforce training; or assistance with regulations. Some are available to all businesses; many are not.

Often, states gear tax credits or other incentives specifically toward large multinational corporations. Indiana, for example, provided a $7 million incentive package to the Carrier Corp. in 2017 to keep jobs in the state, Virginia recently offered Amazon a $750 million package to establish a new headquarters there, and Wisconsin offered Foxconn Technology Group a $4.8 billion package in 2018 to build a new manufacturing plant.

The long-standing debate on targeted incentives is whether they actually work. Are they effective economic development tools, or do they primarily benefit large, individual companies? Despite mixed evidence on their success, tax incentives aren't going away anytime soon.

Effective Tool, or Waste of Revenue?

Proponents believe that coaxing large, successful businesses to a region can create jobs and generate new investments, creating new wealth for entire communities and generating new tax revenue for state and local governments. For businesses choosing between cities that offer similar markets, supplies and labor, lowering the cost of doing business by reducing tax burdens could be a deciding factor.

The results of landing a large employer can be immediately tangible. Mercedes-Benz had a significant impact on Tuscaloosa, Ala., when it relocated in the early 1990s after being granted $250 million in tax incentives. "Since 1999, German companies have invested nearly $9 billion in Alabama operations, creating 15,500 direct jobs," Alabama Secretary of Commerce Greg Canfield told the Tuscaloosa News in 2018. He believes the company's presence attracted other auto manufacturers and raised

> "TAX INCENTIVES GIVEN TO ONE GROUP OF TAXPAYERS ARE PAID FOR BY OTHER TAXPAYERS."
>
> Senator Eric Koch, Indiana

the state's global investment profile.

"Taxes matter, but not nearly as much as politicians think," says nationally known state and local tax policy expert David Brunori, research professor of public policy at The George Washington University. Taxes are a small component of site selection decisions as they are only about 2% of the cost of doing business, Brunori says. Surveys of business leaders suggest that location of suppliers and markets, availability of labor, status of infrastructure and quality of life, among other factors, are more important. And, every dollar lost to incentives is a dollar not spent on improving those criteria, opponents argue.

Even in cases when business locations are influenced by tax incentives and a specific region benefits, this necessarily comes at the expense of another region. For the country as a whole, the result can be a net loss, unless a state is luring a foreign business, of course.

Opponents also argue that tax incentives create an uneven playing field. Alleviating taxes for a few businesses leaves other companies and taxpayers with the burden of making up the difference. This picking and choosing of who pays and who doesn't invites scrutiny. A recent audit of the New Jersey Economic Development Authority's tax incentive programs found inadequate monitoring and oversight and inaccurate job creation claims.

And the Research Says

The existing research is not particularly kind to tax incentives. A 2019 North Carolina University study determined that "financial incentives negatively impact the overall fiscal health of the states offering the incentives." The effects of job-creation incentives, specifically, were found to be a wash, having no effect on state fiscal health.

In a review of 26 academic studies that assessed whether targeted business tax incentives improved the broader economy, researchers with the Mercatus Center at George Mason University, a free-market-oriented think tank, found only one study showing positive effects. Four found negative effects, 13 found no statistically measurable effects and eight found both positive and negative effects, or distinct winners and losers.

Another recent study, by the W.E. Upjohn Institute for Employment Research, an independent research organization, found that incentives "do not have a large correlation with a state's current or past unemployment or income levels, or with future economic growth." A follow-up report concluded that in about 2% of cases the tax incentive appears to have made the difference—but the same decision would have been made without the incentive up to 98% percent of the time.

Oversight Increasing

For a long time, no one really knew whether the billions of dollars being offered in tax incentives were working as intended. In 2012, The Pew Charitable Trusts wrote that, "No state regularly and rigorously tests whether those [subsidy] investments are working" and that none "consider this information when deciding whether to use them, how much to spend and who should get them." Since then, states have increased oversight of tax incentives, and at least 35 states do so today.

"Tax incentives given to one group of taxpayers are paid for by other taxpayers," says Indiana Senator Eric Koch (R). "It's therefore important that we ensure that tax incentives are evaluated to ensure that they are achieving the desired results in a cost-effective manner."

Improving evaluation processes allows state officials to better define the goals of incentives and determine which ones result in economic benefits for a community or broader region, rather than just specific companies.

The Upjohn Institute research suggests that incentives can be improved by targeting firms with high job multipliers and higher wages; replacing incentives with customized training and regulatory assistance; and creating jobs for the local unemployed population.

In addition to improved oversight, the fiscal risks posed by tax incentives can be mitigated in other ways. Setting caps, whether by program or by company, can ensure costs do not unexpectedly balloon during a bidding war. States can also require companies to meet job or investment thresholds before receiving tax incentives, or they can withhold benefits if targets aren't met.

Given the problems incentives pose in terms of fairness and effectiveness, should states bother with them at all? Is playing the incentive game an unfortunate but unavoidable part of policymaking? As former Michigan Governor Jennifer Granholm (D) said, "Every state is competing, and we cannot lay down our arms."

But it's not necessarily an inevitability. The evidence suggests that unilateral disarmament would not, in fact, have a negative economic impact. But declining to pursue successful companies while other states actively coax them with tax incentives could make for challenging political optics.

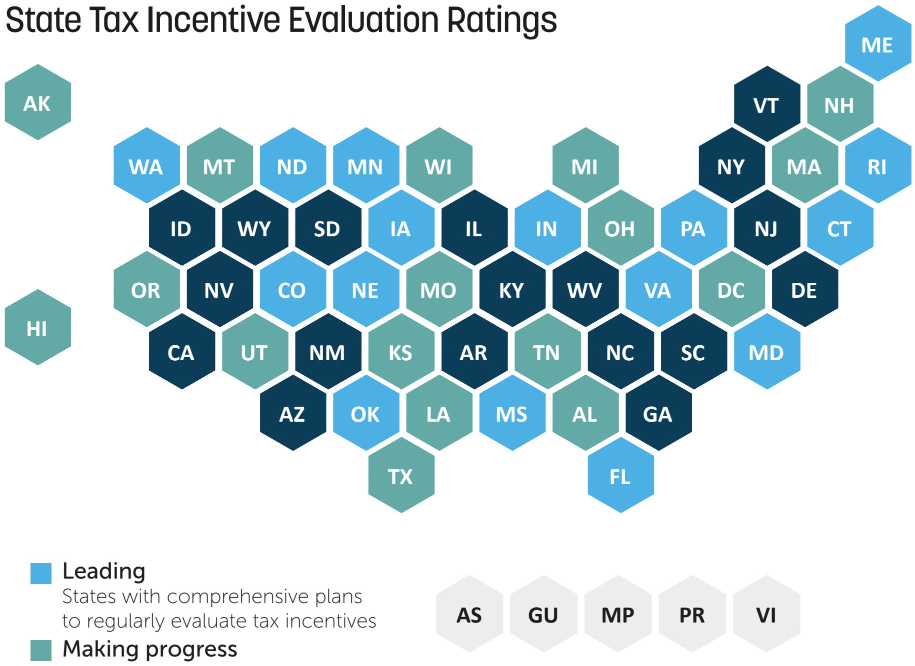
Are Incentives Even Legal?

Although business tax incentives have become ubiquitous, there are some scholars who still question whether they are constitutional. The U.S. Constitution's commerce clause implicitly prohibits states from hindering interstate commerce (it gives regulatory power to Congress), and the U.S. Supreme Court has found certain tax incentives to be discriminatory, though it hasn't clearly defined which ones aren't.

Others have speculated that allowing a select set of big corporations to operate without paying taxes could be viewed as a violation of the equal protection clause of the 14th Amendment. Neither argument appears likely to gain ground in the near term.

One obvious way to end the bidding wars would be an outright federal ban on interstate tax incentives. Of course, preempting state sovereignty would undoubtedly result in a substantial backlash. The corporate subsidies watchdog group Good Jobs First has recommended a "carrot" approach used in the past: Withhold a certain amount of federal appropriations until a state signs a pledge not to pirate jobs from other states. That's what

State Tax Incentive Evaluation Ratings



Leading
States with comprehensive plans to regularly evaluate tax incentives

Making progress
States with basic plans requiring some evaluation of tax incentives

Trailing
States without plans to evaluate tax incentives

Source: The Pew Charitable Trusts

the federal government did in 1984 with a small portion of highway funding until states increased their legal drinking age to 21.

Congress, however, has not shown a similar desire to get involved in this issue.

Why Can't the States Agree?

While incentive relief through the courts or the federal government appears unlikely in the near future, another option would be for all states to simply agree not to offer any company a tax incentive to relocate from another state. The European Union reduced the use of tax incentives by regulating the business subsidies that member states can dole out.

"Member states can only give individual businesses a subsidy under certain conditions—for example, if the subsidy benefits a region that is economically depressed or if it serves an environmental purpose," according the Council on Foreign Relations. The rules require advance


Koch


Hutchinson

notice be given to the European Commission of the enactment of any new subsidy program. The commission, which serves as the EU's executive branch, can disallow deals it deems overly distortive to trade.

Compacts among U.S. states to curb the use of business subsidies, however, have not been very successful. In 1991, Connecticut, New Jersey and New York signed a cooperation treaty calling for an end to advertising aimed at luring businesses from one state to another. New Jersey violated the terms just a few months in and the deal fell apart.

In 2001, some Illinois lawmakers attempted to call a tax incentives truce after their winning battle over Boeing cost them up to $41 million in tax and other incentives over 20 years.

This year, Missouri and Kansas broke new ground by signing a truce to end a long-running incentive battle over Kansas City business activity. According to the Hall Family Foundation, a private philanthropic organization in Kansas City, the combined $335 million spent by the states since 2010 has resulted in a net gain of just 1,200 jobs for Kansas.

Missouri passed legislation to curb offers of incentives to businesses in neighboring Kansas counties, and Kansas Governor Laura Kelly (D) signed a matching executive order. Of course, if localities in the states fail to abide by the rules, the deal could easily fall apart.

Elsewhere, Arizona, Illinois, New York and West Virginia lawmakers have introduced legislation to form a multistate compact, which may be joined by any other state. Illinois Senator Toi Hutchinson (D), a former NCSL president, says the bill she introduced was intended to generate discussion after years of frustration with interstate poaching and concern that incentives weren't providing adequate return on investment.

"What we've been doing is not bolstering state economies," she says. "What would happen if we could think differently?"

States are locked in a battle with one another for the latest corporate relocation or expansion, Hutchinson argues. They would benefit from a more cooperative, regionalized approach to economic development because so much business activity takes place across state lines.

"You can make a case," she says, "that the stronger surrounding states are, the stronger we are."

Jackson Brainerd is a policy specialist in NCSL's Fiscal Affairs Program.

Innovations

Ideas for strengthening the legislative institution

LEGISLATIVE LEAVE

Jobs Back Home May Allow Part-Time Lawmakers to Serve

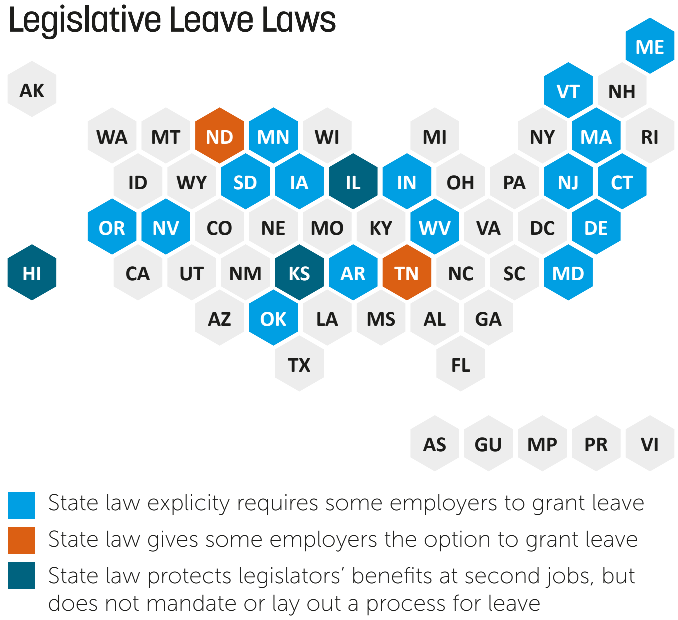
BY HELEN BREWER

Citizen legislators may be one of the most authentic embodiments of the American ideal of "government of the people, by the people, for the people." Each year, they leave their hometowns for a few months to serve as elected state lawmakers, then return home after their sessions end to live as members of their communities.

In the 16 states with part-time legislatures, having another job back home may be essential to lawmakers' ability to serve. In addition to the months spent in session, lawmakers may have to research policies or serve on committees during interims. Many may need year-round incomes, however, to supplement their part-time legislative salaries. For this reason, they often have careers as attorneys, business owners, farmers or teachers.

Legislative leave laws in at least 16 states (15 with part-time legislatures) require employers to grant legislators a leave and, after sessions end, restore them to their previous positions without loss of seniority. Several of the laws explicitly state that the time an employee spends on legislative leave cannot affect his or her eligibility for retirement benefits.

Legislative Leave Laws



Note: Rhode Island law requires employers to provide employees who serve in the legislature with a "flexible work schedule" but does not mention leaves of absence.

Source: NCSL, 2019

Leave laws help protect part-time legislators' outside jobs, but they have limitations. In six of the 16 states, the laws apply only to public employers. And only New Jersey requires legislative leave to be paid.

Four more states have legislative leave laws that are less robust: Oklahoma, for example, requires legislative leave, but only for railroad employees. And in North Dakota, employers can choose whether to grant it.

Lawmakers in states without leave laws must work with their employers to decide how they will split their time between the two jobs.

Colorado does not have a leave law, for example, but Representative Matt Gray (D) takes time away from his work as an attorney each year during session. He said his ability to split his time between his legal and legislative duties "wouldn't work without a team environment on the private employment side."

Most leave provisions do not apply to small-business owners who employ fewer than five or, in some cases, 10 people, or to those who can demonstrate they would suffer a significant hardship if an employee takes legislative leave.

Making legislative service accessible to the greatest number of citizens, many believe, only strengthens the legislative institution and our form of representative democracy. For those choosing to serve in a legislature, but who might be deterred by the possibility of sacrificing their careers and year-round salaries, legislative leave policies offer a real option.

Helen Brewer interned in NCSL's Center for Legislative Strengthening last summer. Does your legislature have a success story to share? Chances are good your innovative idea can be applied in other states. Email natalie.wood@ncsl.org.

StateStats

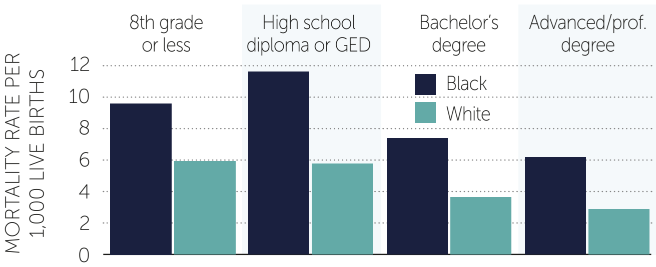
Saving Babies' Lives

Here's some good news. The U.S. mortality rate for babies during their first year of life continues to decline—from 25.9% in 1960 to only 5.8% in 2017, according to the World Bank's Data Bank and the Centers for Disease Control and Prevention. The CDC defines the infant mortality rate as the number of infant deaths for every 1,000 live births. Health experts attribute the decrease to a variety of efforts, including better prenatal care and care of women between births, fewer unnecessary induced labors, prevention of preterm and early term births, better sleeping conditions for babies, targeted home visiting services, and state and regional coalitions or partnerships.

Still, more than 22,000 infants died in the United States in 2017 even though the overall rates have continued to decrease. There are still significant disparities based on race and ethnicity. On average, black babies are more than twice as likely to die before their first birthday as Hispanic or white babies. This is true no matter what the mother's level of education. In the last 15 years, as communities have made efforts to reduce racial disparities, many states have created infant death review committees to help target resources to high-risk communities. A few states, such as Arizona, Iowa and Massachusetts, reduced their rates of black infant mortality by as much as 30%, but overall, substantial gaps remain.

—Tahra Johnson

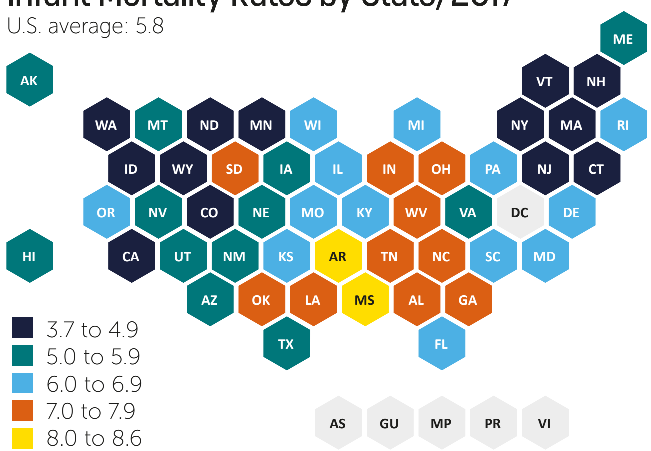
Infant Mortality Higher for Educated Blacks Than for Less-Educated Whites



Source: Centers for Disease Control and Prevention

Infant Mortality Rates by State, 2017

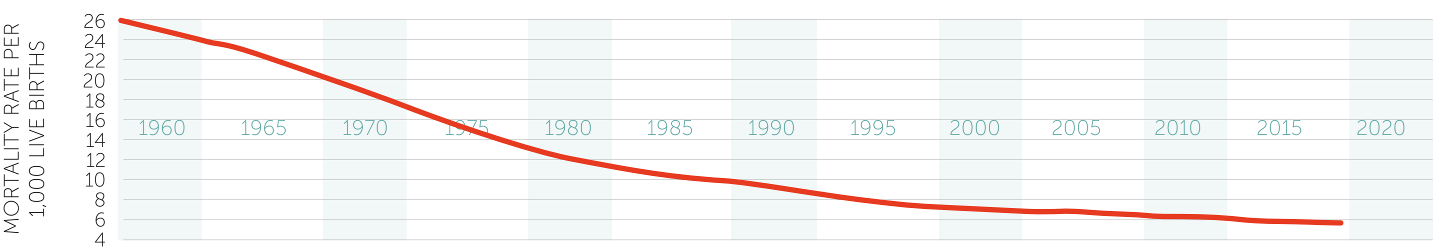
U.S. average: 5.8



Source: Centers for Disease Control and Prevention

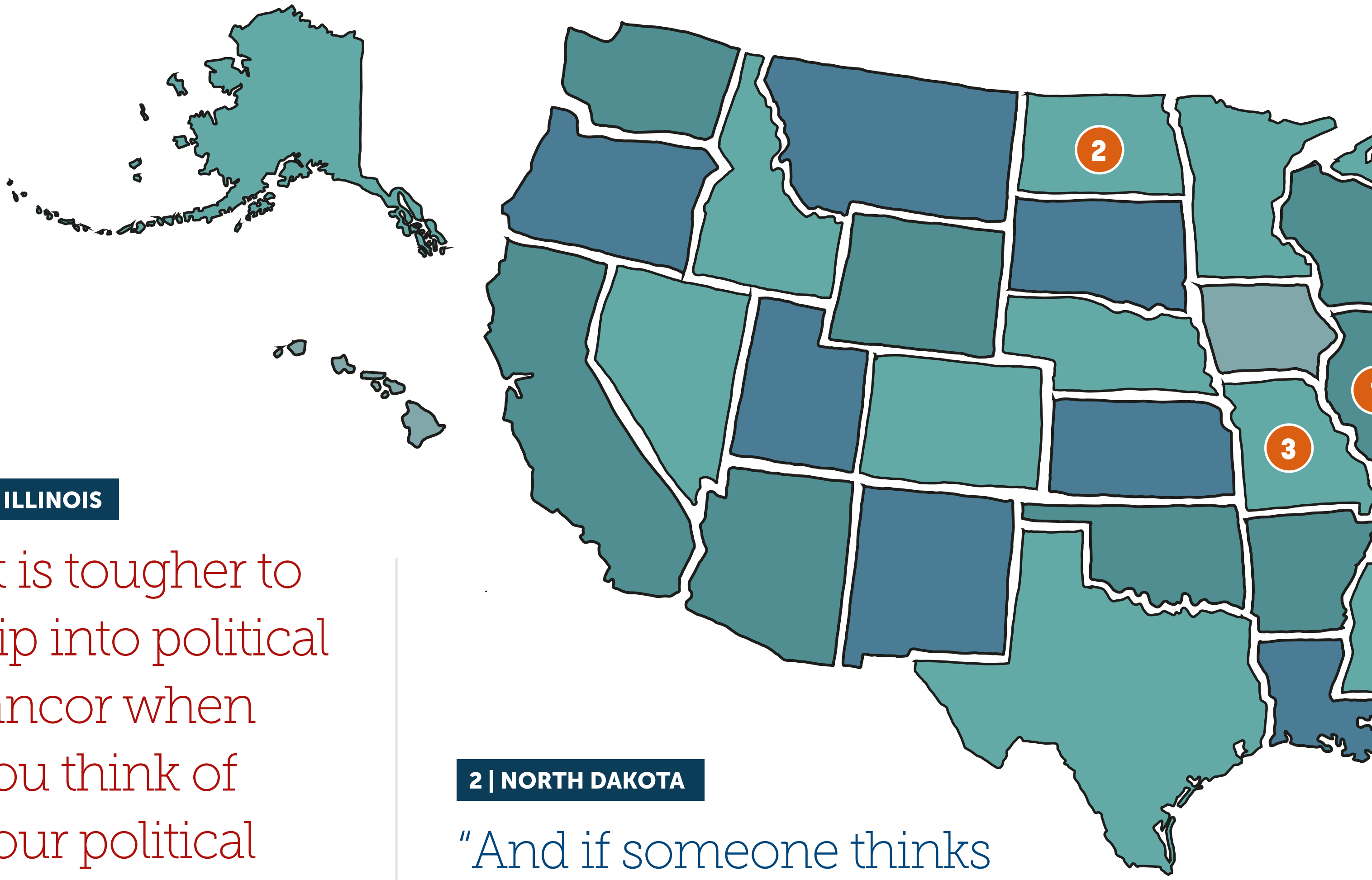
Rates Continue to Dive

The infant death rate has dropped from 26 in 1960 to 5.7 in 2017



Source: World Bank, 2019

Newsmakers



1 | ILLINOIS

"It is tougher to slip into political rancor when you think of your political opponent as a person, not a caricature conjured by social media trolls and partisanship."

Senator Toi Hutchinson (D), former president of NCSL, at the Forum on the Future of Representative Democracy in July, in the Virginia Gazette News.

2 | NORTH DAKOTA

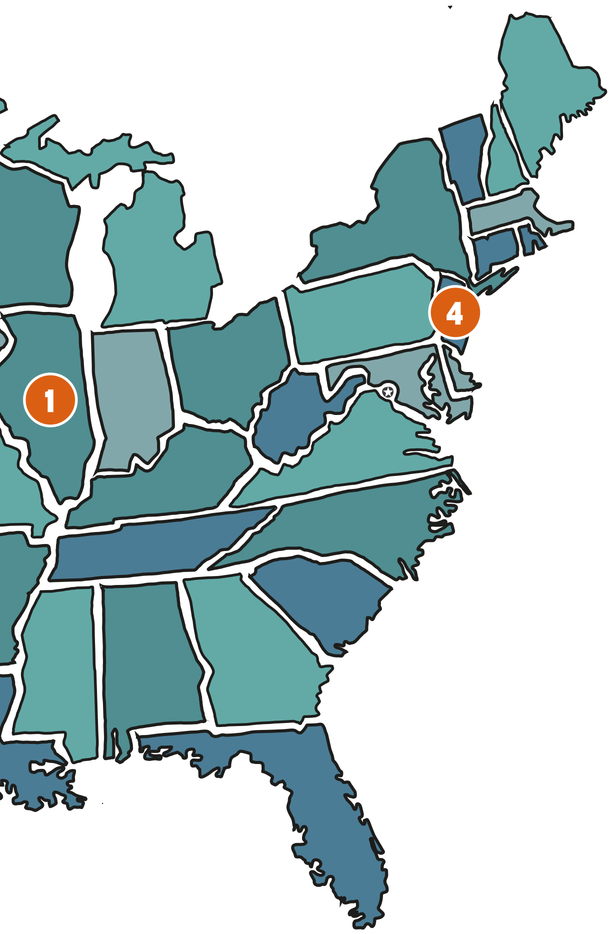
"And if someone thinks [what you post or tweet] is not proper ... who cares? Who cares? We're citizen legislators. We're not pretend people."

Representative Rick Becker (R) on the use of social media, in the Bismarck Tribune.

3 | MISSOURI

"Saying no is not the answer."

Representative Kenneth Wilson (R) on his support for a measure that shifts the state's criminal justice culture from tough on crime to smart on crime, on KCUR Radio.



4 | NEW JERSEY

"You just provided the headline for today's meeting. Thank you for blowing up the hearing."

Senator Bob Smith (D) to NCSL Policy Specialist Jackson Brainerd, after Brainerd said there is no evidence that the number of economic development tax incentives offered bears any relation to the broader performance of a state's economy, from the Associated Press.

OBITUARY

Earl Mackey, NCSL Co-Founder and First Executive Director, Dies at 81

Earl Mackey, the leading architect and first executive director of the National Conference of State Legislatures, died on Aug. 26 in Portland, Ore. He was 81.


Mackey

In the early 1970s, Mackey was one of a group of advocates looking to raise the visibility of state government at the national level. Their efforts led to the creation of the National Conference of State Legislatures and the National Governors Association.

The legislative world was a familiar one to Mackey. He graduated from the University of Missouri School of Law in 1962 and went to work as legislative counsel to U.S. Senator Stuart Symington of Missouri. After practicing law for two years, Mackey was elected to the Missouri House of Representatives in 1966. He served one term, then became assistant director of the Washington, D.C., office of the Council of State Governments, devoting the bulk of his time to state legislative matters.

Between 1972 and 1974 Mackey worked with legislative leaders to galvanize three existing state legislative groups into one national organization that would offer high visibility, greater service and an enhanced voice for legislatures across the country.

Mackey became NCSL's first executive director when the organization was created in 1975, and served until 1987, when he was succeeded by William Pound. "Mackey built a solid foundation for the organization with a strong bipartisan tradition," said Pound, who retired recently.

NCSL expanded rapidly during Mackey's tenure. Its rise followed a decade of intense efforts to strengthen state legislatures, sparked in part by a series of U.S. Supreme Court decisions that required state legislative districts be of equal population. The rulings brought in new legislators who expected services that would improve their ability to make decisions independent of governors and lobbyists.

Following his departure from NCSL, Mackey worked at the Kentucky Legislative Ethics Commission, Portland State University and Ohio State University.

—Edward Smith

Edward Smith is NCSL's director of content. Former NCSL staffers Karl Kurtz, William Pound and Lanny Proffer contributed to this story.

Yes, No, Maybe So

ETHICS

How does separation of powers relate to ethics?

BY NICHOLAS BIRDSONG

Forty-three state legislatures now use ethics commissions to enforce ethics laws and to protect the integrity of the legislative institution. This includes issuing penalties if legislators violate the rules.

But in some states, the imposition of those penalties has been challenged based on two common doctrines: legislative immunity and the separation of powers.

All states have adopted some kind of legislative immunity, which was inherited from British colonial rule and prohibits interfering with or questioning an official's conduct by sources outside the legislative branch of government.

ALL STATES HAVE ADOPTED SOME KIND OF LEGISLATIVE IMMUNITY, WHICH WAS INHERITED FROM BRITISH COLONIAL RULE.

Legislative immunity allows lawmakers to debate issues and carry out their official duties without censorship by threat of intrusive investigations, arrests, civil lawsuits or similar legal consequences.

However, 31 states have ethics commissions that exist outside the legislative branch but still exercise oversight authority over their respective legislatures. Are they violating separation of power principles?

In 2009, the Rhode Island Supreme Court considered whether a legislator was protected from fines he received from the ethics commission for voting on a bill he should have recused himself from because of a conflict of interest. In *Irons v. Rhode Island Ethics Commission,* the court found that, since the ethics commission existed outside the legislative branch and voting on a bill was a core legislative duty, legislative immunity protected the lawmaker from being fined.

The Nevada Supreme Court considered a similar challenge that year in *Commission on Ethics v. Hardy.* Instead of relying on legislative immunity, however, the court found that disciplinary proceedings violated the separation of powers doctrine by improperly delegating a legislative power to another branch of government. The decision was largely based on Article 4, Section 6 of the state constitution: "Each House shall judge the qualifications [and] determine the rules of its proceedings and may punish its members for disorderly conduct."

The separation of powers doctrine has not been a barrier to ethics enforcement in all states, however.

Twelve states and territories have avoided conflicts by establishing ethics commissions or legislative committees that fall under the umbrella of the legislative branch. Others have limited the authority of the commission to making recommendations that must be adopted by a legislative vote before becoming effective.

State courts, as well, have applied separation of powers principles differently. In *Parcell v. State,* for example, the Kansas Supreme Court affirmed an executive branch commission's exercise of authority over legislators. The justices took a more permissive view because the state constitution did not clearly delineate between the branches of government. Because most commissioners were appointed by the Legislature, and there was no "usurping of power" or coercive influence, the court found the commission's authority permissible.

North Dakota took a proactive approach to any potential conflict when it created an ethics commission through a 2018 voter-initiated ballot measure. The constitutional amendment avoids the separation of power challenge by stating that it supersedes any other potentially conflicting constitutional provisions.

As ethical violations continue to challenge the integrity of our state legislative institutions, it's becoming increasingly important to understand and carefully consider how the separation of powers doctrine applies to ethics commissions.

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, at nicholas.birdsong@ncsl.org.

The Final Word

Brian Egolf

Speaker, New Mexico House of Representatives

Attorney Brian Egolf's New Mexico roots go back to territorial days, when his great-grandfather served as a county delegate to Teddy Roosevelt's Progressive Party Convention. Before establishing a law practice in Santa Fe, Egolf worked at the White House, the Treasury Department and for a congressman. He attended Georgetown University and graduated magna cum laude from the University of New Mexico School of Law. Elected to the House in 2008, Egolf was elected speaker in 2017.

What is your leadership style?

I talk a lot about this idea of durable solutions—that for the biggest problems you want a durable solution that will last year after year. From the moment I was elected speaker, the core thing I insisted on was that we've got to have people from all sides at the table talking and trying to find solutions that will work and stick. The other big theme for me is ending the weaponization of government. For way too long, governors and legislative leaders would deploy the power of government either to punish an enemy or to reward a friend. I won't tolerate it.

You were elected speaker by acclamation. How did that inform your approach to the job?

In fairness, I was elected by acclamation probably because the Republicans nominated someone to be speaker who declined the nomination and they didn't have a backup plan. Nevertheless, it had a big impact on me. It really brought into focus that you are speaker of the whole House. It reinforced my desire to be as bipartisan as the members would allow, and to reach out in meaningful ways, not just on easy bills.

What are your thoughts about professional versus citizen legislatures?

The concept of citizen public servants is great. But it's very much outweighed by the detriment caused by having no pay and no staff. And it's a detriment to candidate recruitment. We've got members from the Navajo Nation who drive four and a half hours. We have folks who have six-and-a-half-hour drives for a job that doesn't pay anything and gives you per diem that covers 80% of the cost of a hotel room in Santa Fe. Trying to get members in their 20s and 30s to run is really hard because they don't work in places where their employer will let them be gone 60 or 30 days a year. If we had compensation, it would be easier to attract a much more diverse group of people to serve.

What keeps you up at night?

I'm worried about a lot of 2-, 3- and 4-year-old New Mexico kids living in poverty that don't have time to waste while the grown-ups in their lives figure out how to save them from a life of poverty.

What gives you the most hope?

That in New Mexico now, we have the perfect storm of budget surpluses, a dynamic new governor and legislative leaders who all are focused on the same goal for kids, and we have the resources to make enormous change very quickly.

Who inspires you?

My wife. She does not have a background in business, but she started a company making cold-pressed juice. She had jaw surgery and couldn't chew for many months. This idea that helped her recover from surgery became a company. She is now off onto the next phase—a major expansion that is going to have a huge impact on the community and the economy. She works so hard, putting in long hours to pursue her dream. She is a powerful and inspiring woman.

What final words would you like to share?

Transformational change and bipartisanship are not rocket science. Anyone can do it. You just have to be willing to be the first person to stick your neck out.

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