



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith.

“In some ways, state budgets have not seen the terrible fall-off-the-cliff disaster that many anticipated just seven/eight months ago.”

That was Tim Storey, the Executive Director of NCSL and my guest today on the podcast. Tim is joining me to talk about the year ahead for legislators as they get ready to start their 2021 sessions.

When Tim came on the podcast last year to talk about the upcoming 2020 sessions, unemployment was low, the stock market was booming, and states had strong rainy-day funds. Now, after a year like no other, legislators are facing a very different landscape when they return to the capitol.

COVID-19 and its effects on every aspect of society, the economy, healthcare, education and more will be front and center for every legislature in the nation.

Tim, who has spent decades watching legislatures cope with all manner of challenges, talks about what this most unusual legislative session will look like. Tim, welcome back to the podcast.

Tim: Thank you for having me back on again, Ed. I love doing it.

Time Marker (TM): 01:33

Ed: Tim, this new legislative session will be unusual to say the least. How will the year we’ve just had affect the year ahead for legislatures? Will they meet in person, virtually, a hybrid approach – what are you hearing?

Tim: This is one of those answers I hate to give because it's sort of all inclusive and lacks specifics, but the truth is it is an all-of-the-above approach. Some legislatures are trying to open up as much as they can with some social distancing, mask requirements; just about every legislature has mask requirements. Compliance is an issue that some of the leaders are having to cope with. But lots of plexiglass.

And then there are a handful, an increasing number, and I say a handful... like I know of at least five or six that have already flat-out said they're going to be completely virtual or only access to the members and the staff. So, they're not letting any of the lobbyists or the general public into the capitols. So, that's one option.

There are others who, again, are giving limited access to the capitol to the general public and the lobby and the government relations people. Lots of plexiglass. I wish I had stock in the plexiglass company because certainly capitols will look very odd.

And then there are just a couple that are moving out of the capitol. They've found larger venues where they can hold sessions, hold committee hearings. And some are doing hybrids where they're doing sessions in person spread out, using the gallery for the members, and using virtual for committee meetings and that kind of thing.

As we often say, all legislatures are the same and they're all different, and that's I think how they're approaching COVID. They're all tracking it a little differently.

A handful of states are delaying session, so they're just starting later to get past the surge and the peak that we're experiencing here in the short days of winter.

TM: 03:31

Ed: COVID and the economy will be the key issues for legislatures this year; that seems clear. Breaking that down more, can you talk about some of the more urgent steps legislatures will likely take?

Tim: You're right to say COVID is the fog that lurks over every issue and it will drive I think much of the discussion. It is my strong belief that these will be fairly limited sessions relative to... the analog would be the first session after an election, which I think can be a fairly active time, especially if you've got party control changes, which we did not have in the election. So, you won't have this burst of creativity from a new majority coming in. So, that's kind of off the table.

Then I think because COVID is so ominous in every issue, whether it's transportation, education, of course healthcare, it's going to play into it in some form or fashion. But then at the end of the day, they have to pass budgets and that's going to be the biggest issue: funding K-12 education, funding higher education, dealing with some of the issues that have come up because of the limits of COVID, unemployment benefits, assistance to people who are poor, who don't have resources, who are just barely surviving right now. A number of states are looking at their own stimulus programs. California has done that.

So, I think that the frame for everything is COVID; but then they have to pass budgets. So, some of the specific things I think they'll get at will be legislatures have heard from constituents in

ways that governors have not, which is to say governors acting in their emergency capacities had to race in and pass a lot of orders, executive orders, to just deal with the pressing emergency of the time.

Legislatures are hearing from constituents who are saying I honestly oppose the governor or the need to have these health measures put in place, but my situation as a small business owner of this kind of business, maybe there's a way that we could relook at this whole thing and say I can operate safely, but the way the order is written prevents me from opening.

So, I think legislatures... and it's the same with schools and parents and teachers and schoolboards who are saying maybe we could customize this more and do a policy that's more thought out than just the kind of stuff that the governors and the health departments have had to put in place rapidly.

I think they're going to be looking at a whole lot of things like that. Can we tweak/customize these executive orders? There is frankly more tension than in my 30 years at NCSL of observing legislatures. There's more tension between the executive and legislative branch than I've ever seen before, and that is across the board. That is Republicans/Democrats, Democrats/Republicans, Democrats/Democrats and Republicans/Republicans – all four of those options between legislature and governor control.

And keep in mind that all the legislatures are the same party except for Minnesota. So, in every state, 49 of the states, one party controls the legislature. But there's a great deal of tension. There's always tension between the executive branch and the legislatures. So, I think that's going to come into play.

But in terms of specifics, they're going to be looking at vaccine distribution, analyzing how health departments are doing that, because legislatures are where the people have their say. So, these legislators, they are hearing loud and clear from many constituents who are frustrated because of the way things have been implemented.

Now, some of these things are very necessary and legislators aren't going to mess with them, but they want to analyze. They want to say like I'm hearing from a whole lot of my constituents that this could be altered, this could be tweaked in a certain way. And then they'll look at some stuff like COVID liability: what is the responsibility of small business and large businesses in terms of safety and how much can they be expected to bear, what is their obligation.

I think they'll be looking at scope of practice laws for healthcare professionals. That's something we've heard come up. And again, a lot of states analyzed telehealth and scope of practice laws back in the spring, but they're going to come back and look at that.

Those are some of the big things and at the end of the day, they've got to figure out their budgets.

TM: 07:44

Ed: COVID does seem to hang over all the issues legislatures deal with. Of all of those, I wonder if you think any one single issue will push its way to the front of the line, such as reopening schools.

Tim: That's number one; that's the most obvious one for good reason. School systems have had just a myriad of approaches to how they've opened up and it's created lots of problems. And legislators are going to hear from parents who are going to say this virtual system is not working for my kid, or is there a better way to do this, more options.

We also know that the federal government just put hundreds of millions of dollars into the education system. I have to confess I have not analyzed the specific targeting of the new stimulus money for K-12 education, but it is a big chunk of the close to one trillion dollars that President Trump signed over the weekend.

So, there's a whole lot of money that's going to flow out to the states specifically targeted at K-12 education and that's going to lead, again, to more battles between governors and education departments and legislatures about how they use that money to expand broadband. Maybe that's the key issue in a number of these places, and close the virtual gap, the technology gap for folks who don't have the resources to have nicer laptops or good WiFi access, these kinds of things that many people take for granted. So, I think education is where legislators have heard the most from their constituents.

The other thing that I think many legislatures are going to focus on, primarily GOP-controlled legislatures, is the election process. Clearly there are many in the country who were concerned or literally have skepticism about how the elections were run. So, I think legislatures will do a lot of due diligence on that and hold hearings and say all right, if there is evidence out there of some sort of systemic voter fraud or what about signature requirements and how you run absentee ballots. So, that's another issue.

I feel like that will be more of a... I don't want to diminish it by saying a sideshow, but I think there will be a number of legislators who will focus on that and give that the attention it deserves. I don't think it will flood into the whole floor fights and most of the bodies dealing with it, but it will get a lot of attention, particularly in those committees, those election committees.

And then, of course, you have redistricting which is out there. Just for a second, let's take that little sidetrack. I think what's going to happen with redistricting is it's going to get delayed. It does appear... we don't know right now... we're still sitting trying to figure out exactly when the Census data is going to get delivered to the states.

States have very well-defined timelines for getting those new maps put into place and it varies by state, driven by their election dates, their primary dates and their filing dates. And then it's driven by their session dates because they have to be in session to draw the plans. So, some of them are saying okay, if we don't get the data until June and, again, we don't know; the Census Bureau has not said exactly when that data is going to arrive.

Right now, we expect April 1st, which is the statutory deadline for the delivery of the data to the states. But if we don't get it until later, that could have a big ripple effect of needing to plan out

special sessions and figure out if they can do it next year and really alter that whole timeline for redistricting.

TM: 11:21

Ed: We're recording this podcast on December 29th and in just a few days is the deadline for the Census to report its first batch of data for the reapportionment and redistricting cycle. It looks like that will not be turned in on time. How will this affect states?

Tim: Yeah, that's the apportionment date. I think they've already said... That's the first piece of data that comes out from the 2020 Census. Last I heard they're planning to report January the 23rd or something like that, after the inauguration of the new president. I don't know if that's a coincidence or not. But that's the top-line number for each state.

Of course, the President had sued about including or changing that apportionment data to take out undocumented residents. Last I heard, that's technically pending, so there's a lot to happen on the Census front just in the next few weeks.

Ed: Thanks, Tim. We're going to be right back after this to talk about the outlook for state budgets and what a new administration in Washington means for the states.

MUSIC Gene VO:

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TM: 12:56

Ed: I'm back with Tim Storey to talk about the challenges facing state legislators as they convene for the 2021 sessions. Tim, last year when we did this podcast, you noted the robust state of the economy: low unemployment, a strong stock market, and states generally holding on to healthy rainy-day funds.

It is, of course, a much different picture this year. Fill us in on where states stand in terms of budget, and are revenues in as bad shape as was predicted earlier this year?

Tim: We've heard from the fiscal staff and the fiscal chairs out around the country and things are not as bad as we thought they would be, is the way to phrase this, that when the coronavirus pandemic hit in February, March and April and states were then looking at trying to pass budgets for FY21, which typically in most states is a fiscal year that ends in the middle of 2021.

So, let's say we're mostly halfway through those FY21 fiscal years. States were budgeting based on worst case scenarios. The fact is that it hasn't been as bad as they thought it could be, and there are a whole lot of theories about that, not the least of which is the infusion of hundreds of billions of dollars of federal money into the economy.

So, whether it was the third stimulus package that came from the federal government... Sales taxes are surprisingly strong. The housing market remains strong. So, there are elements of the economy that are fairly strong. And, of course, the stock market is at record highs even as we sit here today.

So, in some ways, state budgets have not seen the terrible fall-off-the-cliff disaster that many anticipated just seven/eight months ago. Again, revenues are flowing in fairly above their projections; not back in pre-pandemic times, but above projections, and they cut budgets so severely that they're now seeing that they've got some extra money to work with in many states.

This is not all 50 states. Some of the oil and gas producing states and the heavy tourism states are really in the tank, so you've got these outliers because of the economies of those states.

But this raises an interesting question. You will not talk to a fiscal chair or a fiscal staff director in any of the legislatures who is optimistic. They are all very cautiously worried about: How does this play out? What does the economy look like when it comes back? Is the shift to online shopping going to continue in the way it has?

If I've heard it once I've heard it 50 times: Thank goodness that we resolved the states' ability... of course, NCSL was a huge part of that, to collect the already the existing tax. I say collect; it wasn't a new tax... collect the taxes on online sales, because that has in many ways kept the sales tax dependent states fairly strong and where they need to be.

So, I think that what we can say now is that state budgets are not nearly in as bad a shape as we thought they would be. They're not in great shape, but they're stable with this huge caveat: no one knows what's around the corner. There's no analogue in the modern era. I don't know that you can really compare the pandemic of 1918 with the pandemic of 2020 in terms of state budgets. State budgets looked nothing then like they do today. There's no way to say we know how this ends from a budgetary perspective, and we know what the fallout is.

And then you've got the two economies problem, which is there are so many people who are tremendously struggling because they're in the service industry, relatively low-paid jobs, so they don't necessarily contribute a ton of tax revenue to the states relative to the overall tax collections and revenue collections. But those people, and I say those people... an enormous number of Americans are desperately struggling, and so states are going to have to look at that. That could drive up some costs as well.

The fiscal folks are worried about hidden spending, hidden costs that they're going to have to cover, not even hidden but just where does this go. And unemployment benefits for people and how long do people stay unemployed. When do restaurants and hospitality, when do those things begin to open up?

The final answer is state fiscal situations are stable as we sit here in January, or going into January, but nothing is for sure as to how this thing ends.

TM: 17:38

Ed: Well, you're sure right that that Supreme Court decision that allowed states to collect sales tax on internet transactions, *South Dakota v. Wayfare*, came at an opportune time given this huge shift to digital commerce.

Tim: Yeah, it's absolutely true and you can see it. Online sales have increased. I just saw an economic presentation, which has a pretty pronounced increase in online sales and, of course, that leads to taxes collected by states that would not have been there. Taxes are on the books that would not have been there. So, that's helped. Many of the states have benefitted because of that.

TM: 18:17

Ed: Tim, in just a few weeks we'll have a new administration in Washington. But as we've discussed before, even this change is unlikely to break through the gridlock in D.C. What do you think the new administration will mean in terms of relations with the states?

Tim: Well, the wild card, of course, is that we're one week away from the resolution of the Senate control, the two seats in Georgia. But I think we also know that if Democrats pick it up and then they have the tiebreaker with Vice President Harris, then it still doesn't bode well because any one or two senators, and of course there are outliers in both parties, can really make it difficult to pass any major legislation.

I guess I'm going to remain optimistic at this point. I think the Biden transition team has done some outreach to states. They don't seem to be telegraphing we're going to come in with a big package and big federal solutions. I don't hear that in listening to the transition. So, I'm going to be optimistic they'll be a good partner and will understand that big, giant, federal, one-size-fits-all solutions are not always the best approach and that big policy change takes careful time.

Maybe there are a few things. Maybe with numbers so close, they'll just say surely, we can work on an infrastructure package. That's something I think would be an enormous step forward for the country, states and the federal government to finally find a way to invest in this massive backlog of infrastructure problems that the country has.

That's something I'll keep an eye on and keep my fingers crossed.

TM: 20:05

Ed: So, in your mind it seems unlikely we're going to see some huge aid to states package coming along.

Tim: Yeah, it doesn't seem like it. There's nothing pending now, and I think even with a new Congress, they're going to wait and see how this new stimulus package plays out. Some of that money does come into state coffers, right – I mean, if people get \$600 stimulus checks or \$2,000 stimulus checks, like they got \$1,200 stimulus checks before, some of that results in increased spending and that comes into state coffers.

I think that states will be getting some assistance through that federal legislation, but just direct aid to the states, direct flexible aid to the states – that's not going to happen certainly any time

soon and if things get worse or don't get better, they may put it back on the table. But I don't see it happening any time soon.

TM: 21:02

Ed: Tim, as we wrap up, is there anything else you'd like to share with listeners as they get ready to head into the 2021 sessions?

Tim: I mean one is be safe. I think we've seen that COVID has affected legislatures directly. Many members have contracted it. This is a people business and it's hard to really pull back, because the human connection and the relationships are really the glue that holds it all together. So, that's really important.

I think the other thing is that this is just going to be unprecedented. Kind of embrace it for the difference that it is and knowing that normal will happen. It might be somewhat different, but I expect it will look very much the same. Legislatures have been around for... the first legislature in the western world, Iceland, claims that around the 10th century. So, these are institutions that have existed for millennia, 400 years on our continent, and have endured disease outbreaks before.

There are examples. The South Carolina legislature actually met outside back in the 1700s because of an outbreak I think of tuberculosis. The first ever legislature in North America, the Virginia House of Burgesses, they had to adjourn early because of a malaria outbreak, because they were meeting in Jamestown in the middle of the hot summer with lots of malaria-carrying mosquitos I would assume.

So, these institutions are strong. Invest in them. We are going to endure this. Do the best you can, as people are counting on you.

Ed: Tim, as always, thanks for your time and perspective. Stay safe.

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Ed: And that concludes this edition of our podcast. We encourage you to review and rate our episodes on iTunes, Google Play or Spotify. You may also go to Google Play, iTunes or Spotify to have these episodes downloaded directly to your mobile device when a new episode is ready. For the National Conference of State Legislatures, this is Ed Smith. Thanks for listening and being part of "Our American States."