



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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2021 Legislative Summit Preview | Sept. 26, 2021 | OAS Episode 142

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.

“Legislatures have learned that it’s important to flex their oversight muscles in times of emergency, just as they should do it in normal times. And one outcome that we’ll be paying attention to and watching for is whether a renewed focus on oversight transcends pandemic governance. We think the legislatures, to be strong, they need to be an effective counterweight to the executive, and we’ll be paying attention to the actions the constituents are taking to carry this forward beyond the pandemic.”

Ed: That was Natalie Wood, the director of NCSL’s Center for Legislative Strengthening. Natalie is one of three guests on this podcast to discuss the upcoming NCSL Legislative Summit in Tampa, Florida in early November.

Natalie previews a session on legislative oversight during an emergency and the lessons learned by legislatures during the pandemic.

My second guest is Erica MacKellar, a fiscal expert from NCSL who discusses the state of state budgets and some of what attendees will hear from economist, Dan White, a speaker at the Summit.

Kate Blackman, director of NCSL’s health program, rounds out the group. She highlights sessions planned for the Summit that will look at the pandemic and other issues.

Here’s our discussion.

Ed: Natalie, welcome to the podcast.

Natalie: Hi, Ed. It’s good to see you.

Time Marker (TM): 01:47

Ed: I asked you to come on the show to discuss a session you're planning for the Legislative Summit focused on legislative oversight in an emergency. The pandemic seemed to put a renewed focus, at least in the legislative world, on the separation of powers and the tension that sometimes exists between the executive and legislative branches.

So, talk about how these issues played out over the last 18 months or so.

Natalie: I'm happy to, Ed. You mentioned the word tension and I think it's important for our listeners to know that that tension is healthy, and it's built into our system of government. It exists so our branches of government can ward against unchecked power from each other.

And while tussling over the separation of powers is nothing new, especially between the executive and the legislative branches, it's been a long time since the pandemic tested our systems.

Now, every state authorizes its governor to declare state of emergency and gubernatorial powers which can expand until the emergency ends, and maybe for obvious reasons. You need to be able to act quickly. But some of these powers also mirror the powers that legislatures typically have, even if it's only temporary.

We have laws on the books that outline how the legislative branch can exercise checks and balances, which include nullifying an emergency order and getting the chance to end it after a certain time period. But these and continuity of government provisions didn't always anticipate what a prolonged, evolving emergency like COVID-19 would look like.

When a legislature wasn't meeting or was slow to come back into session and/or the governor was making all these decisions over a long period of time without involvement from the first branch, legislatures understandably found fault with that. And so, the upshot is that nearly every state and Guam and Puerto Rico considered over 300 pieces of legislation just in 2021 to tweak emergency oversight law.

TM: 03:35

Ed: So, let's back up a little bit and talk about what legislative oversight looks like in a time when you're not facing an emergency.

Natalie: Yeah, good question. Oversight in the legislative branch takes many forms. One that our listeners might be most familiar with is work that standing committees do, many of the processes that are baked into creating and passing a budget and the legislature's ability to override a governor's veto.

The legislatures have other tools too. They can request and conduct special audits. They can conduct performance evaluations of different government programs. They can conduct review over administrative rules. And there might be requirements that certain programs sunset and that gives the legislature an opportunity to review them as well.

Some legislatures use more of these approaches than others. One way to think about it is the more mechanisms a legislature has in place, the broader and deeper the view that the legislature gets into what's happening in the executive branch.

TM: 04:32

Ed: Back to the pandemic, what kinds of actions have legislatures taken during this emergency and are you seeing any trends?

Natalie: Yes, we are seeing some trends. I mentioned... I believe the exact number is 46 legislatures at least considered legislation in addition to the territories. Of those, at least 18 enacted measures in 2021. Others did so in 2020. That's when we first saw a wave of legislation get introduced on this topic.

Some of the changes that got the most traction would be legislatures giving themselves a bigger role in reviewing executive orders or states of emergency that the governors issued, further limiting the length that the orders can be in place before the legislature gets the ability to tweak them or end them. In addition, ending the states of emergency or executive orders; the legislature giving itself the ability to do that. As you can imagine, another hot topic was legislatures wanting to give themselves the ability to review spending, which is especially important with the federal emergency dollars coming in.

And lastly, something that my team and I at the Center for Legislative Strengthening finds pretty interesting is states that are adopting resolutions to put measures on the ballot that would give the legislature the ability to call itself into special session. That's something that in 14 states, only the governor can call the legislature into special session; the legislature can't do it itself. Something that's arisen as of late is: Should that be that case? Maybe legislatures should be able to call themselves in, especially given what's been going on.

As I said, for that last thing, that will involve changing the state constitution in most places, so we're going to need to wait a little bit to see what happens.

TM: 06:16

Ed: Well, I suspect I know the answer to this, but have there been legal or constitutional challenges to any of these actions?

Natalie: Yes. You can imagine rightly that the governor hasn't always been so excited about the legislature flexing its muscle, so there have been court challenges to some actions. The details of the challenges vary because the laws and the circumstances in the states vary. But some states that have experienced legal tussles are Indiana, Kentucky, Louisiana and Michigan.

And then there has been some veto overriding going on in a couple of places as well. A legislature passes something, and the governor vetoes it. Then the legislature moves forward with it, giving a veto override. Spoiler alert – we'll be teasing out some of that in our session when we get to Florida.

TM: 07:05

Ed: Ultimately, we hope we all learned some things from the pandemic. So, what have legislatures learned?

Natalie: That's exactly why we wanted to feature a session on this topic at the Legislative Summit, and we plan to solicit answers to this question from our attendees, in addition to highlighting how certain legislatures responded.

So, I think some of the lessons learned are emerging. But I do think it's safe to say that legislatures have learned that it's important to flex their oversight muscles in times of emergency, just as they should do it in normal times. And one outcome that we'll be paying attention to and watching for is whether a renewed focus on oversight transcends pandemic governance.

We think the legislatures, to be strong, they need to be an effective counterweight to the executive, and we'll be paying attention to the actions our constituents are taking to carry this forward beyond the pandemic.

Ed: Natalie, thanks for the preview of your Summit session. After this short break, I'll be back with Erica MacKellar.

MUSIC and Female VO

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Ed: I'm back with Erica MacKellar from NCSL. Erica, welcome to the podcast.

Erica: Thanks for having me.

TM: 08:44

Ed: Erica, thanks for coming on the show to talk about the state of state budgets. This is going to be a session at the Legislative Summit and the question I most want to ask is: How are state budgets doing overall? When the pandemic started, there were a lot of gloom-and-doom predictions on how it would affect state budgets. How did that work out and what's the overall fiscal situation in the states?

Erica: Overall, the fiscal situation compared to where we thought we would be a year ago is really good. Like you mentioned, last summer states were predicting some pretty catastrophic revenue losses and preparing for budget cuts. Fast forward to today and a lot of those dire revenue estimates really didn't come to pass in most states.

States that rely heavily on tourism definitely faced some challenges, but for the most part state revenues fared better than expected. I think some of the reasons: employees were largely able to shift to remote work, which helped state personal income tax revenues, and we didn't see consumers stop spending as much as experts had really kind of expected. Instead, they sort of

shifted some of their spending from services to home good and those sorts of things that really helped buoy states' sales tax revenues.

I think the ability of states to collect online sales tax revenues also helped. I think that was a huge boon for states.

As a result of these and some other things, we've seen state tax revenues rebounding much quicker than expected. I don't think states had to delve into their reserve funds as much as they anticipated, and many states have been able to kind of restore those funding cuts and even make deposits into their rainy-day funds.

Ed: How about all that federal stimulus money – how has that affected state budgets?

Erica: There's no question that the unprecedented amount of federal funds that have flowed to states since the start of the pandemic have really helped state budgets. The Cares Act passed in 2020 really helped states address the immediate impact of the pandemic. It included 150 billion dollars in flexible aid to state, local and tribal governments to address that emergency, allowing states to purchase PPE, increase testing capacity, provide grants and loans to small businesses, and other kinds of immediate responses to the pandemic.

The more recent American Rescue Plan ACT, or ARPA as we call it, included 350 billion dollars in flexible aid to state, local and tribal governments, and I think states are really thinking about this package and those funds as more of a recovery package. States have until 2024 to allocate those funds, and with that longer timeframe, they're really thinking strategically about how to maximize their use and jumpstart the economy.

Additionally, I think federal funding also helped states maximize their own general fund dollars. More federal funds for programs like K-12 education and Medicaid helped states move their general funds to other priority areas and programs that they might otherwise have had to reduce or cut.

TM: 11:33

Ed: Now you need to get out your crystal ball. What do you think states will see in terms of revenue growth in the future?

Erica: Well, we certainly hope that revenue growth will continue in the states and there seems to be a sense of cautious optimism out there that this better-than-expected revenue growth can continue. But obviously there is a lot of uncertainty out there, particularly around the delta variant and what that might mean for the economy.

Dan White, an economist with Moody's Analytics, will be with us at the Legislative Summit in Tampa and he'll be doing a presentation on the U.S. economic outlook on Wednesday, November 3rd. Dan always has great insights into both the trajectory of the economy and also what it will mean for state budgets.

TM: 12:13

Ed: Before we wrap up, any other thoughts you have as states go into what we hope is a post-pandemic period?

Erica: There's a lot of interest out there in how states are allocating these unprecedented federal funds and it's something that we've been tracking closely here at NCSL. We have a database on our website that's tracking as states allocate those ARPA funds for different sources that I hope will be helpful for people.

Ed: Erica, thanks for filling us in on this upcoming session at the Summit. We're going to take another quick break and then come back with Kate Blackman.

MUSIC and Gene VO

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Ed: I'm back with Kate Blackman, the director of NCSL's health program. Kate, welcome to the podcast.

Kate: Thanks for having me, Ed.

TM: 13:27

Ed: So, you have a few sessions coming up at the Legislative Summit. One of them, not surprisingly, is about the pandemic and the challenges to healthcare facilities and public health. Tell me about that one.

Kate: Absolutely. I think at this point everyone is probably familiar with the fact that the pandemic really exposed a lot of deficiencies in the healthcare system and the public health system, many of which had been there for a long time but were really exacerbated by the pandemic.

As we continue to work through pandemic response and recovery as we speak, this session will really look at: What are some of the lessons learned so far? What were those gaps and challenges? And then: What are those lessons learned that we may be able to apply in real time as we continue to recover and move out of the pandemic? But also, as we potentially look ahead to the future, whether it's continuing to fight COVID-19 and variants and things like that, or potentially future pandemics.

TM: 14:24

Ed: I know that people in every field have talked about lessons learned, as you just noted. I wonder as you were working on this session: Are the lessons learned clear now? Do you think there are some immediate lessons learned and maybe there are other lessons that take longer to be clear, maybe a year or two years?

Kate: Great question. I think definitely there will continue to be lessons learned a year and two years down the road. Talking to both public health experts and healthcare experts as well as to our members, to lawmakers who are thinking about response and recovery, I think everyone has alluded to the fact that we'll continue to learn lessons and look back to see what happened during the pandemic.

But certainly, there have also been some successes in real time. The session will likely touch some on vaccines. That's not the whole focus. We'll touch on a number of things. But vaccines are one area where we have seen some state successes and lessons that may be applied as we look to things like boosters or rolling out to additional populations like younger children.

So, there are certainly some lessons learned in real time, and then there are some things that we may really think about moving forward into the future. And another theme that you'll likely hear from this session, and I imagine at other sessions at the Summit as well, is thinking about the American Rescue Plan Act and all of the funds going to states in ways that lawmakers may be thinking about how to apply those funds in ways that really address some of these gaps.

So, I think it's very timely, both now and I'm sure for years to come, to talk about some of the lessons learned.

TM: 15:56

Ed: Well, I want people to know that this will not be all pandemic all the time at these sessions in Tampa. You have another session that will focus on mental health issues. What will the speakers touch on?

Kate: The session is not necessarily about COVID-19, but certainly the pandemic has elevated the conversation around mental health in our country. This session will focus on mental health across the lifespan, so across our lives from early childhood all the way through older adults.

We know that things that happen early in childhood, especially traumatic events or what is called adverse childhood experiences can really shape your later outcomes, both chronic disease outcomes, but also later mental health or substance use disorder or other behavioral health challenges in the future.

So, the session will have some emphasis on that early childhood period where we know we can intervene and potentially prevent some adverse events and prevent some later mental health challenges.

It will also look at older adults and some of the unique challenges. Again, I think as a result of the pandemic, we saw folks in long-term care facilities, for example, who are facing a lot of social isolation, and so really thinking about some of the different, unique needs that we have as young children, as middle-aged adults and as older adults. So, it will really look across the whole life course.

TM: 17:18

Ed: We did a podcast earlier this year about social isolation. It was eye-opening to me to hear that it's not only older people whom you might expect would experience increased isolation, but that teenagers were strongly affected by the isolation from their peers.

I guess it's really hard to talk about any public policy issue right now without touching on how the pandemic has affected it, and I suppose that's true of the childcare session you're going to have as well. Fill us in on that one.

Kate: Yes, so the third session that we're hosting on the health and human services track is the childcare session. Like the healthcare and the public system, it's a system that already had some challenges. It had some fragmentation and things like that within it that were longstanding, but really exposed as a result of the pandemic. And we saw how important childcare was for the economy and all of us being able to continue during the COVID-19 pandemic.

That session will talk about how to potentially rebuild childcare systems, especially again with an influx of federal funds, ways that states may be able to leverage those to think about childcare systems and new ways, and also then looking at some of those state innovations and opportunities that are happening in real time or moving into the future.

TM: 18:37

Ed: A lot of people got a wakeup call about how childcare can affect the economy, even if they didn't have school-aged children at home. I think this will be an interesting session for many attendees.

In fact, all these sessions sound good and it sounds like there will be plenty for folks to dive into in Tampa. Thanks for filling us in, Kate. Take care.

MUSIC

Ed: And that concludes this episode of our podcast. We encourage you to review and rate NCSL podcasts on Apple podcasts, Google Play, Pocket Casts, Stitcher, or Spotify. We also encourage you to check out our other podcasts: "Legislatures, The Inside Story," and the special series "Building Democracy." Thanks for listening.