

## Our American States | An NCSL Podcast



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, the politics that compel them, and the important work of democracy.



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### State of State Legislatures | Episode 1 | 12/26/2016

In today’s podcast, we take a close look at the political landscape of state legislatures, examine the top 10 issues they will tackle this year, take a look at how the new Trump administration will affect their work, and talk about the possibility of a national constitution convention.

Today's guest is William Pound, the executive director of the National Conference of State Legislatures, otherwise known as NCSL. Bill has directed NCSL for around 30 years, and is one of the nation’s foremost experts in state legislatures and how they operate.

### Podcast Transcription

Gene Rose: News from the nation’s state capitals, insights to critical public policy issues that affect your daily lives. This is Our American States, a podcast from the National Conference of State Legislatures.

Welcome to Our American States, a podcast of compelling conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy. I’m your host Gene Rose.

In today’s podcast, we’ll take a close look at the political landscape of state legislatures, examine the top ten issues they will tackle this year, take a look at how the new Trump administration will affect their work, and talk about the possibility of the national constitution convention.

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So Bill, what is the political status of state legislatures today? What happened in the 2016 elections?

Bill Pound: The November elections for state legislatures were in some ways a status quo election. They defied the idea of change. There were Republican gains. They were less than the Republicans had gained in recent years, but they've been on a steady, upward path since 2008, so the election of 2010. The number of chambers that are controlled by the two parties remains exactly the same even though there were six changes, three in each direction – three wins, three losses for both parties.

What the country looks like now is not unlike the map we see of a presidential election in many ways, with the Democrat control concentrated on the coasts, particularly New England and the Middle Atlantic states, everything north of Maryland, and then on the West Coast, with Washington, Oregon, California, Hawaii and Nevada being in the Democratic column.

And then the Republicans are concentrated in the center of the country, the South, the Midwest and much of the Rocky Mountain West with the exception of Colorado and New Mexico.

Gene: So while the 2016 elections didn't necessarily change the state legislative political landscape in a dramatic way, I'd like to get your perspective on what the political status is of state legislatures today and how it's changed over the last 20 years or so.

Bill: There are 7,383 state legislators and Republicans have about 60% of that total; it's about 60/40. It's the largest Republican numbers in the history of the country and the smallest Democratic numbers, certainly in the modern time since we've been a 50-state nation and even going back to World War I.

In the past 20 years there's been a steady move toward increased Republican control, starting back in 1994 actually and in the 90s the Republicans began to gain strength where they reached parity around the early 2000s, and then since 2010 and the redistricting that was done right after that, they have shown dramatic gains. What was once the solid Democratic South is now the solid Republican South, and there has been a noticeable increase in Republican seats in the Midwest during that period of time.

Gene: Thank you Bill. After this short break, we'll find out what the top ten issues are for 2017, what's in store at the state level for healthcare, marijuana and state budgets. We'll get the Top Ten List after this short break.

Music and Female VO:

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Gene: Welcome back to Our American States. Each January State Legislatures Magazine offers a forecast of the top public policy issues for the year. Issues on the list this year include: immigration, transportation, policy/community relations, cybersecurity, and government regulations.

Bill, I'd like to get your reaction to a few of the other issues in the Top Ten List. Leading off the magazine's list is healthcare reform. So Bill, what's going to happen at the state level? Will everyone just be waiting around to see what the Trump administration and Congress will do first?

Bill: Well, the states on the Affordable Care Act are going to react to what the Congress does. Of course the word has been to repeal it or repeal and replace, which Republicans have tried to do in recent years and President Obama has vetoed every attempt to do anything like that.

The states manage the Affordable Care Act essentially, but the federal government finances the bulk of it; even with the expanded Medicaid program that's true. With the traditional Medicaid program, the funding is split between state and federal governments. But under the Affordable Care Act, the state portion is growing slowly, but growing in terms of the portion that they have to pay, with initially the federal government paying 100% and the states nothing. Now it's increasing at the rate of about 2 or 3% a year, the state share, what will be growing to where... it's supposed to stop off at 90/10. I think there's no guarantee that that will happen.

It's a wait and see because until Congress does... and recently as today there is news of Republican disagreement about what the best approach is, what to do with the ACA tax setup, and whether to repeal it completely, or to faze in whatever you do over a period of time, which would require a gradual repeal as well. You could repeal it at a date certain, but it would be down the road a ways.

Gene: A related healthcare issue, Bill, is the opioid epidemic. What have states done so far and how do you see them reacting to the issue this year?

Bill: You will see the states reacting to... well, one thing is for the first time some federal funding directly aimed at the opioid problem, but the states, I think you saw in the presidential campaign and you saw in many state elections, clearly it was one of the primary issues that was out there and will continue to be, to see what we can do as a nation to deal with this problem.

Gene: Marijuana is a growing issue in the states and it's not being prompted by state legislatures, but state legislatures are reacting to things that the public has put into motion. How do you see the issue playing out in the states this year Bill?

Bill: We've seen the spread of legalized marijuana to where we'll now have within the next couple of years a result of the elections of 2016, we'll have about eight states which have legalized recreational marijuana. We've got about 28 or 29 states that have legalized medical marijuana, which has been done by the legislatures by and large, not entirely, but by and large.

I happen to think that the early states in this area, particularly Colorado and Washington as the first two, and then Oregon and Alaska, the legislature has done a very good job creating a regulatory regime to deal with it, a regulatory and tax regime, and that while they have found problems and there have been problems with it, they have been quick to respond to them and to fix it. Many of them I think can only be anticipated... after it was, in fact, on the market, there was a legal market for it, and I would expect other places, California for example, to follow much the lead of those legislatures.

I think you will see more pressure now in more places for legalization. A big variable in this is: What does the U.S. Department of Justice do under new leadership? Because they have essentially looked the other way, but it is illegal under federal law that is not enforced. What's going to happen now?

Gene: Over the last couple of years, states have been reacting to the federal Every Student Succeeds Act. Do you anticipate more action on this issue in 2017?

Bill: Well, I think there will be a good deal of change, particularly in K-12, which falls under the Every Student Succeeds Act, the new congressional enactment of 2016. We at NCSL have worked with probably 20 of the state legislatures in the period since last April when it was enacted to work with them on their options on what they might do under this new bill that they haven't been doing, because they have a great deal more latitude than they did under the old No Child Left Behind Act.

I think you will see the states experimenting and changing their educational systems; that's been ongoing because of this concern we have in this country that we are falling behind, particularly on K-12 education, that we are not up to international standards in this area.

A key point in all this is finance because the states finance about 47%, close to 50% of educational funding of K-12 education funding. About 33% of total state spending goes into that, about 9% into higher education. So it's 42% for the whole educational area in the composite state budget. And I think you will see a lot of new experimentation under it.

Gene: And what about another issue that's high on the State Legislatures Magazine, higher education?

Bill: Well, obviously one of the key things in state government and, if you ask state legislatures one of the most important things, is economic development and jobs, and higher education is a critical component of that. The states had pulled back funding on it during the recession. They're gradually restoring a portion of that. We've transferred a lot of costs to users in tuition, but you will see I think the states, again, both vocational and higher education, there will be a continued emphasis on.

Gene: And of course, Bill, the key to many of these issues are state budgets. It's an issue that I know NCSL tracks closely. How are state budgets entering the new legislative sessions in 2017?

Bill: Our October survey, and I think events since then have born it out, indicated that if you look at the 50 states, there are about 10 states that are in really pretty good shape – the revenue is meeting or exceeding expectations. There are about 10 states that are in pretty bad shape – that is where it is falling behind what the projections were last spring when budgets were adopted. Frequently these are states that are dependent on taxation of natural resources, severance taxes, things like that, particularly oil and gas, coal for that matter. And then about 30 states that pretty much are on where they thought they would be. What that is right now is that state revenue will increase, but at a lower rate than it has the last couple of years, probably at a rate of only 2-2.5%, where it has been increasing 3-4% once we came out of the recession.

And what happens in that area is, again, closely tied to federal action. What happens with Medicaid? For example, there's been a great deal of interest in the Congress in block grants. If

we go to block grants, does that mean we're going to give a fixed amount with more flexibility to the states? Or are we going to capitate the program where, as your population grows in the Medicaid program, your federal allotment would grow as well, because there's a big difference between the two? And on tax reform at the federal level, which has been another of President Trump's... key proposals: What form is it going to take? Because Congress now being all Republican, both branches, they have looked at if they want to reduce taxes, reducing some of the tax deductions. One of those in particular is very important to the states and that's the deduction you get for your state and local tax payment.

A second element of that goes to municipal bonds and the way they are treated under the tax laws, because if that treatment would change... right now that income is not taxable... but if you change it, it will make the costs of borrowing for things like infrastructure or whatever states borrow for, it will increase that.

Music and Gene VO:

When we come back, we'll look at how states will work with the new Trump administration. Will having a unified party in the executive and legislative branch at the federal level improve the relationship between states and the federal government? And are states in a position and have an interest in calling for a national constitutional convention? We'll find out right after this break.

Music and Male VO:

NCSL is the champion of state legislatures. We help states remain strong and independent by giving them the tools, information and resources to craft the best solutions to difficult problems. We fight against unwarranted actions in Congress and have saved the states more than one billion dollars. We conduct workshops to sharpen the skills of lawmakers and legislative staff in every state. Visit our website to learn about how we can help you be successful.

Gene: Welcome back to Our American States. Our guest is William Pound, the Executive Director of the National Conference of State Legislatures. Bill, each year your organization lobbies the federal government on behalf of the states. What are your top priorities for 2017?

Bill: Well, they remain pretty much the same as they've been. One is that we do not like and do not want unfunded mandates. We basically don't like mandates, the federal government telling the states what to do, but particularly if they're not funded, if they set out a requirement and there is no federal aid to carrying it out.

A classic example of that is money that goes into K-12 education where the federal government provides about 7% of the total on all that and state and local provide the rest, and that 7% is primarily to specific populations, frequently lower-income and underserved or special needs kind of students. When that bill was passed 34 years ago, Congress committed to funding 40% of it. Now we're at 7%. So that becomes a key issue.

Obviously the federal/state fiscal relationship that we previously talked about is another key component of that. What form is it going to take? Take infrastructure for example, another thing that was talked about a good deal in the presidential election. How are we going to

finance that? Is the federal government going to say alright, the states should contribute 25%, 50%, whatever it may be, and where does it come from? What kind of conditions are we going to put on things? Those will be the things that we'll be watching very carefully. And always, of course, we're conscious of the 10<sup>th</sup> Amendment of the federal government invading state power, what constitutionally has been left to the states.

Gene: So for the first time in many years, there's unified government at the federal level. Do you see opportunities or challenges for the states with the election of a Republican president and Congress?

Bill: Probably both. It makes it more likely that Congress will act on a number of things that they've only been able to talk about now, and the question is, you know: Which direction does it go? The key thing that characterizes the relationship right now is uncertainty. Until we get a better sense out of Washington, D.C. of what direction the federal government is going to go, it's hard for the states to do a lot of things and I think there will be some hesitation, some holding back to see: What's going to happen with the Affordable Care Act? What's going to happen to tax reform?

Gene: What are you hearing from state legislatures and their speculation on what a Donald Trump presidency will mean for the states?

Bill: I'd say the biggest thing is uncertainty. It's simply that. It's sort of a wait-and-see what is going to happen here, what rules or conditions may differ from what we've had.

Gene: So as we alluded to earlier, Bill, Republicans control 66 of the 98 state legislative chambers. Nebraska of course is unicameral and nonpartisan. A recent article in the Chicago Tribune speculated that this control really is only one state away from initiating a convention on constitutional amendments, and there's no question that states are frustrated by the lack of movement on issues at the federal level. Are you hearing any talk of states using their power to push for a national constitutional convention?

Bill: Well, there has been a good deal of interest over the years in calling a constitutional convention. It can be for different reasons. The primary one has been for a balanced federal budget, to put a constitutional amendment on requiring a balanced federal budget. There have been several others including one that would establish the rules for a constitutional convention under which it would be conducted to create greater certainty going into the process than before.

Last time I looked there were four or five different efforts out there to try to do something with a constitutional convention. They vary some, although there are some constants in them, and I think a question will be do the groups that are doing that get together, and it is more likely that they could have a convention and propose something with the Republicans in control of about two-thirds of state governments.

Gene: So Bill, any final thoughts on the state of state legislatures for 2017?

Bill: Well, most of our domestic policy originates in the state legislatures. We see national programs carried out like education or like healthcare. But in both those cases and in most of the cases of environmental or transportation policy or others we could name, they start in the states. When

we did welfare reform back in the Clinton administration, that started in the state government with the states experimenting in these areas. And so I think that will continue because it's easier to do that on a smaller scale in states than it is on a one-size-fits-all national program. So I think that will continue. I see no reason why it will not.

Clearly healthcare will be a very big one in that, and tax reform, if it is driven by the federal government, because the states and the federal government are linked on a lot of their taxes, may provide the opportunity for the states to change their tax systems in ways they really haven't looked at in recent years... with a relative emphasis, for example, on things like income taxes versus sales taxes. And also to look at how our universe has changed by modern technology, the Internet particularly, in commerce and that, and what that has done to state and local revenues over time. I think that will raise those issues considerably.

Legislatures are very interested in job creation. They want to see economic development. They want to see growth in that area. And they want to utilize I think the educational systems to try to achieve that, to prepare people for the kind of jobs that are going to be there. You'll see I think a good deal more interest in the technology preparation, the STEM occupations, things like that. That's not new because it's been there, well, particularly since the downturn of 2008 created a greater emphasis on that, and that will continue.

Music and Gene VO:

Our thanks to William Pound, the Executive Director of the National Conference of State Legislatures, and this addition of Our American States. Be sure to subscribe to this podcast on Itunes, Googleplay or on the NCSL website, [www.ncsl.org/podcast](http://www.ncsl.org/podcast). Until our next episode, this is Gene Rose. Thanks for listening.