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The State of State Legislatures | OAS Episode 25 | Jan. 10, 2018

Welcome to Our American States, a podcast of meaningful 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. For the National Conference of State Legislatures, I’m your host Gene Rose.

We start off the 2018 calendar year taking a look at the major issues state legislatures will be addressing over the course of the next few months. Walking us through those issues is Bill Pound, the executive director of the National Conference of State Legislatures. We talked with Bill at the organization’s Denver office.

Gene: So Bill, let’s start out with finances with the tax cut bill approved by Congress and signed by the President. Do you think that’s going to have an immediate impact on the states?

Bill: Yes, it certainly will have an impact in the 2018 sessions since it has taken even now on January 1st and requires a considerable adjustment or a combination by most state tax systems. One of the things it’ll do in many states: increase their revenues, at least temporarily, by the fact that they eliminated a number of federal deductions. And if the states follow the federal deduction system, if they do follow it, and many of them do, and they have to make a decision: Do we want to follow that, or do we want to change our own tax system to where we still allow those deductions at the state level even when they’re not allowed at the federal level?

The second thing will be that it may have an effect on state revenues down the road a little bit in that as federal revenue declines, which it should under the tax bill, it will lead in this session of Congress to more uncertainty, which was the key word I think last year: uncertainty – coming out of the new administration and a different Congress, and it’s still there because with the budget decision to come later this month, at least hopefully it will at the federal level, and the looking at entitlement programs particularly which heavily fund state activity in many cases, because the state is the administrator of those programs, whether it’s health or many of the social services in particular – it will mean that the burden may get shifted more, if you want to maintain level of effort, to the state level than it has been.

There will be budgetary pressures; there will be both pluses and minuses. It also may create pressures on state tax systems, particularly the states that have high amount of deductibility,

high amount of itemizers in their state, and that have relatively high tax levels, which tend to be California in particular on the West Coast and the East Coast states from Maryland north through Connecticut and Massachusetts. It will be a pressure on state tax systems to reduce them since they will no longer be federally deductible, the state and local tax payment; it will create pressure.

You can see it happening already where the Senate President in New Jersey said while they have been one of their first items of business since they had an election in 2017 was going to be what's called a millionaire's tax, a tax on high earners, increasing it. He said well, we need to rethink that. In light of what the federal government has done, this may not be as attractive an idea as it first appeared. And you can see that in other states too.

Gene: And what about just state revenues in general? Are they pretty healthy right now?

Bill: Well, the state revenue situation has been growing at two and a half percent a year. The big problem with that is that state expenditures are growing at three and a half/four percent a year, largely through growth in healthcare costs, whether it's Medicaid or the other programs that are all tied around the CHIP program and the Affordable Care Act. While they are growing, they are in many cases not sufficient to meet the sort of natural expenditure growth without program changes.

Gene: The State Legislatures Magazine just published its top ten issue forecast. Why don't we walk through a few of those? The first is the opioid epidemic. Your magazine reports that more people were killed by opioid overdoses than by motor vehicle crashes in 2015. So states have been struggling with this issue for years. What do you see on the horizon for this year?

Bill: I see continued struggle. The states have been in this issue, dealing with it, longer than the federal government has. They're on the ground, they're closer to it, and they saw what was happening and you saw state legislation two or three years at least, maybe more than that, before the Congress, the federal government got so heavily involved in it in the last year or two, concerned about the problem.

The problem does not appear to be alleviating much in spite of the legislation. I mean, we put a number of things in, whether it's penalties, whether it's making it harder to obtain prescription drugs, whether it's narcotics or non-prescription crackdowns. It's still a major problem here in our society. I think for that reason it will remain on the state agenda and the states will look to each other and what they've done, what may have worked or may have been somewhat more successful than other things, and you'll see it as clearly an attempt to do that and to educate the public. But the problem is clearly quite severe.

Gene: Well let's jump to another drug, marijuana, which is definitely something that states are working on. California has just approved the sale of recreational marijuana. Do you see states continuing efforts in that to reduce penalties?

Bill: Definitely. I think that will happen. All the recreational marijuana legalization has been done through the ballot box, through initiatives generally. This year I think there is probably a very good chance that one or more states, the legislature will take action and legalize...

Gene: ...which no state has done before...

Bill: ...recreational... no state has done before, and the states the most likely to do something; probably the most likely is Vermont, and then Delaware, maybe even New Jersey.

Medicinal marijuana, on the other hand, we are already in 29 states, has been legalized. The degree of it varies considerably. But clearly absent some kind of federal action to try to suppress this, the train is rolling in that direction. It doesn't seem to be stopping. And, you know, two more states have legalized recreational, but it isn't active yet, but it will be midyear this year: Massachusetts and Maine.

Gene: So let's jump to immigration, a subject that perhaps really highlights some of the tension between the federal government and the states. What is the struggle here? What do you think states are looking for?

Bill: Well, they're looking for a lot of different things depending on the state. Some are looking for a greater crackdown, no question about it, on illegal aliens. Others are looking for the opposite of that; they're much more friendly environments and they have a lot of noncitizens and illegals, and they're looking to make their life easier, whether it's drivers licenses, whether it's educational opportunity, both K-12 and particularly higher education, you know – making noncitizens eligible for scholarship programs, things like that. And I think we'll see that dichotomy in our society continue.

Gene: President Trump has rolled back several federal regulations in his short time in office. Is this something NCSL supports? Is there a benefit to a state when government is deregulated?

Bill: Well, NCSL as an organization has both supporters and opponents, depending on the regulation. There were several things, some of the financial services things, that we opposed the deregulation activity. There have been others where we supported it. It's tied to topic, tied to whatever it is and whatever we have policy around.

Now one where we hadn't taken a position either way – they stopped a regulation in development, making websites and transcriptions and access to governmental activities – they stopped the rule making process on that during the holidays. And that was one that was going to have a considerable effect on state legislatures in their internal operations on how they make information available.

Gene: It was a requirement to have more information?

Bill: It was requiring them to either stream everything or have caption, all legislative hearings, everything, and to have the telephone systems for the hearing disabled, make them accessible. And now the way I read it, that's not going to happen right now anyway. That was one that a number of the legislatures have been looking at, again, on their internal operations: what does this mean to us?

Gene: NCSL has a taskforce on cybersecurity issues. Do you see this as a topic that states will continue to address this year?

Bill: Yes. Cybersecurity is important because it's important to citizenry. It's sort of like whack-a-mole; it keeps popping up; there's something new all the time in the area of whether it's disclosures of people's personal information, whether it's governmental breaches, and the state and the federal government both have a role in this.

My sense is clearly the states react more quickly than the Congress does on most of these things. There will be pressure I would think for national standards on many of it, but sometimes that take several years to play itself out, and those that are affected by it, not only just ordinary citizens, but industries, people who are in the information technology business, in that they begin to want to say: we need uniformity in some things like this. And then a lot of the states would agree as long as there's action at the federal level.

Gene: And what kind of action do you think they're seeking?

Bill: Mostly it's to protect people's information, that the possessors of that have responsibilities, and that they're enforceable by law in many ways; people's privacy is protected.

Gene: And there's even the threat now that they say that foreign governments are accessing information or trying to influence the public.

Bill: I suspect we don't even know. Certainly there's clear evidence that that's been going on. And what else may be going on out there? Who knows? Or what technology... what's the next thing technology makes possible?

Gene: Uh huh, right, 'cause that's going to change as time goes by, right?

Bill: Yup.

Gene: Of course no discussion about state issues would be complete without talking about health and education where typically you see the highest numbers of bills in state legislatures. What do you see on the horizon for that?

Bill: This is closely tied to the financial part where we began this conversation because the costs of health and education are considerably over about two-thirds of state budgets that are being spent there. But we can anticipate, I think, more changes in the health system. Obviously one of the questions facing Congress right now: they did a temporary reinstatement of the children's health program here in December that I think runs through March, four months, and the future of that will be a big question to the states if the federal government reduces... I don't think they'll do away with the program, but if they should reduce significantly funding in it, it puts extreme pressure on the states because there is, I think, generally fairly broad support for that program.

And the whole healthcare cost thing under the Affordable Care Act as it was originally written, the state share of it goes up now in 2019, a year from now, and from the federal government paying most of the cost, nearly all the cost of new enrollees in through Medicaid and then that states go down and states have to pay ten percent, and then we watch and see that grow. I thought all along that would happen in this arrangement. And that will only increase the pace of state healthcare cost growth with that going on.

There will be a good deal of activity; I think there will be activity on cost control at the state level – everybody's aimed at that, saying that the cost equation is simply out of balance in the healthcare area.

In education you've got the Every Student Succeeds Act which Congress had passed and which is now in the process of implementation. States have filed their plans with the federal government. We'll see that. It restores a great deal more flexibility to the states than they had under the Obama Administration. And you'll see continued pressure on spending at the school level, and I think continued pressure for both school choice, in the sense of charter schools... probably less so on vouchers, but that would be a continuation of the current trend of things.

Gene: Rounding out the list: driverless vehicles and energy issues. Do you have thoughts on those?

Bill: My thoughts are they're not going to go away and they may not happen as fast as a lot of people in the industry think they will, but they are going to happen.

As we begin implementation and a number of states have done that by creating special regulatory regimes, pretty light-handed in most cases, we'll see the technology over the next few years probably will move beyond considerably beyond where it is right now, you know, and things that we probably haven't seen where this can go yet, but continued experimentation will continue.

Gene: And on energy?

Bill: The growth of renewable energy is still continuing. They can be aided by government regulation or government subsidies; some of the green energy things have been. I think you will see some of that support withdrawn to try to make a level playing field. You're going to see continued development, particularly absent some of the federal regulation that was there in the past. Many of the states continue development of their traditional energy resources, oil and gas, particularly gas.

Gene: You've been in a perfect spot to study state legislatures for a number of years now. Any other thoughts about where state legislatures are generally or what you see?

Bill: Well, states are still where the action is, I think, and you'll see a lot more activity out of them than you will out of the Congress in terms of they're closer to the people's problems directly. You're going to see a great deal of activity in infrastructure again, which, it's been there – all the infrastructure activity pretty much has been at the state and local level. States pay the largest share, a larger share than either the local government or the state governments do of infrastructure development.

One of the big federal/state issues is going to be what the President and Congress do on infrastructure. That was one of the President's key things and they've put it off, but it looks like it will come up some time in 2018. What kind of program gets developed? Is there greater federal assistance in it? Or do we look to the private sector, which the states have a good deal creating the public/private partnership model, things like that, for further infrastructure development, particularly on highways.

Some parts of infrastructure lend themselves to it and some don't. But roads and bridges are probably more easy than many things. But yeah, I think those will both be important things.

In terms of legislatures themselves, the development in recent months of all the openness about sexual harassment will continue I think. You will see this come out much more in the legislatures and government will have to deal with it. It's not just the private sector. And we can see it now, a number of the legislative bodies either moving to create new committees to make complaints more easily made and heard, adjudicated in some way, and to try to create a different atmosphere around it... it's societal as a whole starting I guess with the entertainment industry, but clearly it's spread to the media and to government in particular, and I would expect both the U.S. Congress and state legislatures to be dealing with this more than maybe they would like to.

Gene: Any final thoughts? Anything I haven't asked you about that you think is going to be a big concern?

Bill: Well, you know, one other area that certainly is worth watching is election administration. We've seen a fair amount of change and a lot of attention since the 2016 elections. Are the elections fair? Is the ballot system protected in that? We see the effect of the Virginia election and they elected a legislature in the off-year, so this last November, and how close that was. And now we're down to where we have a lottery essentially and a tied vote situation. Clearly half the states or more are looking at how they do it.

There was this trend of moving toward the computer as the solution for a lot of this, and the trend is clearly in the opposite direction now: the fear of what can be done, what can be hacked. Virginia had moved back to... I believe I'm right about this – Virginia moved back to a paper ballot this time and there are several states that are going back to paper ballot as the most secure form of election administration. And I think we're going to see more of that.

Music and Gene VO:

And that concludes this edition of Our American States. You may follow these issues we discussed with the National Conference of State Legislatures Executive Director, Bill Pound, by going to the organization's website: www.ncsl.org. You may subscribe to this podcast on iTunes or Google Play.

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