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JANUARY 2017

STATE LEGISLATURES
NCSL’s national magazine of policy and politics

FEATURES

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States are re-examining the way they regulate a variety of occupations.

Bathroom Bills on Trial Page 24
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The Supreme Court has agreed to hear its first case on transgender rights.

A Roadmap for Self-Driving Cars Page 27
By BENJAMIN HUSCH and ANNE TEIGEN
These five things you need to know about the new federal guidance on autonomous vehicles.

Dive deep into the worlds of transportation funding and finance or marijuana policy, with everything you need for a deeper understanding on either topic all in one place. Two dives, lots to catch in SL Online’s Deep Dive section.

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THE FINAL WORD PAGE 31
Meet California Senate President Kevin de León
“It’s incumbent on all legislators, whether Democrat or Republican, to provide our citizens a modicum of dignity and respect.”

SL ONLINE
You can find more information and links to resources on topics covered in these pages at SL Online, including NCSL’s complete elections analysis.

Go to ncsl.org/magazine
South Dakota Senator Deb Peters Named Public Official of the Year

South Dakota Senator Deb Peters (R) was recognized as a Public Official of the Year by GOVERNING magazine for her outstanding accomplishments as a national leader in fighting for the ability of states to collect sales taxes from online purchases.

Peters, chair of South Dakota Senate Appropriations Committee, has repeatedly urged Congress to give states taxing authority over internet commerce. Congress has debated the so-called Marketplace Fairness Act for more than a decade, while states, in the meantime, have lost tens of billions of dollars in potential sales tax revenue. Federal action would address a 1992 court decision that prohibits states from collecting sales taxes from retailers outside their borders.

Last year Peters, who is president-elect of NCSL, and by her own admission “not a patient person,” grew frustrated by congressional gridlock while South Dakota sales tax revenue declined—an ominous portent in a state that has no income tax. So she introduced her own bill allowing South Dakota to collect sales tax on internet purchases. She worked with her governor and attorney general to write the bill in such a way that it would fast-track any potential lawsuit through the courts. The first day the law went into effect, online retailers sued.

The case may make it to the Supreme Court as early as next year. And could result in a reversal of the 1992 case Quill Corp v. North Dakota.

Peters’ bold action inspired a movement. Twenty-two states introduced 33 bills allowing states to collect sales tax on internet purchases in 2016.

“I can be a little pushy if things aren’t going my way,” Peters says. She just may succeed in pushing Congress—and the court—into a new world order of online sales taxes.

Peters received her bachelor’s degree from the University of South Dakota and is a certified public accountant.

Utah Fiscal Analyst Jonathan Ball Wins Gold

Jonathan C. Ball, director of Utah’s Office of the Legislative Fiscal Analyst, is this year’s winner of the Steven D. Gold Award for his significant contributions to public financial management in intergovernmental relations and state and local finance. Ball is being honored for strengthening the legislative institution through his outstanding work in developing effective training materials in the art of legislative fiscal analysis.

Ball leads a team of nonpartisan finance experts and economists who forecast state revenue, recommend budgets, estimate the cost of proposed legislation and staff the Utah Legislature’s appropriations committees. His innovative uses of technology to make budget information more easily accessible to policymakers and the public has won him numerous awards, including NCSL’s Online Democracy Award for the Utah Legislature’s website. He’s been on the faculty of the Legislative Staff Management Institute, is a frequent speaker on budget and revenue policy at national meetings, and is a regular guest lecturer at various state universities.

He has enjoyed 20 years of public service, including jobs in the executive and legislative branches of both state and federal government. Before moving to Utah, Ball held positions at the Joint Economic Committee of the U.S. Congress, the Washington Office of Michigan Governor John Engler, the U.S. Department of Commerce and the White House Office of Management and Budget.

Ball has served as president of the National Association of Legislative Fiscal Officers and the Western States Legislative Fiscal Officers’ Association. He also has served on NCSL’s Executive Committee. He earned a bachelor’s degree in economics from Michigan State University and a master’s degree in public policy from Georgetown University.
**SHORT TAKES ON NCSL NEWS**

**NCSL EXPERTISE**

“There’s a shortfall of transportation funding around the country, at both the federal and the state levels.”

Kevin Pula on why states are raising gas taxes to pay for building and maintaining roads and bridges, on NPR.

“Election Day did not turn out to be the historic event watchers of women in politics may have expected.”

Katie Ziegler on how women’s representation in state legislatures remains virtually unchanged at about 24 percent, in the Sentinel & Enterprise News.

“Court challenges … haven’t all been either to undo voter ID or to support it.”

Wendy Underhill on how courts disagree on whether voter ID requirements are discriminatory, in The New York Times.

State teams worked on plans to implement the new federal Every Student Succeeds Act at an NCSL education meeting in Houston in November. From left, Jennifer Corrigan of the Colorado Children’s Campaign, Colorado Senator Jerry Sonnenberg, Barbara Hickman from the Colorado Department of Education and Steve Durham from the Colorado State Board of Education worked on options for the Centennial State.

**IDEAS**

NCSL’s Health Program sponsored a Legislative Health Staff Seminar on “Improving Health System Performance” in New Orleans in October, with support from The Commonwealth Fund. Fifty legislative staff from 46 states participated, discussing strategies to improve efficiencies and effectiveness in health programs and services.

After testifying before the Ohio General Assembly about online sales tax collection, NCSL’s Max Behlke, left, toured the Capitol with Representative Gary Scherer, a member of NCSL’s Executive Committee Task Force on State and Local Taxation.

**SUPPORT**

This new NCSL report describes legislation designed to protect not only the missions of military installations, but also the well-being of surrounding communities.

With the demand for college degrees—and the cost of college—going up, states are studying data to determine whether and how education pays off in the workforce. Read this new report to find out how data can help drive policy.

**CONNECTIONS**

NCSL welcomed 19 German and Austrian legislators from the Partnership of Parliaments to its Denver headquarters in November. NCSL staff shared their expertise on the elections, marijuana legalization and regulation of drones and autonomous vehicles, among other things. The group also met with Colorado legislators and observed the U.S. elections.
NEWSMAKERS

As legislatures begin to convene this month, the gavel comes down with some familiar faces at the rostrum. Here’s a look at some of them.

UTAH’S TOP TWO REPUBLICAN LEADERS WILL REMAIN AT THEIR POSTS. Speaker Greg Hughes will continue as leader for a second term in the House. Senate President Wayne Niederhauser also won the nod from his caucus for a second leadership term. Both men ran unopposed.

“It’s even clearer to me now how we are all connected in ensuring our energy resources are used efficiently.”

Senator Lorraine R. Inouye (D) after completing the Legislative Energy Horizon Institute’s course in energy policy, in Hawaii 24/7.

THE ELECTION GAVE DEMOCRATS THE MAJORITY IN BOTH CHAMBERS OF THE NEVADA LEGISLATURE. Assemblyman Jason Frierson won the speakership, returning to the House after an election upset two years ago cost him his seat. Senator Aaron Ford, the former minority leader, now leads the majority. Both men are African American, a first for the state.

“Colorado’s House and Senate have new leaders due to term limits. The state is one of only three with split control. Representative Crisanta Duran (D) assumes the speakership of the House and Senator Kevin Grantham (R) is Senate president. Duran is the first Latina to hold the post.

ARIZONA HAS TWO NEW FACES IN LEADERSHIP. Steve Yarbrough (R) is the new Senate president, replacing former leader Andy Biggs (R), who was elected to Congress. In the House, J.D. Mesnard (R) is the new speaker, succeeding David Gowan (R), who lost his congressional bid.

REPUBLICANS WON CONTROL OF THE MINNESOTA SENATE, gaining five seats to win a slim 34-33 majority. Senator Paul Gazelka (R) is the new majority leader.

“It will give us a stronger voice.”

Oklahoma Representative Leslie Osborn (R), on forming a bipartisan women’s caucus during the 2017 legislative session, in the Shawnee News-Star.
HOUSE REPUBLICANS GAVE THE NOD TO IOWA REPRESENTATIVE LINDA UPMEYER to serve a second term as speaker. She is the first woman in Iowa to hold the post. The GOP won six seats to take control of the Iowa Senate following the election. Senator Bill Dix (R) is the new majority leader, succeeding Senator Mike Gronstal (D), who had held the position since 2006 and was defeated in his election bid.

IN OHIO, REPRESENTATIVE CLIFF ROSENBERGER (R) WAS RE-ELECTED SPEAKER for a second term.

MICHIGAN HOUSE REPUBLICANS MAINTAINED THEIR 63-47 MAJORITY following the election and named 35-year-old second term Representative Tom Leonard (R) their new speaker. Former speaker Kevin Kotter (R) was termed out of office. House Minority Leader Tim Greimel (D) did not run for his leadership post, and Democrats elected Sam Singh (D) to head the caucus.

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SENATOR M. TERESA PAIVA WEED (D) WILL SERVE A FIFTH TERM as Rhode Island Senate president.

REPRESENTATIVE JOE ARESIMOWICZ (D) IS THE NEW SPEAKER OF THE CONNECTICUT HOUSE, stepping into the post vacated by Brendan Sharkey, who retired. The Senate is evenly split 18-18 for the first time since 1893. Under the state constitution, the lieutenant governor is the presiding officer and tie-breaker.

“I can only take President-elect Trump at his word when he said it should be a states’ right’s issue.”

New Jersey Senator Nicholas Scutari (D) on laying the groundwork for legalizing marijuana, in the Associated Press.

REPRESENTATIVE BETH HARWELL (R), THE FIRST WOMAN ELECTED SPEAKER OF THE TENNESSEE HOUSE, fought back a challenge to win a fourth term as leader.

REPUBLICANS CONTROL THE KENTUCKY HOUSE FOR THE FIRST TIME IN 95 YEARS after the defeat of 17 Democratic incumbents on election night, including Speaker Greg Stumbo (D). The new speaker is 20-year veteran Representative Jeff Hoover (R), who for the past 16 years has served as minority leader. Both the Senate and governorship are in GOP hands.
Thank You for Supporting America’s Greatest Support System: Family Caregivers

To recognize their work to support family caregivers, AARP honors 57 state legislators by naming them to the 2016 class of Capitol Caregivers—a bipartisan group from 23 states and territories. Specifically, these elected officials advanced policies to support the spouses, adult children, friends and others who make it possible for older Americans to live independently in their homes and communities—where they want to be.

Today, about 40 million family caregivers provide assistance for their older loved ones, helping with bathing and dressing, meal preparation, managing finances, grocery shopping and more—even medical tasks like wound care, injections and complex medication management. This unpaid care is valued at $470 billion a year, surpassing total Medicaid spending.

Congratulations and thank you to the state legislators in AARP’s 2016 class of Capitol Caregivers:

**Arizona**
- Representative Heather Carter

**Connecticut**
- Senator Beth Bye
- Senator Mae Flexer
- Senator Terry Gerratana
- Senator Kevin Kelly
- Senator Martin Looney
- Representative Catherine Abercrombie
- Representative Theresa Conroy
- Representative Matthew Ritter
- Representative Toni Walker

**Delaware**
- Senator (Lt. Governor Elect) Bethany Hall-Long
- Majority Leader Valerie Longhurst
- Representative Paul Baumbach
- Representative David Bentz

**District of Columbia**
- Councilmember Yvette Alexander

**Florida**
- Senator Aaron Bean
- Senator Denise Grimsley
- Representative Larry Ahern
- Representative Cary Pigman
- Representative Chris Sprowls

**Georgia**
- Senator Charlie Bethel
- Senator Renee Unterman
- Representative Chuck Efstration

**Hawaii**
- Senator Roz Baker
- House Speaker Joseph Souki

**Illinois**
- Senator Daniel Biss
- Senator Jacqueline Collins
- Representative Greg Harris
- Representative Andrew Skoog

**Indiana**
- Senator Michael Crider
- Representative Cindy Kirchhofer
- Representative Sean Eberhart

**Louisiana**
- Senator Yvonne Dorsey-Colomb

**Maryland**
- Senator Delores Kelley
- Senator Thomas “Mac” Middleton

**Michigan**
- Senator Margaret O’Brien

**Minnesota**
- Senator Kent Eken
- Representative Nick Zerwas

**Oklahoma**
- Senator Frank Simpson
- Representative Pat Ownbey

**Pennsylvania**
- Representative Hal English
- Representative Tim Hennessey

**Rhode Island**
- Senator Roger Picard
- Representative Brian Patrick Kennedy

**South Carolina**
- Chairman Hugh Leatherman
- Chairman Brian White

**Utah**
- Representative Rebecca Chavez-Houck
- Representative Lowry Snow

**Virgin Islands**
- Senator Marvin Blyden
- Senator Kurt Vialet
- Senator Janette Young

**Washington**
- Senator Barbara Bailey
- Representative Steve Tharinger

**West Virginia**
- Delegate Amy Summers

**Wisconsin**
- Representative Dianne Hesselbein
- Representative Mike Rohrkaste

**Wyoming**
- Representative Elaine Harvey

In 2017, across the states, AARP will continue fighting for family caregivers, and the loved ones who count on them: for more support, help at home, workplace flexibility, training, financial protection and more. Learn more at aarp.org/SupportCaregivers
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- Senator Renee Unterman
- Representative Chuck Efstration

Hawaii
- Senator Roz Baker
- House Speaker Joseph Souki

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Mobile Devices Keep Trackin’

Mobile tracking devices, once the bailiwick of private investigators, spies and law enforcement, are now widely available online and in stores.

The devices can be worn or attached to a car or other object, and the location information they collect can be monitored from afar via computer.

The market for the devices is growing as parents use them to keep tabs on teenagers, caregivers use them to monitor family members or nursing home residents with dementia, and employers use them to manage their workforce.

Tracking devices also have helped in the fight against crime, even in light of a 2012 U.S. Supreme Court ruling—in United States v. Jones—that law enforcement agencies must have a warrant before using a GPS device to track a vehicle.

Of concern to some, however, is that the devices can be used to invade the privacy of others and to commit crimes. Further, neither the Supreme Court nor Congress has addressed whether a warrant is required for law enforcement to access location information, nor have they ruled on businesses or individuals tracking another person’s movements.

That’s left state legislatures to find their own way. At least 18 have addressed privacy concerns raised when individuals track others without their knowledge. Delaware, Illinois, Michigan, Rhode Island, Tennessee, Texas and Wisconsin prohibit installing a tracking device on a motor vehicle without the owner’s consent.

Seven other states—California, Hawaii, Louisiana, Minnesota, New Hampshire, North Carolina and Virginia—more broadly prohibit the use of electronic devices, not just on vehicles, to track the location or movement of a person without consent. Most of these laws include exceptions, for example, for lawful use by law enforcement (all states); for employers in connection with an employee’s work (Illinois, Rhode Island, Virginia); for a parent or guardian on a minor child’s vehicle (Delaware, Michigan, New Hampshire, North Carolina, Tennessee); for private investigators (Texas, Virginia); for an authorized representative of an incapacitated adult (Virginia); and for commercial motor carriers, car manufacturers, fleet vehicle owners or telematics services (Illinois, Louisiana, North Carolina, Rhode Island, Tennessee, Wisconsin).

Penalties for violations range from civil remedies and fines to misdemeanor punishments or fines.

Although most states do not have statutes specifically addressing employer use of electronic tracking devices, several courts have found monitoring by employers in the context of the employer-employee relationship to be legal, within limits. At least five states, including Arizona, Connecticut, Illinois, New York and North Dakota, have expanded stalking statutes specifically to prohibit the use of a GPS or other location monitoring device in order to stalk or harm a person.

In states without specific laws on tracking devices, other general stalking, harassment or invasion of privacy laws could apply, depending on how the devices are used or on court interpretations.

—Pam Greenberg

E-Pedal Power

For all the benefits of riding an electronic bicycle—like arriving at work sweat-free or getting a bit of extra help on a long ride—there’s a problem many riders can’t avoid. While 27 states and D.C. define e-bikes and clarify where they can be operated, the remaining 23 states group the bikes with mopeds, scooters and other solely motor powered vehicles. That means e-cyclists, whose bikes are “pedal-assist” and don’t operate absent human exertion, must deal with burdensome licensing, registration or equipment requirements.

But, with about 200,000 e-bikes sold in the U.S. every year and that number growing, state legislatures are clarifying and refining existing laws. Much of the recent legislation has removed e-bikes from the mopeds and scooters classification. Other states are refining more recent e-bike laws to provide more detail on allowed areas of operation, equipment and safety requirements, and other issues.

Seven states enacted e-bike legislation in 2015 or 2016. Three of them—California, Tennessee and Utah—created a three-tiered classification system to differentiate among models with varying speed and performance capabilities. All three states exempt e-bikes from registration, licensing and insurance requirements. They also require every e-bike to have a label stating its classification, top assisted speed and motor wattage, to aid enforcement.

More states are poised to consider changes to their e-bike laws in 2017. Stay tuned—and don’t get jealous if a pedal-assisted rider passes you on the bike path.

—Doug Shinkle
What do a boilermaker, a piano tuner and a dog handler have in common? It’s likely they all completed an apprenticeship as part of their job training.

Paid apprenticeships are on the rise as interest in them grows. No longer limited just to trade jobs such as electricians and construction workers, apprenticeships are now encouraged for a variety of careers, including many in the areas of information technology, transportation and health care.

This “earn while you learn” approach to training prepares people for highly skilled jobs through classroom work and real-world experience.

Studies show that 87 percent of those who participate in an apprenticeship program are still employed nine months after completion, with an average annual wage around $50,000.

Nearly 448,000 workers are currently training in registered apprenticeship programs, and the federal Department of Labor plans on increasing this number by 34,000 in the next five years.

Despite the fact that training apprentices can be costly and time consuming, the Department of Commerce recently found that companies are enthusiastic about the idea because it helps fill otherwise vacant jobs.

Employers must be willing to commit to paying apprentices a fair wage and any other expenses training may require—ranging from $25,000 to $250,000 per apprentice.

Senior employees must also commit to training new employees over a considerable length of time, sometimes years. It varies by career.

To become an HVAC technician, for example, apprentices spend between 8,500 and 10,000 hours learning the ins and outs of all kinds of heating and cooling systems. To become a child care development specialist takes about half that time, only about 4,000 hours.

On average, most apprenticeships take about four years to complete, and although people who complete registered apprenticeship programs in the United States are shown to earn more—up to an estimated $240,000 extra in earnings over their lifetime than someone who did not complete such a program—it is still a big investment for businesses.

State legislators are examining ways to encourage these training programs by helping ease the costs that businesses often take on to train an apprentice. One way is to give businesses some tax relief for offering apprenticeships.

Arkansas, Connecticut, Louisiana, Missouri, Nevada, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia and Guam offer tax breaks to businesses that train apprentices.

The structures for these tax credits vary, but they all are designed to reimburse training costs, reduce the businesses’ tax liability or exempt the business from property taxes.

In a world where having a good job is crucial, it’s interesting to see the world’s oldest form of work training still carrying on strong—just with a modern twist to it.

—Jessica Hathaway

**By the Numbers**

**Shelf-Awareness: Libraries**

The states play a declining, though still vital, role in funding U.S. public libraries. Of the total $11.5 billion invested in public libraries in 2012, $788 million, or 6.9 percent, came from state government sources, according to the most recent figures from the American Library Association. That represented a 10-year decline of 37.2 percent on the states’ part. During that period, however, total revenue was up 7.2 percent thanks to funding increases from local sources. Here’s a look at 2012.

6.9%

States’ portion of public library funding, nationwide.

2.2 billion

Number of materials circulated by public libraries, a 10-year increase of 28 percent.

340.5 million

Number of times people used a public computer.

366,642

Number of paid library staff. More than a third (136,851) work in public libraries.

119,729

Number of libraries in the U.S. Most—98,460—are school libraries.

$7

Per capita spending on collection materials in the New York Public Library, the highest in the nation.

*Source: American Library Association*
There’s plenty to ponder beyond presidential politics.

Where will the new jobs be created? What will happen to Obamacare? How will infrastructure improvements be funded? If the wall is built, who will pay for it? Do the states stand to gain or lose from these changes?

Any time there is a switch in the White House, there’s a fair amount of uncertainty in the states about what it means for them and for state-federal policy. Now that Republicans hold the presidency, both houses of Congress, 66 state legislative chambers, both chambers in 32 state legislatures and 33 governorships, the impact could be huge.

And this year, so is the uncertainty.

Every state, along with D.C., Puerto Rico, Guam and the Virgin Islands, will hold legislative sessions in 2017, and the vast majority open this month. The few that start later in the year might benefit as the first few months should bring a little more clarity to what states can expect from the Trump administration.

Slow revenue growth, especially in energy-dependent states, along with not knowing when there might be another economic downturn, emergency or other pricey surprise, have motivated states to rebuild their budget stabilization or “rainy day” funds. Data-driven analysis may offer some innovative solutions to limited budgets down the road, but for now, legislators must find enough funds to meet ever-rising Medicaid costs, needed repairs for transportation infrastructure, growing pension obligations and the everyday costs of funding education and criminal justice systems.

A big focus this year will be on jobs, which is a priority for the new administration as well. Like balancing budgets, creating jobs has been a perennial priority of lawmakers for years. They will be considering how to weigh the needs of businesses against the rights of workers in discussions on workforce development, job training for the future, pay equity, paid family leave and the minimum wage.

Beyond the budget and jobs, state legislatures have an abundance of other policy issues to deal with in 2017.

1. The Future of Health Care Reform

Everyone wants to know what will happen to the Affordable Care Act. Since its passage in 2010, more than 20 million people have gained health coverage, many through the health exchanges created by the law, according to estimates by the U.S. Department of Health and Human Services in March 2016. Because of federal subsidies, which lower prices significantly for those who qualify, officials estimate that more than 70 percent of consumers can find plans this year that cost them less than $75 a month.

Those federal subsidies face an uncertain future with the new administration and Congress. But without them, up to 12 million Americans might not be able to afford coverage, especially since health insurance costs everywhere continue to rise. Lawmakers will be learning all they can about the pros and cons of any alternatives presented.

Thirty-one states and the District of Colum-
action to expand protection from deportation, challenging President Obama’s 2014 executive order.

During the campaign, Trump promised to repeal and replace the Affordable Care Act and turn the Medicaid program into a block grant. Some worry this will result in less money altogether, but others see opportunities in having more control over how the money is spent.

If block grants are instituted, legislators will likely debate what limits and requirements to place on Medicaid eligibility to make the program more affordable for states. Ideas include setting work requirements, charging a premium or requiring proof of legal residency.

Whatever happens, legislators will be looking for new options and innovations for a healthy future.

2. Immigration Migration?

Many in this country believe immigration, whether legal or not, has been mishandled and is out of control. State lawmakers have long hoped the federal government would overhaul the nation’s outdated immigration laws and address the challenges the states have had to take on themselves.

Twenty-six states have filed suit challenging President Obama’s 2014 executive action to expand protection from deportation to about 5 million unauthorized immigrants. States will now be watching Trump’s actions on immigration as well.

Authority over immigration policy is shared. The federal government grants visas, green cards, and citizenship, and manages the border; the states handle services for immigrants after they arrive, such as employment, education, and licensing.

Some states have restricted immigrants’ rights, but others have expanded them. Five states, for example, bar unauthorized immigrants from receiving in-state tuition, while 20 states allow them to attend any public college at the in-state rate.

The issue of Syrian and other refugees will also be front and center, as 49 states participate in the refugee resettlement program. Currently, the U.S. accepts about 85,000 refugees who are fleeing persecution annually.

Trump made immigration a key issue in his campaign, promising to build a wall along our southern border, detain border crossers and deport criminals. States will be interested in how far any new restrictions on immigrants go, and how the changes will affect related federal funding, state laws and state law enforcement.

3. Regulations on Review

Rules and regulations at all levels of government are on the hot seat. State legislators will be busy in several policy areas deciding what needs to be regulated for the public’s safety and what needs to be freed from unnecessary and burdensome rules.

Innovative technology in self-driving cars and drones, for example, will keep lawmakers busy debating what the level of government regulation should be. Currently, eight states and the District of Columbia have passed legislation related to autonomous vehicles, and 32 states have laws addressing the use of drones. Newly released federal guidelines signal that 2017 will be the year self-driving cars shift into top gear in legislatures.

At the federal level, the new administration has vowed to eliminate many of the rules, regulations and executive orders it considers to be a drain on the economy—most notably in banking, insurance, labor, energy and the environment. The Clean Power Plan, for example, requires states to reduce carbon dioxide emissions by 2030. Although 26 states have sued the federal government over the rule, others have been busy developing plans to meet the deadline, all of which could now be eliminated or weakened in the months ahead.

Congressional leaders have begun discussions about using a little-known law, the Congressional Review Act, to reverse several regulations put in place by the Obama administration. The law empowers Congress to overrule a federal agency’s regulation within 60 working days from when it was issued. How many times will Congress apply this little-used law? It’s uncertain.

4. Transportation Infrastructure

Just like the check engine light on your dashboard, this issue never seems to go away. While nominal spending on U.S. infrastructure increased 4% percent between 2003 and 2014, real spending was down 9 percent. Increased construction and maintenance costs, better fuel efficiency, the popularity of alternative modes of transportation and lower gas prices have cut into gas tax revenues traditionally used for transportation projects. With no sustainable long-term solution from Congress, 19 states and D.C. have raised their gas taxes or adjusted their tax formulas since 2013 to bring in more revenue.

Trump has proposed a 10-year, $1 trillion fix, but many lawmakers say that is not nearly enough to ensure that our bridges, roads, new transit lines and existing infrastructure are safe and efficient.
Legislatures will continue to look for sensible ways to overcome the funding roadblocks too. And some will turn to public-private partnerships or increased private-sector involvement.

5. 
Children of the Opioid Epidemic

The latest estimates put the number of Americans addicted to opioids—a class of drugs that includes heroin and many popular prescription painkillers—at 2.4 million. Many of these addicts will overdose, the leading cause of accidental death in the U.S. today. Between 1999 and 2014, opioid deaths increased 369 percent; heroin deaths alone jumped 439 percent, according to the Centers for Disease Control and Prevention.

These statistics foretell a growing crisis in the foster care program, as the children of addicts are often abused, neglected and orphaned. Frequently, grandparents provide care, but many of them face their own challenges with addiction, poverty and disabilities.

The number of infants born exposed to alcohol and drugs has also skyrocketed. The exposure rate in Louisiana, for example, has nearly tripled since 2008, “driven in part by a rise in heroin and prescription painkiller use among pregnant women,” says a new report by the state Department of Child and Family Services.

In 2008, the department reported 569 babies born with detectable amounts of drugs or alcohol in their systems. By 2015, that number had reached 1,512.

In addition, many young children are also getting their hands on the drugs. With enough opioid prescriptions written every year to put a bottle of pills in nearly every home in the country, it’s no surprise that the number of children being hospitalized for opioid poisoning more than doubled between 1997 and 2012, according to a recent Yale Medical School study.
The rates for teenagers also increased. The study found that as regulations made it harder to obtain prescription opiates, teens switched to heroin. Rates of hospitalizations for heroin poisoning in teens increased by 161 percent between 1997 and 2012.

Although lawmakers have been actively addressing the epidemic, they will be challenged to find ways to protect the children caught up in the fallout of this persistent problem.

6. Police-Community Relations

The seemingly unending reports of deaths and violent interactions between cops and the public serve as a frequent reminder that a lot of work remains to be done to ensure a safer future for all citizens. Legislatures passed more than 400 new bills on policing in 2016, and this year looks to be just as active. The new laws address police-worn cameras, investigative requirements for officer-involved deaths, data collection and reporting, and community policing.

In general, state laws aim to improve safety, transparency and accountability in law enforcement as legislators continue to be essential partners in the effort to improve police relations with the communities they serve.

Across the country, legislators have created work groups that facilitate conversations on racial and social justice and have expanded promising local programs that bring together communities and police. States will continue to learn from one another in 2017 about which policies work and which don’t.

7. Planning for ESSA

State lawmakers will be implementing the federal Every Student Succeeds Act this year, which gives states more authority over how schools are run. It takes full effect this coming school year. Most legislators welcome the new law and are pleased with the direction it took—away from the one-size-fits-all, top-down approach promoted in its predecessor, the No Child Left Behind Act.

The new law requires states to develop plans and submit them to the U.S. Department of Education either in the spring or summer of 2017. The plans must describe how they will measure the progress and achievement of students and how they will intervene in struggling schools. State lawmakers are and will continue to be involved in developing these plans during this year’s sessions.

Legislators, however, will also be watching to see whether Trump moves to repeal certain education regulations proposed or finalized by the Obama administration. And lawmakers will definitely keep a collective eye on the U.S. Department of Education, which Trump targeted for elimination during the campaign.

8. The Affordability of Higher Education

Students and parents aren’t the only ones concerned about not being able to afford college. Tackling the increasing cost of tuition and the growing amount of student debt has been the focus of lawmakers’ efforts for years. Yet, the statistics remain dismal: Between 2003–04 and 2013–14, the cost of a four-year degree at public institutions rose 34 percent, according to the U.S. Department of Education. From 2008 to 2013, state appropriations to higher education fell by $14.1 billion, or 21 percent, while the number of full-time students grew by 1.2 million, or 8 percent, according to The Pew Charitable Trust’s analysis of U.S. Department of Education data. States used to pay the lion’s share of the cost of college, now students do.

In addition, 44 million Americans owe nearly $1.3 trillion in student loan debt. Along with a diploma, the average graduate last year left college with somewhere between $29,000 and $37,000 in student loan debt, according to varying estimates.

Lawmakers have tried freezing tuition, tying tuition to the consumer price index, using corporate taxes to fund tuition “stabilization” funds, offering free tuition to promising groups of low- and middle-income students, and more. And they will continue to seek solutions despite uncertainty about the new administration’s policies on college affordability and student debt. Trump has advocated various ideas that cut across the liberal-conservative spectrum.

9. Fending Off Cyberattacks

Cyberthreats have enormous implications for government security, economic prosperity and public safety. Hackers increasingly are breaking into systems full of personal, sensitive information on citizens so they can sell the data. Political hackers aim to get their message out or embarrass opponents, and state-sponsored actors...
75% of heroin users first abuse prescription opioids.

Ask a physical therapist about safer ways to manage pain.

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Spy for government secrets or to take down critical infrastructures. The electric grid, for example, has received a growing number of threats.

Hackers have targeted hospitals, police stations and government agencies, some even holding their data with ransomware until the “hostages” pay up.

State legislators will continue to improve cybersecurity. Some states have already begun. They have beefed up their security practices, exempted secure information from public records laws, offered incentives to the cybersecurity industry, funded education for cybersecurity professionals, diversified energy production to make the electrical grid more resilient and promoted microgrids, which can supply power to a specific area when a disruption to the electric system occurs.

States also have created task forces or multi-agency teams to fight the threat on many fronts. Other states have focused on security awareness training for their employees. States can even buy cyberinsurance to help cover the costs of recovering from an attack.

Forty-seven states have laws that require businesses or governments to notify consumers or citizens when their personal information is breached. Some states will consider strengthening those laws by expanding the definition of “personal information,” lengthening the list of who must comply or developing more specific security practices.

To ensure networks are secure, reliable and adequately protected, most agree that collaboration among all levels of government and industry is essential in this fight to stay one step ahead of would-be hackers.

10. Marijuana, Phase 2

Marijuana legalization continues to spread. On Election Day, voters in California, Maine, Massachusetts and Nevada approved the legalization of adult-use recreational marijuana through ballot measures. Arizona voters were the only ones to just say no. That makes it eight states and the District of Columbia that have legalized marijuana for adult recreational use. Several more states have decriminalized the possession of small amounts of marijuana, and 28 states and D.C. now allow the use of medicinal marijuana.

Legislators in states that have legalized recreational use will be busy deciding how best to license and regulate cultivation facilities and retail shops and how to prevent children from misusing it. This might include requiring identification checks at dispensaries, prohibiting anyone under age 21 inside dispensaries, requiring child-resistant packaging of cannabis products and prohibiting the use of marijuana in public.

They will be debating safe driving concerns since new cannabis products, unfamiliar strains, and the fact that people metabolize and retain THC differently than they do alcohol make it difficult to determine levels of impairment.

As states move forward with medical and adult-use recreational marijuana policies, the struggle over control intensifies among federal, state and local governments. Marijuana is still a Schedule I drug under federal law and is defined as dangerous, with no currently accepted medical use and high potential for abuse. This will continue to complicate taxation, banking and other areas regulated by federal laws.

This is another state issue with an uncertain future under the new president, although he has voiced his support for medicinal marijuana.

Plenty to Do Despite Uncertainties

There are plenty of additional issues to fill legislative agendas this year and in the years ahead. Lawmakers will continue to tackle the high costs of medicines and to reform juvenile justice practices. They will deal with end-of-life and long-term care concerns, the future of nuclear energy and the impact of distributed renewable energy. They will consider the evidence and decide what works best for easing ex-prisoners’ re-entry into society, training teachers and principals, and educating our youngest students, to name a few.

It’s safe to say, the president’s not the only one with a tough job ahead.
1 Red Light/Green Light
Running a red light is now legal in Pennsylvania—under certain conditions. A new law allows drivers to go through a red light if the vehicle-sensing system that controls the signal appears to be malfunctioning, preventing the light from turning green. The law was originally intended to help motorcyclists, whose bikes often don’t weigh enough to trigger the sensors in the pavement, but it was later expanded to all drivers. Because the rule doesn’t specify how long a driver must wait at a red light before going through it, some are concerned about an increase in accidents.

2 Pull Over and Be Polite
Driver’s education classes in Illinois must now cover what to do during a traffic stop, the Chicago Tribune reports. The requirement applies to public high school programs and to private driving schools. The law, which was filed by Representative Frances Ann Hurley (D) and enacted in August, arrived as news reports from across the country drew attention to the tragic results of interactions between drivers and police officers gone wrong. But Hurley says the law wasn’t a response to those deadly encounters. “It was just to teach everybody the same thing,” she said. “We want everybody to know what they’re supposed to do when they get pulled over by police.”

3 Assistance Uncapped
Family welfare caps—aka “welfare queen” laws—are meant to discourage women receiving public assistance from gaming the system by having more kids to get more aid. The restrictions, however, have no effect on mothers’ birthrates, according to Guttmacher Institute research. In addition, as the Urban Institute argues, they can thrust families deeper into poverty and impair children’s development. California is the seventh state since 2002 to repeal a family cap. Similar laws are on the books in 21 other states. California’s action makes a total of $220 million in aid available to 130,000 children annually. New Jersey lawmakers voted to repeal their state’s cap last year, but the measure was vetoed by Governor Chris Christie (R).

4 Battling Bullies
Two Texas lawmakers made good on their promise to try to toughen the state’s anti-bullying law. Senator José Menéndez (D) and Representative Ina Minjarez (D) filed “David’s Law” on the first day of prefiling for the state’s 85th Legislature. Named for David Molak, a San Antonio high schooler who took his own life last year after months of cyberbullying, the law would make it a misdemeanor to harass or bully anyone under age 18 through text messages, social media or other electronic means; require school districts to develop a way to anonymously report bullying; and bolster the ability of law enforcement, through subpoenas, to identify anonymous social media users who send threatening messages. Forty-nine states have passed laws to prevent bullying and protect students, with all but one having provisions for cyberbullying to be classified as a crime.
Holsters Go Under
Idaho is the 10th state to allow people 21 and older to carry a concealed firearm without a permit, KBOI-TV reports. Supporters point out that it’s already legal in the state to carry a gun openly without a permit, and the new law simply allows people to cover a holster with a coat or jacket. Opponents of the measure, which went into effect in July, decried the lack of any training requirement in the law.

De End of Declawing
New Jersey cats will be able to shred furniture with feline impunity if a bill making its way through the Assembly becomes law. The bill adds declawing—the medical term is onychectomy—to the list of criminal animal-cruelty offenses, though it makes exceptions for medical reasons. If the bill passes, New Jersey would be the first state to ban cat declawing. Veterinarians who perform the procedure, and people who seek that service, would face a fine of up to $1,000 or six months in jail, as well as civil penalties, according to the bill.

Brains Over Brawn
Jobs requiring good analytical, social, communication or management skills are growing at a higher rate than those that depend on manual skills, according to a new Pew Research Center study of Labor Department data. From 1980 to 2015, the number of jobs requiring social, communication or management skills grew by 83 percent to 90 million, and those needing analytical skills grew by 77 percent, to 86 million. In contrast, positions depending on manual skills grew by only 18 percent, to 77 million. The trend has been a boon to women, who made up 47 percent of the total labor force in 2015 but held 52 percent of the jobs demanding higher analytical skills and 55 percent of those needing strong social skills.

Legislators on Record
Voters liked what they saw in California’s Proposition 54, the Legislative Transparency Act, approving it by about 64 percent on November’s ballot. The measure, which was promoted as a way to ensure better public access to legislative proceedings, contains an uncommon proviso: All public meetings must now be documented on video, with the recordings posted online within 24 hours and retained there for 20 years. The lengthy retention period and associated costs—$1 million to $2 million up front and about $1 million annually thereafter—are unique, according to NCSL research.

Home Sweet Home
Americans appear to be staying put. The percentage of us who move during a year’s time—the so-called mover rate—fell to an historic low of 11.2 percent last year, according to the Census Bureau. The rate was above 20 percent at several times during the 1950s and mid-’60s and again in 1984 but has been declining since then. About 42 percent of those who moved last year cited housing as the reason—wanting a new or better house or apartment, for example. Roughly 27 percent moved because of family, and 20 percent moved for work. The South had both the highest number of people moving out (901,000) and the highest number moving in (940,000). The mover rate was highest among African Americans (about 14 percent) and Asians (13 percent).
States are re-examining the way they regulate a variety of occupations.

BY SUZANNE WEISS

In 2003, bright blue-and-white kiosks offering $99 teeth-whitening treatments began popping up in shopping malls, spas and other locations across North Carolina. The growing number of outlets, and the brisk business they were doing, soon attracted the attention of dentists—who typically charge upwards of $500 for teeth whitening—and eventually the North Carolina Board of Dental Examiners, eight of whose 10 members were practicing dentists themselves.

Citing a state law it interpreted as prohibiting anyone but licensed dentists from bleaching teeth, the board issued cease and desist letters in 2006 to more than 50 kiosk operators and their landlords. Within a year, all of the cut-rate teeth-whitening businesses in North Carolina had shut down.

But far from settling the matter, the board’s actions generated a legal battle fought all the way up to the U.S. Supreme Court; culminating in 2015 in a landmark decision with complex ramifications for states’ traditional approaches to regulating a wide variety of occupations.

The battle began when the cease and desist letters were brought to the attention of the Federal Trade Commission, which, after investigation, filed a complaint against the board, accusing it of anticompetitive behavior. “Without any legitimate justification or defense,” the complaint charged, the board had prevented non-dentists from offering a service that reduced prices and expanded consumer choice.

The dental board argued that its conduct was shielded by what is called the “state-action doctrine”—a New Deal-era legal principle that renders federal antitrust laws inapplicable to economic regulations adopted by a state in its sovereign capacity.

But the Fourth Circuit, and ultimately the Supreme Court, sided with the FTC’s contention that an entity like the dental board—controlled by market participants who are elected by other market participants—is a non-sovereign “private actor,” not automatically exempt from antitrust challenges.

In North Carolina Board of Dental Examiners v. FTC, handed down in February 2015, the high court established a new standard: When a state delegates control over a market to a non-sovereign actor, the state-action immunity doctrine applies only if the state itself “actively supervises” and accepts political responsibility for the private actor’s decisions. The need for supervision, the court ruled, “turns on the risk that active market participants will pursue private interests in restraining trade.”
What It Means for States

For governors, legislators and other policymakers, the ruling has raised the specter of a tide of lawsuits against licensing boards, which oversee occupations ranging from doctors and lawyers to barbers, locksmiths, beekeepers and auctioneers. Among the most common complaints against such boards, according to the FTC: difficult entry requirements, arbitrary restrictions on offering innovative services and unclear definitions of the “boundaries” of a given occupation.

A regulatory board of accountants, for example, may decide, for whatever reason, to limit the number of new licenses awarded each year, or a licensing board of attorneys may adopt a rule or code of ethics that prohibits attorneys from advertising. It’s how we ended up with hair braiders—in 26 states across the country—needing a cosmetology license that typically costs $22,000 and involves more than 2,000 hours of training.

Protecting Consumers

Those serving on boards, however, would remind us that licensing, regulatory boards and all kinds of other regulations were created for a reason—to protect consumers from fraudulent, negligent, unqualified or otherwise unscrupulous practitioners. They would contend that oversight, rules and regulations guarantee high standards, so consumers receive quality work and fairly priced services.

Professional licensing also protects the reputation of the occupation itself, supporters say, protecting it from un- or under-trained tricksters capable of doing great harm.

The Supreme Court ruling has triggered about a dozen suits against state licensing boards over the past year—brought not by the FTC, but by current or prospective licensees. Nearly all of them have been settled or dismissed, having been found not to involve “a credible underlying antitrust claim,” says Sarah Allen, a senior assistant attorney general in Virginia who has been closely tracking the fallout from the high court’s decision.

One notable exception is a suit filed in April 2015 against the Texas Medical Board by Teladoc Inc., a company that uses telephone and videoconferencing technology to provide on-demand remote medical care. Teladoc is challenging a board rule that requires physicians to meet with patients in person before treating them remotely. The company alleges that the rule restricts its ability to compete, resulting in higher prices and less access to doctors for the state’s residents.

Last December, a federal judge rejected the medical board’s request to dismiss the case, declaring that there had been “no active supervision to establish state-action immunity,” Allen says.

And there’s the rub: What constitutes “active supervision,” and who or what is best suited to provide it?

Lisa Sorenson, executive director of the State and Local Legal Center, points out that state licensing boards take many thousands of regulatory actions every year, the large majority of which do not involve market manipulation. But there are certainly instances in which boards can and do “go rogue,” as she put it, tilting the regulatory framework in favor of private interests.

So, Sorenson says, every state must now reassess the structure and operations of its licensing boards with an eye to reducing the risk of antitrust claims—“and there is no one-size-fits-all way of doing so.”

Where to Begin?

As a starting point, state officials can look at a 13-page guidance paper issued by FTC staff in the wake of the 2015 Supreme Court decision in the dental board case.

The paper begins by noting that states may avoid conflict with federal antitrust laws altogether by creating regulatory boards that serve only in an advisory capacity, or staffing them exclusively with individuals who have no financial interest in the occupation being regulated.

But the vast majority of state licensing boards are, in fact, dominated by active members of the occupations they oversee, the paper acknowledges—and states thus “must accept responsibility for their conduct by actively supervising them.”

The paper follows with the essential components of good supervision: a substantive review of a potentially anticompetitive board decision, the development of a factual record and the power to veto or modify particular decisions to ensure they agree with state policy.

The big question is who should do the supervising?

• An executive-branch official or agency? Colorado’s Department of Regulatory Agencies has long had authority over all state licensing boards, and over the past year Alabama, Delaware and Maryland have moved in that direction.
• The attorney general’s office? So far, only Oklahoma has taken this approach. Governor Mary Fallin (R) issued an executive order requiring boards controlled by market participants to submit a record of their actions to the attorney general’s office for review, written analysis and possible modification. The drawbacks to this idea, both Sorenson and Allen say, are that attorneys general typically lack the resources to carry out such a task, and because they often advise multiple state boards on legal matters, they may have conflicts of interest. In addition, in many states, boards are not required to follow the advice of the attorney general.
• What about the legislature? In some states, legislative committees have the power to review board rules and regulations, but that can cause political problems for elected officials. “It forces them to take sides, and they don’t want to be in that position,” says Ken Levine, director of the Texas Sunset Advisory Commission, which was created by the Texas Legislature in 1977 to independently monitor the performance of state agencies, including licensing boards.
Seeking Better Supervision

Since the Supreme Court’s decision, states are handling the supervision of licensing boards through executive orders, legislative proposals and opinions issued by the offices of attorneys general, according to recent NCSL research.

The Connecticut General Assembly passed a bill last year that makes any exercise of statutory functions, including licensing, subject to approval, rejection or modification by the commissioner of the state’s Department of Consumer Protection.

Indiana lawmakers established a committee to make recommendations on reforming the way that appeals of decisions made by occupational licensing boards and other agencies are handled. The goal is to move away from traditional, patchwork administrative law models (with a single administrative law judge) toward panels of judges who hear appeals from several boards and agencies.

Governors in Alabama and Massachusetts issued executive orders. Alabama established the Office for Regulatory Oversight of Boards and Commissions to review, modify or veto the actions of boards and commissions.

In Massachusetts, the director of professional licensure, which oversees 28 boards, and the commissioner of public health must now conduct “a careful review” of any actions with the potential to be anticompetitive in the areas of licensing requirements, defining scope of practice, pricing, advertising and allocating territory. The order requires disapproval of any measure that doesn’t advance “an important policy goal of the Commonwealth.”

In 2015, the Arkansas Legislature passed a bill requiring that all proposed board rules and regulations be approved by a subcommittee of the Legislative Council. Previously, the powers of the subcommittee, which consists of 22 legislators selected by the House and Senate leadership, did not go beyond simple review of proposed board actions.

“We needed a process with some teeth,” says Senate President Pro Tempore Jonathan Dismang (R), who sponsored the bill. “In some cases, these boards have become a government unto themselves.”

Removing Burdens

A particularly ambitious initiative is underway in Delaware, where Governor Jack Markell (D) formed a committee to do a top-to-bottom analysis of the composition, state oversight and licensing requirements of all boards and commissions.

The Delaware Professional Licensing Review Committee, whose members include legislative and gubernatorial appointees, is charged with comparing the state’s licensing requirements with those of other states; identifying best practices; and recommending actions that will alleviate the risk of antitrust liability and eliminate unnecessary licensing/certification requirements.

A key goal, Markell says, is to “remove regulatory burdens that can dissuade individuals from entering into professions, and can represent a barrier to the disadvantaged and underemployed from improving their lot in life.” The committee is set to issue its findings and recommendations soon.

Steven Ogle, general counsel to Texas’ Sunset Advisory Commission staff, says the challenges facing states as a result of the Supreme Court decision are indisputable. “It’s going to take substantial effort on the part of states to figure out the logistics of all this, and a lot of it will likely be trial and error,” he says.

Although the FTC guidance provides some help, “there are a lot of unanswered questions, and it’s probably going to take a test case to resolve them,” Ogle says.

In a few states, “the attitude seems to be ‘wait and see’ or ‘the feds won’t bother us,’ but most states are proactively taking steps to respond because they know that, absolutely, this will affect them,” he says.

Soronen agrees. “This case is obscure, but it’s important. And all levels of state government—from bill drafters to department heads to governors’ legal counselors—have some interest in and responsibility for addressing it.”
OCCUPATIONAL LICENSING

Jobs Requiring Licenses Way Up

Do licensing requirements restrict job opportunities or protect the public?

Once upon a time, all you needed to go into business and make a living was the know-how, resources and equipment necessary to keep your business afloat. But over the past few decades, the percentage of Americans who cannot work without obtaining a license or other form of government consent has grown significantly—from about 4 percent in the 1950s to nearly 25 percent today.

Occupational licensing laws were first passed to protect the public from negligent, unqualified and substandard practitioners, but increasingly they are seen as a mechanism designed not to protect consumers, but rather to insulate existing business interests from competition.

Critics charge that licensing requirements contribute to higher prices for goods and services, discourage specialization and innovation, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.

Today, roughly 1,100 occupations are regulated in at least one state, ranging from highly specialized professions like medicine, law and engineering to what once were considered “odd jobs”—and a whole lot of things in between, from elevator operators to casket sellers, hearing-aid dealers to upholsterers, lightning-rod installers to turtle farmers, interior decorators to reptile catchers.

“Most things that should be licensed, are licensed,” says Ken Levine, director of the Texas Sunset Advisory Commission. “But there are some things that don’t need to be. There is, really, over-regulation and over-licensing.”

Levine’s agency, created by the Texas Legislature in 1977 as an independent monitor of the performance of state agencies, has from time to time recommended removing licensing requirements for certain occupations, including dietitians, dyslexia therapists and radiologic technologists.

In all but a couple of instances, “the Legislature didn’t agree with us,” Levine says. The number of licensed job categories varies from a high of 177 in California to a low of 41 in Missouri, with the average among states in the mid-90s.

Licensing requirements vary widely from state to state, too. For example, Michigan mandates three years of education and training to become a licensed security guard, while most other states require only 11 days or less. South Dakota, Iowa and Nebraska require 16 months of education to become a licensed cosmetologist, while New York and Massachusetts require less than eight months.

Many states require twice as much training for X-ray technicians—and eight times as much training for dental assistants—as does the military. All the variations make it difficult for some workers to transfer their licenses across state borders. Military spouses, with their frequent moves, are especially hard hit.

The push to add occupations that need licenses continues. Most recently, private investigators in Mississippi, music therapists in Florida and elevator maintenance workers in New York have lobbied legislators for state-mandated licensing.

But over the past couple of years, sign-language interpreters in Idaho and substance-disorder counselors in Iowa, who managed to win legislative approval for their licensing proposals, were thwarted by a governor’s veto. And in Arizona, the governor signed a package of bills that he pledged “will begin the elimination of burdensome regulations that are often designed to kill competition or keep out the little guy.”

States’ licensing arrangements were the focus of sweeping criticism in a report prepared by the Treasury Department’s Office of Economic Policy, the Council of Economic Advisers and the Department of Labor, and issued by the White House in July 2015. They concluded that the expansion of occupational licenses has created a substantial drag on the economy by making it harder for people to start their own businesses and for the nation “to take full advantage of all of America’s talented labor.” Licensing restrictions “cost millions of jobs nationwide and raise consumer expenses by over $100 billion,” the report said.

The report looked at the impact of licensing requirements on several populations—veterans and their families, immigrants, the underemployed and individuals with criminal records—and the options for institutional reform that “would promote a more careful and rational approach to occupational regulation.”

Among other things, the report suggests, states could look at certification as an alternative to licensing. Unlike licensing, certification isn’t mandatory. Another key recommendation is to consider the use of regional compacts to harmonize licensing requirements across states.

Morris Kleiner, an economics professor at the University of Minnesota and a leading critic of occupational licensing, has conducted research documenting the rise of licensure and its effects on the labor market. Being in a licensed profession is associated with as much as 15 percent higher wages, he found, and may slow employment growth in the field.

“With licensing, you’re creating a monopoly, and it’s very difficult for people in many places to enter these occupations,” Kleiner says. “It’s keeping people away from the American dream.”

—Suzanne Weiss
The Supreme Court has agreed to hear its first transgender case. At its center is Gavin Grimm, a high school student who has been battling with his local school board in Gloucester, Virginia, for the right to use the boys’ bathroom.

Although Grimm’s birth certificate lists him as female, he says he never imagined he “would grow up to be a woman.” Grimm told his family he was transgender in middle school, and during the fall of his sophomore year of high school, he changed his name and his school records to reflect that he was a boy.

With permission from school administrators, Grimm used the boys’ bathroom for seven weeks without incident, until the local school board adopted a policy requiring students to use bathrooms corresponding to their biological sex rather than their gender identity.

Grimm filed a lawsuit alleging the policy discriminates against him and violates the Equal Protection Clause of the 14th Amendment and Title IX of the Education Amendments of 1972, which prohibit sex discrimination in public schools. Title IX guidelines specifically protect students from discrimination on the basis of gender identity.

In April 2016, a panel of U.S. Appeals Court judges sided with Grimm. The school board then appealed the decision, and now the case is on the Supreme Court docket.

**Being Transgender**

Almost 60 percent of transgender students say they have been denied access to restrooms consistent with their gender identity, according to the Gay, Lesbian and Straight Education Network. The advocacy group also found that students who experienced higher levels of discrimination because of their gender expres-
sion were more than three times as likely to have missed school in the past month as those who had not. They also had lower GPAs than their peers.

The Obama administration’s position was that barring transgender students from bathrooms is a violation of Title IX. Last year, the Department of Education penned a “Dear Colleague” letter to all public schools reminding them of their Title IX obligations regarding transgender students. In order to receive federal funding, the letter reminded them that schools must provide a safe and nondiscriminatory environment; use names and pronouns consistent with students’ gender identities; ensure access to sex-segregated activities and facilities based on students’ gender identities; and protect students’ privacy.

Officials from at least 24 states are challenging the legality of the Obama administration’s interpretation of Title IX. The lawsuits allege that the Obama administration exceeded its authority when it issued the “Dear Colleague” letter, and that the guidelines issued are incompatible with Title IX because they violate privacy rights.

How the change in administration will affect these and other suits is currently unknown. During the campaign, President-elect Donald Trump said that transgender people should “use the bathroom they feel is appropriate.” He indicated that decisions about bathroom policies should be left to the states and localities. And, in an interview right after the election, Vice President-elect Mike Pence maintained the position that bathroom policies are a local matter, and that “Washington has no business intruding on the operation of our local schools.”

Legislation and Lawsuits

Hundreds of cities, school districts and 18 states have passed laws protecting transgender people from discrimination since 1975 when Minneapolis, Minnesota, became the first city to pass a law prohibiting discrimination against transgender people.

In July 2016, Massachusetts enacted legislation with bipartisan support allowing transgender people to use bathrooms and locker rooms in accordance with their gender identity and banning discrimination in public accommodations based on

**Gender Expressions**

**Sex** is assigned at birth and refers to a person’s biological status as either male or female; it is associated with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.

**Gender** refers to the socially constructed roles, behaviors, activities and attributes that a society considers appropriate for males and females.

**Gender identity** refers to a person’s internal sense of being male, female or something else.

**Gender dysphoria** is a medical term experts use to describe the distress people may feel when their gender identity does not match the sex they were assigned at birth.

**Transgender** is an umbrella term for people whose gender identity, expression or behavior does not conform to that typically associated with the sex they were assigned at birth.

*Source: American Psychological Association*

**WHAT THE PUBLIC THINKS**

If you had to choose, which comes closest to your view?

Transgender people should be …

… allowed to use public restrooms of gender with which they currently identify.

… required to use public restrooms of gender they were born into.

… (no answer).

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>51%</th>
<th>46%</th>
<th>3%</th>
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</thead>
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<td>Men</td>
<td>45%</td>
<td>52%</td>
<td>2%</td>
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<tr>
<td>Women</td>
<td>55%</td>
<td>40%</td>
<td>4%</td>
<td></td>
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<td>Ages 18-29</td>
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<td>30-49</td>
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<td>50-64</td>
<td>44%</td>
<td>52%</td>
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<td>65+</td>
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<td>48%</td>
<td>7%</td>
<td></td>
</tr>
</tbody>
</table>

*Source: A Pew Research Center survey of adults in August and September 2016.*
CIVIL RIGHTS

gender identity. Senator Sonia Chang-Diaz (D), the prime Senate sponsor told MassLive.com, “When you look at the national landscape and consider the anti-LGBT events that have recently taken place across the country in the public arena, it’s really critical that Massachusetts stand on the right side of history and make a strong recognition that public accommodations are fundamental to equal rights in America.”

Lawmakers opposed to these policies also have passed laws. In March 2016, members of the North Carolina General Assembly were the first to pass a bill requiring students in public schools to use bathrooms corresponding to the sex shown on their birth certificate.

Legislators in at least 20 other states have proposed similar legislation, with more than half specifically addressing school bathrooms. Three weeks before North Carolina’s legislature passed its law, South Dakota passed a similar one, but it was vetoed by the governor.

South Dakota’s “Student Privacy Act” would have required transgender students in public schools to use bathrooms, locker rooms and other facilities based on the sex assigned them at birth. The bill’s sponsor, former Representative Fred Deutsch (R), says he introduced the bill “in response to the federal administration’s new interpretation of Title IX—that explicitly prohibits sex discrimination in federally funded educational programs—that transformed it into a prohibition against discrimination on the basis of sexual orientation.”

Where Things Stand

There are numerous lawsuits pending, besides Grimm’s. After North Carolina passed its law, the federal government threatened to withdraw funding to the state under Title IX. Governor Pat McCrory (R) sued for a ruling clarifying the law, and the Justice Department sued the state right back. McCrory has since dropped the suit, citing its “substantial costs to the state.”

North Carolina is, however, still fighting another lawsuit challenging the law’s constitutionality filed in March on behalf of Joaquin Carcaño, a 27-year-old transgender man who works at the University of North Carolina at Chapel Hill and is banned from using the men’s restroom at work under the law.

At press time, however, the North Carolina governor’s race was still undecided. If McCrory ends up losing, it could affect the future of these lawsuits.

Debates over LGBT rights will continue, but some of the current lawsuits may not as we transition to the Trump administration. The Supreme Court ruling in the case involving Gavin Grimm will be important, as it could have long-lasting implications in several policy areas.

To play the game, you have to know the rules

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Used by more than 70 percent of the nation’s legislatures, Mason’s Manual is the only parliamentary manual designed specifically for state legislatures. The current edition features up-to-date citations of case law, extensive internal cross references and a user-friendly index.

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A Road Map for Self-Driving Cars

Here are five things you need to know about the new federal policy on autonomous vehicles.

BY BEN HUSCH AND ANNE TEIGEN

Self-driving cars may be the “greatest personal transportation revolution since the popularization of the personal automobile nearly a century ago,” the National Highway and Transportation Safety Administration states in the introduction to its new policy on highly autonomous vehicles. U.S. Department of Transportation Secretary Anthony Foxx described the document, titled “Federal Automated Vehicles Policy,” as just the beginning of a process that will include public input and lead to the safe development of the vehicles. He pledged to update the policy within a year. Although the 112-page document is fairly comprehensive, these five key items stand out.

1. Recommendations, Not Mandates
The second section of the four-part document—“Model State Policy”—is specifically directed at the states. It’s clear at the beginning of the sections that none of the topics discussed are currently required. “This guidance is not mandatory,” though the agency may make “some elements of the guidance mandatory and binding through future rulemakings,” the policy states.

2. Autonomous Vehicles Defined
The policy adopts a new classification system proposed by the Society of American Engineers to describe autonomous vehicles. The six-level system assigns Level 0 to vehicles with no automation, in which a human driver is in full control at all times. Cars defined as Level 1 or 2 have some aspect of automation, though the human driver remains in primary control. Tesla’s “Autopilot,” which can aid with changing speeds and lanes, is considered a Level 2 vehicle. Vehicles at Levels 3 and 4 have gradually increasing degrees of automation, with the driving systems monitoring some aspects of the driving environment. Level 5 represents vehicles capable of fully automating all aspects of driving.

3. States in the Driver’s Seat
The “Model State Policy” section delineates the distinct areas of federal and state authority, noting that the federal government is responsible for setting motor vehicle safety standards, while states remain the lead regulator when it comes to licensing, registration, traffic law enforcement, safety inspections, infrastructure, and insurance and liability regulations.
A State Policy Road Map

The new document presents model policy for states wanting to move ahead with autonomous vehicles. Although it fails to mention the key role state legislatures play in enacting policy, it offers a series of steps a state could consider to ensure the safe testing and possible use of self-driving cars. It also identifies areas of state law that might require updating to accommodate a world full of automated vehicles.

• Law enforcement and emergency response
• Vehicle registrations
• Liability and insurance
• Education and training
• Vehicle inspections and maintenance
• Environmental impacts

Tune-up Time for NHTSA

In the policy, the agency lays out some possible changes it believes could help it respond better to this new technology, including additional funding to support more research, a larger network of experts, pre-market approval and a possible involvement with upgrades after vehicles sell. The agency makes a strong case that as the pace of automated vehicle innovation increases, its current role as a regulator of conventional vehicles could stall.

States Keep Cruisin’

Although a few cities, like Pittsburgh and Austin, Texas, have allowed companies to test autonomous vehicles with no new law on the books, eight states and the District of Columbia have passed some sort of legislation. Governors in Arizona and Massachusetts have issued executive orders related to autonomous vehicles. These laws vary in scope, however.

California, Florida, Michigan and Nevada passed comprehensive regulations governing the testing of autonomous vehicles. Florida is the first state to allow anyone with a valid driver’s license to operate an autonomous vehicle on public roads. Florida’s law does not require that an operator be in the vehicle. And in California, the Contra Costa Transportation Authority OK’d the testing on certain public roads of the first fully autonomous vehicle not equipped with a steering wheel, brake pedal or accelerator.

Tennessee lawmakers voted to prohibit local governments from banning the use of autonomous vehicles and established a per mile tax structure for these unique vehicles. The Louisiana Legislature defined terms like “autonomous technology,” “driving mode” and “dynamic driving task.” North Dakota and Utah lawmakers passed legislation to study and evaluate best practices and safety standards and report back with recommendations.

In fact, last year 19 states introduced some sort of legislation related to autonomous vehicles, and there’s no sign of that number dropping in 2017.

Questions Remain

Although the policy provides some clarity on how the NHTSA plans to regulate autonomous vehicles going forward, questions remain. Will the federal government ever formally require certain safety standards for these vehicles? How will insurance handle questions of liability? Will drivers need additional licensing? Will the agency receive greater funding to upgrade the regulatory tools it needs?

Not everyone is waiting for answers. Even before the policy was released, a few automakers and technology companies began operating low-level autonomous vehicles. Still, it will likely be many years before completely self-driving vehicles are common on our roads and highways.
The new year is looking like a good one for minimum wage workers. In November’s election, voters in four states approved ballot measures increasing the lowest wage permitted by law. It could mean incremental pay raises for more than 2 million workers over the next four years, according to the Fairness Project, which supported the initiatives.

In 18 states, workers will begin the year with higher minimum wages thanks to legislation passed in 2014 and 2015, or to automatic increases tied to the rising cost of living.

Twenty-nine states and the District of Columbia now have set their hourly minimum wages above the federal level of $7.25. Two states—Georgia and Wyoming—have minimums below that, at $5.15 per hour. California and Massachusetts have the nation’s highest state minimum wages, both at $10 per hour. Some cities have set their own hourly minimums, and Emeryville, California, currently has the nation’s highest: $14.82.

The minimum wage is a perennially contentious issue at the federal level. Would an increase reduce poverty or increase it? Would it boost productivity or force businesses to cut jobs? Would it lessen income inequality or put young workers at a disadvantage? The list of questions—all defying easy answers—goes on. There’s been no change in the federal wage in seven years. The states and some cities, however, are responding with their own approaches, reflecting regional variations in job markets and cost of living.

—Kevin Frazzini

Minimum Wages as of January 2017

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<th>State</th>
<th>Minimum Wage</th>
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</thead>
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<tr>
<td>Alaska</td>
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<td>Connecticut</td>
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<tr>
<td>Florida</td>
<td>$8.10</td>
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<tr>
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<tr>
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<td>Indiana</td>
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</tr>
<tr>
<td>Virgin Islands</td>
<td>$7.25/$4.30</td>
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</tbody>
</table>

*States with wage requirements that vary depending on employers’ annual sales volume or number of employees, or both.

Source: NCSL

Minimum Trivia

- **1938**: Year federal minimum wage was established
- **25¢ an hour**: First minimum wage
- **22**: Times Congress has increased the federal wage
- **$7.25 an hour**: Current federal minimum wage
- **11**: States that enacted minimum wages for women and minors before the federal one was set
- **Oklahoma**: State with the first minimum wage law (covering just men) in 1938
- **2009**: Year Congress last increased federal minimum wage, upping it 70 cents
- **5**: States that use only the federal minimum wage

Source: NCSL

Voters approved ballot measures in 2016.
Legislatures passed or enacted laws in 2016.
Voters approved ballot measures in 2014.
Legislatures enacted laws in 2014 or 2015.
Have not adopted a minimum wage.
Tie wage increases to the cost of living.

Source: NCSL, Nov. 15, 2016
Every day, lawmakers carefully study topics and introduce legislation important to their state, their constituency and their party. From energy and education to health care and immigration, legislators create or eliminate policies that affect others.

But with ethics laws, elected officials legislate from the inside in. They create and introduce legislation that will directly affect them.

From financial disclosures and gift restrictions to conflicts of interest and cooling-off periods, these ethics laws are aimed at legislators—not the public they represent. The direct effect is a set of laws that is both created by, and imposed on, the legislative members themselves.

In almost any other circumstance, this would be considered a conflict of interest. But because of the importance of ethics laws, and the constitutional safeguard of separation of powers, the public not only allows this kind of direct-effect legislation, it often enthusiastically promotes it.

To be sure, legislating an effective and popular ethics framework is no easy task. The idea of limiting conflicts of interest, increasing financial disclosures and decreasing overall privacy for elected officials is complicated by the fact that many of our nation’s governing bodies are citizen legislatures. They are made up of people with outside careers and interests, who voluntarily give up a portion of their time to serve in a public-interest capacity. Creating a transparent and less private public service environment can have a chilling effect on potential citizen legislators.

Lawmakers work through a complex process to draft, introduce and pass a robust legislative ethics framework. Ethics laws serve as a powerful tool in promoting public trust in government—a cornerstone of representative democracy. Meaningful ethics laws don’t appear overnight. They are the product of careful deliberation by those who are responsible to not only represent constituents, but also build public trust in government and ensure that the ethics laws they create function as intended.

—Ethan Wilson

Ethan Wilson is a policy specialist in the Center for Ethics in Government at NCSL. If you have questions or comments on ethics, email Ethan at ethan.wilson@ncsl.org.
In 2014, Kevin de León became the first Latino elected leader of the Senate in over a century. He had served four years in the Assembly before his election to the Senate in 2010. After graduating with honors from Pitzer College, de León taught citizenship courses to immigrants, was a community organizer, and worked with the National Education Association and California Teachers Association. In 1995 he helped plan the largest civil rights march in California history against Proposition 187—a voter-approved initiative that denied government services to undocumented immigrants—a law he later worked to overturn.

How did your upbringing shape your world view? I’m very aware that it wasn’t a sense of brilliance or genius that allowed me to become the leader of the Senate in California. There were other people who helped me, who took a chance on me, who helped me get into college and so forth. So it wasn’t a sense of, you know, ‘He’s a genius outlier.’ I also learned that diversity is a strength—not a weakness—whether you’re from Scotland, Germany, Mexico or China. It’s our strength as a nation, but especially as a state.

What motivated you to run for political office? There was an assembly member in the California Legislature who represented a largely Latino district, which I represent part of today. He was a Harvard and West Point graduate. He inspired me because he was the cosponsor of a bill that took away driver’s licenses from immigrants. I thought that was just so wrong. Twenty years later, I worked to get those driver’s licenses back.

What is your proudest accomplishment? My Security Choice retirement plan. I think it is immoral that two-thirds of the seniors who live in poverty in California are women. I think it’s incumbent on all legislators, whether you’re a Democrat or Republican, to provide our citizens a modicum of dignity and respect because there are those who have no access to any type of retirement security at their place of employment. I believe that will begin to change for America.

What are your favorite TV shows? I love “Game of Thrones” and “Peaky Blinders.” I also love Anthony Bourdain, because it’s not just about food—it’s about the social-political dynamics of the nations, cities and regions he visits throughout the world.

What would you be doing if you weren’t a legislator? If someone said, ‘You can be this high-profile elected official, or you can be a rock singer,’ I’d choose rock singer in a heartbeat. I wouldn’t even look back. My only problem is I have no talent.

What final words would you like to share? In a highly divisive and polarized nation because of this presidential election, Republicans and Democrats and others must come together and find common ground to heal the wounds. I think we should look to the states because they are national laboratories for good public policy. Many states are on the cutting edge, they’re innovative, and they serve as a prime example of how Washington, D.C., should work.
Thank you for helping private sector workers take charge of their financial future

This year California, Connecticut, New Jersey, and Maryland enacted historic laws that help millions of employees look forward to a more secure and independent retirement. These laws improve access to simple payroll-deduction retirement savings for working residents who don’t have an employer retirement plan. Across the country, 55 million workers don’t have access to a workplace retirement plan, and people are 15 times more likely to save for retirement if they can do so at work. These laws also save taxpayers money by helping fewer people rely on government safety net services. That’s why more than two dozen states are considering similar laws and AARP urges them to give small businesses a competitive edge—just like California, Connecticut, New Jersey, and Maryland already did. AARP would like to take this opportunity to thank the following “Super Saver” state leaders whose ongoing support ensured the passage and implementation of this historic legislation.

**Maryland**
- Governor Larry Hogan
- Senator James Rosapepe
- Senator Richard Madeleno
- Delegate William Frick

**Connecticut**
- State Comptroller Kevin Lembo
- State Senate President Marty Looney
- State House Majority Leader Joe Aresimowicz
- State Senator Ed Gomes
- State Representative Peter Tercyak

**California**
- Governor Edmund G. Brown Jr. (Jerry)
- State Treasurer John Chiang
- Senate President Pro Tempore Kevin De León
- Senator Richard Pan M.D.
- Assembly Member Mike Gatto
- Assembly Member Jim Cooper

**New Jersey**
- State Assembly Speaker Vincent Prieto
- Senate President Steve Sweeney

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