NCSL Standing Committee on Labor and Economic Development

POLICY DIRECTIVES AND RESOLUTIONS

2021 Policy Week Review Call
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Regarding matters of labor and employment, federal and state governments should continue their partnership to ensure that workers are protected on the job, when they are unemployed, after they retire, and that employers are given the assistance they need to comply with federal and state employment and labor laws. While the National Conference of State Legislatures (NCSL) recognizes federal lawmakers' obligations to implement measures under federal jurisdiction to make certain that the rights and needs of both employers and workers are protected, when states are required to implement federal laws, the federal government should ensure adequate federal funding for such initiatives, both for states' administrative and benefits cost.

**Wages**

NCSL supports the federalism structure adhered to between federal and state governments, reflected in such laws as the federal Fair Labor Standards Act and state wage and hour laws. NCSL supports adequate federal funding for all U.S. Department of Labor offices to fully enforce federal wage and hour laws.

**Workplace Safety**

Workplace Safety is another area where federal and state governments share jurisdiction. NCSL strongly supports efforts by the federal government to improve the safety of all workplaces. Federal action should not preclude or preempt states from pursuing stronger approaches that are appropriate for them. Where the federal workplace safety agencies as tasked with protecting workers’ health and safety on the job, the federal government must ensure that these agencies have sufficient funding to
perform all of its important functions. In addressing workplace violations, these agencies should determine what remedial or punitive actions are required based on the severity of the infraction, the employer’s history of health and safety violations, and good faith efforts to comply with federal workplace safety laws and regulations in order to achieve effective enforcement and protection of workers.

**Leave Benefits**

NCSL supports the federalism structure as to workplace leave benefits granted by federal and state governments. The federal government should ensure that any new federal laws or regulations in this area do not unduly burden the states with unfunded mandates.

**Safety Net Benefits**

NCSL recognizes that federal safety net entitlement programs such as Unemployment Insurance, Social Security, and Medicare are partnerships between the federal government and state governments. These programs also reflect a commitment by the federal government to the American employers and wage earners who contribute directly into these systems. As such, NCSL calls on the federal government to fully honor these commitments to unemployed workers, and current and future retirees.

**Unemployment Insurance**

The basic unemployment insurance (UI) program is a well-established federal-state partnership. NCSL opposes federal laws or regulations that would create new barriers to the receipt of state UI benefits. NCSL supports adequate federal funding for state UI administrative costs, including the processing of UI claims, job search assistance, and reemployment programs. NCSL also supports federal funding to state UI programs to ensure adequate income support for the unemployed. And, NCSL supports ensuring
that payroll taxes in dedicated UI trust funds continue to be used solely for payment of unemployment compensation, as required by federal law. States should retain their broad authority under existing federal UI guidelines to define labor market attachment eligibility rules, benefit levels, and disqualification penalties for separations other than layoffs. New administrative burdens on state UI programs must be shown to be necessary to strengthen the programs and should be adequately funded by the federal government. The severely-underfunded Employment Service should receive additional federal funding so that it can carry out all of its important labor market functions in the states.

As a means of stabilizing the economy, NCSL supports extensions of the federal-state Extended Benefits (EB) program when unemployment rates are high. NCSL further supports the development of more effective triggers for EB so as to improve its responsiveness during periods of high unemployment. NCSL also supports continued reauthorization of the Federal Emergency Unemployment Compensation Program when unemployment is high.

NCSL urges the federal government to move the dedicated Federal Unemployment Tax Act (FUTA) trust fund from the discretionary to the mandatory side of the federal budget and to not use the fund to offset the federal budget deficit.

**Social Security**

Any effort to balance the federal budget or reduce the federal debt should not be accomplished by reductions to Social Security benefits.

Congress and the Administration should continue to provide the expected and earned benefits promised by Social Security, and the important role of Social Security in alleviating poverty should not be lost in the efforts to restore long-term solvency or
reform the program.

NCSL opposes expansion of mandatory Social Security and Medicare coverage to public employees of state and local governments who are not already covered.

**Pensions**

NCSL opposes federal regulation attempts of state and local pension plans, including federal reporting requirements.

NCSL urges Congress to enact legislation that will reduce or eliminate the impact of the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) on state and local government retirees, particularly those who have earned lower uncovered government pension benefits or partial Social Security monthly benefits, including Medicare.

**Retiree and Employee Healthcare Costs**

Congress should support federal policies that allow public sector retirees to deduct health care premium costs and/or additional medical expenses from their taxable income, as well as federal efforts to allow retirees to save for health care costs through tax-preferred vehicles.
The National Conference of State Legislatures (NCSL) strongly urges the federal government to better coordinate its economic development activities with the states. NCSL urges the U.S. Department of Commerce, the U.S. Department of Agriculture, the U.S. Department of Labor and the Small Business Administration to each establish a designated liaison to coordinate economic development activities among the four agencies and with the states.

Arts, Culture and Economic Development

NCSL encourages the federal government to support arts and culture through investments in State and Local programs that will promote economic development, job creation and community revitalization.

NCSL encourages collaboration and coordination among the Federal Government’s disparate arts, culture and economic development agencies as they consider State and local programs ensure that the policy and program outcomes meet the needs and goals identified by state policymakers.

Workforce Innovation and Opportunity Act Reauthorization & Funding

In order to train and maintain a highly skilled workforce NCSL believes that states should be given flexibility to meet the broad goals set out in the Workforce Innovation
and Opportunity Act (WIOA) and that state discretion to establish and administer
workforce development services should be maintained.

Reauthorization of WIOA should not include inflexible federal mandates and restrictions
on how funds can be used by states and the localities which deliver these services. In
addition, workforce development reporting should be streamlined to promote program
and administrative efficiencies.

- NCSL believes that the components of an integrated WIOA system should be
  appropriately funded in appropriation and reauthorization.
- NCSL believes that administrative and technological funding for One-Stops
  should be central to WIOA appropriation and reauthorization.

**Responsible Housing and Housing Finance**

NCSL encourages the Congress and the Administration to support flexibility and state
discretion in housing programs and avoid unfunded mandates.

NCSL encourages efforts to promote a greater state role in administering federal
housing programs, subject to sufficient funding and flexibility.

NCSL is encouraged and supportive of public private partnership programs and
initiatives that increase the availability of financing for homeownership opportunities.

NCSL supports first time home buyer tax credits to promote homeownership prospects,
preserving the Mortgage Interest Deduction, and low-income housing tax credits that
produce new, affordable housing.
NCSL strongly urges the federal government to consult state legislators and other state officials as voucher program reforms are designed to ensure that they will meet state needs, provide the flexibility we desire, avoid cost shifts to states, and continue with ample federal funding for program and administrative costs.

- Additionally, we urge the Congress to sustain funding levels sufficient to maintain existing vouchers, including the Department of Housing and Urban Development-Veterans Affairs Supportive Housing (HUD-VASH) programs and already committed project based Section 8 subsidies.

The Federal Role in Career and Technical Education (CTE)

The federal government should provide additional funding and support the authority of states for flexibility to allocate some funds through a competitive grant administered by the state in pursuit and support of innovative, high quality and effective programs.

- NCSL believes that CTE competitive grant programs should be used to incentivize and modernize state and local programs in order to meet the evolving needs of students. NCSL supports adequate funding for CTE competitive grant programs.
- These funding decisions can best be handled at the state level rather than by individual schools and/or districts.
- States should continue to have the authority to determine the split between secondary and postsecondary CTE programs.
- The existing CTE funding formula for the allocation of federal funds to the state should be maintained.
Free Trade and Federalism

The National Conference of State Legislatures (NCSL) supports expanding U.S. net exports through well-crafted international trade agreements that are consistent with traditional American values of constitutional federalism, and protect state legislative, judicial and regulatory authority.

NCSL supports federal legislation that promotes collaboration between the states and the federal government on trade policy. NCSL supports efforts to negotiate new trade or investment agreements and its implementing legislation that secure free and open access to overseas markets for American products. In negotiating new agreements, NCSL believes that federalism and state sovereignty protections must be included.

NCSL urges the Office of the United States Trade Representative (USTR) to collaborate with state legislatures as well as governors about trade policy that may affect state practices and policy on procurement, investment, services, and any action that would remove a foreign entity from state authority. USTR should not bind a state to an international procurement agreement without formal consent from the state legislature.

NCSL encourages USTR to utilize the “positive list” approach for making services, procurement, and investment commitments in trade agreements. Only state laws that are specifically committed should be covered in the agreement. Following appropriate
consultations with USTR, the states must be able to set and adjust their commitments – a right the states have and which USTR has repeatedly recognized. USTR should therefore make clear to trade negotiating partners that U.S. states retain the ability to make adjustments to commitments regarding state-level services, procurement, and investment policies.

NCSL will not support Bilateral Investment Treaties (BITs) or Free Trade Agreements (FTAs) with investment chapters that provide greater substantive or procedural rights to foreign companies than U.S. companies enjoy under the U.S. Constitution. Specifically, NCSL will not support any BIT or FTA that provides for investor/state dispute resolution. NCSL firmly believes that when a state adopts a non-discriminatory law or regulation intended to serve a public purpose, it shall not constitute a violation of an investment agreement or treaty, even if the change in the legal environment thwarts the foreign investors’ previous expectations.

NCSL believes that BIT and FTA implementing legislation must include provisions that deny any private action in U.S. courts or before international dispute resolution panels to enforce international trade or investment agreements. Implementing legislation must also include provisions stating that neither the decisions of international dispute resolution panels nor international trade and investment agreements themselves are binding on the states as a matter of U.S. law.

NCSL supports the authorization and appropriation of resources to USTR, so they are equipped to fully collaborate with state legislatures, while representing their interests.
and the American public's in trade negotiations and agreements.

NCSL encourages Congress to require the Government Accountability Office to develop state economic and sovereignty impact statements for international trade and investment agreements under negotiation.

NCSL urges the USTR to collaborate with state legislators as well as governors prior to the onset of trade negotiations about state procurement practices, investment, and services issues. NCSL supports federal efforts to provide Trade Adjustment Assistance (TAA) to affected workers.

NCSL supports federal efforts to assist in building the trade capacity and trade agreement compliance of developing countries, including funding infrastructure and rural development, and ensuring that laws and institutions related to labor and the environment are improved and strengthened.

NCSL believes that all international services agreements entered into by the United States must include provisions that preserve the right of federal, state, and local governments to provide and regulate services in the public interest on a non-discriminatory basis.

**Divestment**

NCSL upholds the continued ability of the states to divest from any country, or firms conducting business in that country, if the country is proven to be supporting or
engaging in terrorism or other serious criminal acts against the United States or its citizens, or proven to be engaging in serious human rights abuses, including genocide, slavery or human trafficking.

NCSL urges the federal government to provide authoritative information to U.S. investors, including state and local public pension plans, about foreign and domestic firms and their financial and investment activities in specific countries, such as those identified by the U.S. Department of State as State Sponsors of Terrorism.

World Trade Organization Negotiations

NCSL recognizes the benefits of international trade in creating jobs, raising living standards and stimulating growth in the United States. NCSL supports U.S. efforts to increase the transparency, accessibility, participation and accountability of the World Trade Organization (WTO). NCSL supports broadening participation in the WTO and addressing environmental and labor matters. NCSL also endorses the call within the WTO to further reduce trade barriers in manufactured products, agriculture and services.

NCSL will only support trade agreements that preserve state law and the authority of state legislatures.

Implementing legislation for trade and investment agreements must also be crafted to include protections for our constitutional system of federalism. Reservations must be made to trade and investment agreements to “grandfather” existing state laws that might otherwise be subject to challenge. NCSL opposes private rights of action in U.S.
courts or international dispute resolution panels based on international trade or investment agreements.

General Agreement on Trade in Services

NCSL urges a renewed commitment to state-federal collaboration in financial, energy, environment, distribution and education related services. NCSL also urges the USTR to oppose further WTO constraints on domestic regulation of the service sector.

NCSL calls upon Congress to renew the notice to include state government notification and approval provisions for the General Agreement on Trade in Services (GATS) negotiations as well.

USTR must recognize that governors are not authorized to bind state governments unless legislatively permitted and NCSL strongly recommends that USTR, for all future procurements, include state legislatures. The federal government must cooperate with state legislatures to provide that decisions about state procurement practices or other matters governed by state laws under our federal system are not made without the consent of the legislature. Additionally, NCSL encourages USTR to strictly observe the states’ constitutional authority to set procurement policy to promote these public interests while negotiating any modifications to WTO’s Agreement on Government Procurement (GPA) or procurement chapters in free trade agreements.

NCSL urges USTR to collaborate regularly and meaningfully with state governments during any renegotiations of the GPA.
Export Promotion, Export Finance and Trade Agreements

The states and the federal government have a role in export promotion, particularly to help small- and medium-sized businesses who may find it difficult to obtain financing or insurance for their goods.

NCSL urges the federal government to improve its coordination and cooperation with state programs.

NCSL urges continued funding for federal export programs such as the U.S. Commercial Service (USCS) of the Department of Commerce, which would permit it to properly staff overseas posts. Funding for the Export-Import Bank's direct and guaranteed loan programs should also be maintained, and NCSL particularly supports a constant level of funding for the Bank's City/State Program.

NCSL supports the federal government's efforts to work through multilateral negotiations to open markets that are currently closed to U.S. products and to reduce the use of trade-distorting subsidies.

NCSL supports increasing capacity at the Office of the USTR to work with state governments and ensure that our trading partners are adhering to the terms of our agreements.

NCSL strongly urges the federal government to support training for inspection professionals and the development of new technologies to secure the health and safety
of imported foods and agricultural products.

Affirming and Strengthening the President’s Order on Safeguarding Federalism in Trade

NCSL requests that the President by executive order clarify that trade and investment agreements and bi-lateral investment treaties negotiated by the USTR should avoid conflicts with state governing authority, under the same terms as the executive order on preemption.

NCSL requests that the President establish, by executive order, a more effective federal-state consultation system that includes greater involvement and notification of state legislatures.
Veterans Affairs

NCSL recognizes that the U.S. Department of Veterans Affairs (VA) provides benefits and services to veterans of America’s armed forces, including a number of specialized programs for disabled, minority, homeless, and women veterans. NCSL supports and urges Congress and the President to protect VA funding of benefits for veterans from budget cuts.

NCSL further urges Congress to provide funding to streamline the VA processes for securing all benefits in a timely manner for those veterans coming home from deployment, including appropriate health care for physical injuries and psychological wounds.

Federal Impact Aid

NCSL recognizes that School districts with military installations are potentially disadvantaged because of their inability to levy taxes against the federal government.

NCSL recognizes the importance of Federal Impact Aid to help off-set the loss of tax revenue and supports continued funding of the program.

Federal Funding Cuts and Base Realignment and Closing (BRAC)

When closing, or considering property transfers in a BRAC, NCSL supports federal grant incentives for community involvement during the re-development of bases.

Employment of Veterans
Regarding matters of labor and employment for veterans, the federal government should continue its partnership with states to assist veterans in their transition from military service to the civilian workforce. NCSL supports programs of the Small Business Administration (SBA) that help veteran-owned businesses. NCSL also supports and encourages federal assistance, including training and tax credits, for employers who hire veterans into their workforce.

Educational Assistance and GI Bill

NCSL urges Congress to fund, as authorized, all programs associated with educational opportunities for returning veterans to have those benefits equivalent to the GI Bill of previous years.

Preserve the Army National Guard and the Air National Guard

The National Conference of State Legislatures (NCSL) recognizes that the Army National Guard (ARNG) and the Air National Guard (ANG) are vital tools for helping states manage and respond to emergencies and natural disasters at home and abroad. With congressional reauthorization pending, a strong ARNG ensures an operational resource and a strategic reserve for our active duty military branches in combat roles overseas, as well as adapting to complex missions domestically.

NCSL urges the federal government to maintain current funding levels for the ARNG in order to preserve their highly regarded capabilities and to ensure that they are always prepared for duties in the states and abroad in service to our country.

NCSL recognizes that any effort to reduce our nation’s federal deficit requires reductions across all federal agencies. However, reductions should not be made
without a thorough review of the overall Army force structure across the active, Guard and Reserve components.

NCSL further urges that any congressional or Department of Defense review of the Army structure, including the role of the ARNG, includes appropriate input from state policy makers.

NCSL also opposes any effort to preempt domestic control of the ARNG from state authority.

Services being provided to our veterans should also include members of the ARNG to help them transition into society and have equal access to job training and other benefits.

Furthermore, NCSL supports equipment return, replacement, and upgrade to address destroyed material left abroad during deployment.

Service Dogs for Veterans

U.S. service members deployed into combat zones often face physical, mental, and emotional challenges as they make their return home. One of the tools being used to successfully support these veterans and mitigate the difficulties they face is service dogs. They not only assist in daily tasks for those with physical impairments – their use as support animals for soldiers with conditions such as post-traumatic stress disorder is growing as well.

NCSL recognizes the need to ensure that the use of these canine companions is supported and expanded across the country for our returning veterans, including members of the states’ National Guard. For this reason, NCSL supports federal policies that promote the use of these service animals. Specifically, NCSL commends the work
being done on the Wounded Warrior Service Dog Act. This bill supports the study and
use of service dogs for veterans – and NCSL urges its passage.
NCSL further calls upon Congress to enact legislation that would permit the Veterans
Administration to consider certain costs associated with a certified service dog as a
reimbursable medical expense.
Compact of Free Association
The National Conference of State Legislatures (NCSL) urging Congress and the United
States Department of Veterans Affairs to work together to develop a program or pass
legislation to provide veterans from Compact of Free Association nations with access to
high-quality medical care within their respective communities.
The United States government entered into a Compact of Free Association (COFA)
agreement with the Federated States of Micronesia, Republic of Palau, Republic of the
Marshall Islands, and Commonwealth of the Northern Mariana Islands.
Citizens of COFA nations are eligible to enlist in the United States armed services, and
over the years, the United States has vigorously recruited Pacific Islanders from COFA
nations to serve in the United States military.
Pacific Islanders from COFA nations have a long and distinguished history of military
service stretching back to World War II.
Upon completing their military service and returning to their respective communities,
veterans from COFA nations are unable to secure Department of Veterans Affairs
services, especially Department-approved basic medical services, which are non-
existent in their own communities.
Veterans from COFA nations must fly to Hawaii, at enormous cost to their personal financial well-being, to obtain proper medical care at Tripler Army Medical Center.

NCSL urges Congress and the United States Department of Veterans Affairs to work closely to develop a program or pass legislation to provide veterans from Compact of Free Association nations with access to high-quality medical care within their respective communities.
WHEREAS, EB-5 is the designation for the fifth employment-based preference immigrant visa category established by Congress in 1990; and

WHEREAS, Congress established the Immigrant Investor Pilot Program in 1992 to create regional centers which aid foreign investors, by directing and professionally managing their investments while concentrating pooled investments in defined distressed economic zones; and

WHEREAS, EB-5 allocates 10,000 visas annually to foreign investors and their families who invest at least $1 million (or $500,000 in a targeted employment area) which must generate at least 10 jobs; and

WHEREAS, EB-5 has become a vital source of regional economic development funds; and

WHEREAS, from FY1992 to present, qualified foreign investors from the EB-5 Program has generated more than $33.3 billion in capital investments for American communities; and
WHEREAS, that investment has supported over 171,000 American jobs, according to a Department of Commerce study; and

WHEREAS, at the end of Q1 FY2019, there were more than 13,000 pending applications filed for EB-5 investors, representing nearly $6.5 billion in potential direct investments and 208,000 American jobs; and

WHEREAS, according to the latest economic impact study, the EB-5 Program accounted for nearly $12 billion in foreign direct investment between FY2014 and FY2015, contributing $55 billion to the U.S. economic output and supporting more 355,000 American jobs; and

WHEREAS, the EB-5 Program had record-breaking capital formation in FY2015 and Q1 FY2016 with over $4.3 billion and $628.5 million in foreign direct investment respectively; and

WHEREAS, on February 15, 2019 Congress passed legislation to reauthorize the EB-5 Regional Center Program through September 30, 2019; and

WHEREAS, states and localities are working with private parties to use EB-5 foreign direct investment to finance job creating projects; and
WHEREAS, the rationale behind the EB-5 Program is to create jobs, so those jobs, including construction jobs lasting less than two years, should meet or exceed local wage, benefit and health and safety standards and help strengthen the communities deemed to be in need of economic stimulus and workforce development; and

WHEREAS, the law allows for state and local level input in designating targeted employment areas for EB-5 development, and incentivizing state and local oversight and cooperation on specific projects within those targeted employment areas would help ensure compliance with community and industry labor standards; and

WHEREAS, the EB-5 Program is in need of reform to increase accountability and transparency and enhance program integrity, including through requirements that Regional Centers publicly disclose annually for each project details on job creation methodology, prevailing wage, living wage, and other labor standards, if applicable;

WHEREAS, USCIS should annually publish a list of New Commercial Entities approved for EB-5 investment;

WHEREAS, USCIS should effectively monitor EB-5 projects to prevent fraud and ensure that jobs are created, and workers are protected by having clear requirements prior to regional center designation and project approval, as well as by conducting regular oversight, including site visits to projects;
WHEREAS, any effort to extend or make permanent the EB-5 regional center program must balance investment in urban centers and rural areas in recognition of the potential benefits of the program in both; and

WHEREAS, without Congressional action the EB-5 regional center program will sunset on September 30, 2019.

NOW, THEREFORE, BE IT RESOLVED, that The National Conference of State Legislatures urges Congress to reform the EB-5 program to ensure integrity and appropriate oversight during reauthorization of the EB-5 regional center program through legislation, ensuring any reform of the EB-5 regional center program maintains the ability to deliver job-creating capital to American communities, including mechanisms to ensure the creation of quality jobs, close loopholes, prevent Federal officials or their family members from personally profiting off the program, bar developers and contractors found to have violated local, state and federal laws, including labor laws, from receiving EB-5 funding, improve processing systems to address backlogged petitions, streamline approvals for all applications, and enhance program integrity measures through improved reporting requirements and oversight that is not unduly burdensome.