



Higher Education State Policy Issues for 2018

by the AASCU Government Relations and Policy Analysis Division

Introduction

Public college and university leaders will enter a state policy landscape in 2018 marked by more political uncertainty than any time in recent memory. Policy changes enacted by lawmakers in Washington last year will influence on state policy in 2018, and new proposals expected to be under consideration in Congress will only add to ambiguity and political division in statehouses. The immediate driver of state-level uncertainty is the overhaul of the federal tax code signed by President Donald Trump in late 2017. While many policy analysts have focused on provisions in the legislation directly targeting higher education, changes in the federal tax structure will have wide-ranging consequences for state tax codes and revenue outlooks in 2018 and beyond. Outside of the tax bill, calls from leaders on Capitol Hill to reform entitlement programs, address pressing issues on immigration policy, and rewrite the Higher Education Act (HEA) could all have immense repercussions for states and reshape American public higher education for a generation.

Beyond uncertainty emanating from Washington, lawmakers in many states will have challenging sessions due to stagnant state revenue growth. A strong national economy has not led to concomitant revenue growth in many states. For a variety of reasons, many states continue to struggle with limited increases in new revenue, while others may face deficits in 2018. In addition, public higher education's competition for new state revenue with other state priorities will increase. The prospect of revenue enhancements to fill budget gaps and restore investment in state services remains unlikely in many states due to upcoming midterm elections and record levels of GOP control in statehouses. Together, these dynamics foreshadow ambiguity and difficult budgetary choices that could lay ahead for lawmakers in many states in 2018 legislative sessions. These decisions will undoubtedly affect public college and university budgets.

Outside of state budgets, higher education policy issues debated in 2017 will likely continue into 2018. For example, governors and legislators remain concerned about filling available jobs and creating educational pipelines to employment. Some lawmakers remain concerned over claims of restricted speech on campus. Perennial state higher education policy issues, such as linking higher education funding to performance and expanding dual enrollment opportunities, will be on 2018 legislative agendas as well.

The political stakes for states in 2018 are enormous. Of the 50 governors' offices, 36 will be up for election this year. There will also be elections for 82 percent of the nation's legislative seats. This election will be pivotal because many of the governors and state senators elected in 2018 will play a role in federal and state redistricting after the 2020 census. Barring any major changes from the Supreme Court, these legislative maps—which are increasingly sophisticated, controversial and partisan—put a stamp on political power in the statehouses and Congress until 2032. Republicans have historic levels of power at the state level after wave elections in 2010 and 2014, with complete control of 26 state governments today (compared to eight for Democrats). Based on historical analysis and recent victories by Democrats in off-year elections, political pundits forecast that the environment is ripe for Democrats to regain some of the power lost throughout this decade. Voters will have the final say on Nov. 6, and the consequences of their decisions will ripple throughout American politics for years to come.

This paper provides a review of higher education policy issues that legislators and governors are mostly likely to discuss this year. This 11th annual assessment of state higher education policy issues includes a mix of new issues—such as federal policy changes—and longstanding policy debates, such as budgets, guns on campus, performance funding and immigration. Newspaper articles, economic forecasts, gubernatorial addresses, and the 2017 state legislative sessions informed this analysis.

1. Changes in Federal Law

For the first time in the 11-year history of the AASCU Top 10 list, federal policy is the leading issue affecting state higher education policy. The top federal policy issue affecting states in the 2018 legislative sessions is the tax bill approved in late 2017. While most higher education media attention focused on provisions directly targeting students and institutions of higher education, larger issues were at stake for institutions that serve the majority of the nation's students. Public university associations advocated against eliminating the state and local tax (SALT) deduction, and the final iteration of the bill allowed taxpayers to deduct up to \$10,000 in state and local taxes on their federal tax bill. While this was an improvement from some earlier drafts of the legislation, it will still place new fiscal pressure on states—especially higher-tax states—as some taxpayers will have to pay more of the cost of taxes at the state and local levels.

A larger issue in the tax bill was how changes in federal tax law would affect state tax revenue, and by extension, higher education funding. State taxes often conform to federal taxes to streamline and simplify the tax process for both taxpayers and states. According to the Tax Policy Center, 27 states use the federal adjusted gross income (AGI) as their income tax base, six states rely on federal taxable income, and three states use federal gross income. Over 40 states conform to the federal definition of corporate income. In addition, 20 state tax codes are automatically linked to federal tax codes (rolling conformity), while a similar number of states are linked to the federal tax code as of a specific date (static conformity).¹

Because of the intertwined relationships between state and federal tax policy, the new tax law will affect state budgets. However, the extent to which it affects states will vary and remains difficult to discern. Some have questioned the legality of the new law, while others have suggested ways states could maneuver around it. Budget forecasters in some states predict growth in revenues stemming from the new law, while officials in other states see a net loss for their state budget. Because budgets remain tight in many states, even small changes

in tax revenue could have meaningful effects on funding for public colleges and universities.

Beyond tax reform, other pressing federal issues could affect state policy agendas as well. President Trump phased out the Obama-era Deferred Action for Childhood Arrivals (DACA) policy starting in March 2018, forcing Congress to take action to continue the program. DACA provided “lawful presence” for some undocumented immigrants, which allowed undocumented students in some states to claim eligibility for in-state tuition. On January 10, a federal judge temporarily halted the shutdown of the DACA program. Negotiations in Washington on DACA's future remain ongoing as of January 12. If Congress does not act on maintaining the DACA policy, students participating in the program could be subject to deportation and lose their work permits. Colleges in some states could lose a significant number of students. A 2014 report estimated DACA student enrollment in college nationally at 241,000; some colleges, especially those in the South and West, have outsized shares of these students.²

Entitlement reform could also have considerable repercussions on state budgets. In December 2017, U.S. House Speaker Paul Ryan (R-WI) called for making sweeping changes to federal healthcare and anti-poverty programs in 2018. Some programs, such as Medicaid, are a partnership between states and the federal government, and federal cutbacks in these programs could leave states with more responsibilities and less resources. With federal transfers accounting for 33 percent of state revenues, any major policy changes in federal policy structures could have substantial consequences for state budgets and available funding for public higher education.

The reauthorization of the HEA could also present new challenges and opportunities for states. The House Education and Workforce Committee approved an HEA reauthorization in late 2017, and the chair of the Senate Health, Education, Labor and Pensions (HELP) committee stated his intention to pursue reauthorization in 2018. A new HEA reauthorization could affect states in myriad ways, from changing provisions requiring state authorization of institutions to overhauling federal financial aid forms that many states rely on for calculating state aid.

2. Sluggish State Revenue Growth

Amid positive numbers on a variety of national economic indices, the budgetary situation remains subdued in many states heading into the 2018 legislative sessions. A December 2017 report from the National Association of State Budget Officers (NASBO) indicates that for the fiscal year that ended on June 30, 2017, state budget expenditures grew only 2.3 percent over the previous year, the lowest year-over-year increase in the post-recession era, and 26 states enacted budgets with general spending below 2 percent, while 15 states reduced their budgets. In addition, more states made mid-year budget cuts than at any time since the recession subsided.³ The revenue situation in states—combined with tax reform, limited net tuition growth, and growing expenses—prompted Moody's Investor Service to downgrade higher education's financial outlook from stable to negative in December 2017.⁴

There are multiple reasons for the gloomy budget forecasts in many states. While market prices are improving, revenues derived from severance taxes on oil and gas extraction have dropped considerably in recent years. In states dependent on agriculture, state leaders have cited falling commodity prices as a reason for the revenue slowdown. State tax cuts implemented over the last decade have limited new budget revenue, along with uncertainty stemming from federal policy proposals. State leaders have also cited natural disasters as a stressor on state budgets. The longer-term shift toward online purchases and a service-based economy has undoubtedly affected sales tax revenues as well.

The fiscal outlook for FY 2018 remains mixed and state specific. NASBO analysis points to “moderate improvements,” indicating that most states are in “stable but tight fiscal environments.”⁵ Recent news stories, however, point to budget troubles ahead in **Alaska, Connecticut, Montana, Minnesota, New York, Oklahoma, Oregon, Rhode Island and Wyoming**. More states will likely confront budget shortfalls as 2018 unfolds.

With its alternative revenue streams and discretionary status in state budgets, public higher education will be on the front lines of any fluctuations in state revenue in 2018. Beyond scarce state revenues, the competition for new resources from other state services, such as K-12 education, transportation and corrections, remains as intense as ever. State higher education advocates will need to continue to make a strong case for investments in higher education as a catalyst for economic growth.

3. College Affordability

As discussions on the reauthorization of the Higher Education Act restart in 2018, there will be continued national focus on college affordability. Because of the upcoming midterm elections, there will likely be more pressure on state officials, from the capital to the campus, to hold down the price of college. Yet if state budget conditions deteriorate due to tax reform, weak tax revenue numbers or other factors, budget cuts could derail recent progress made on containing the state-to-student cost shift. These changes could also adversely affect availability of state financial aid.

Over the past several years, public concerns over college affordability have prompted governors and legislators to negotiate with campus officials for—or to mandate—tuition increase caps or freezes. The renewed focus from state political leaders on college affordability in recent years, coupled with new state investments in higher education, have contributed to limited tuition increases over the last several years. According to the College Board, average published in-state tuition charges at public two-year and four-year colleges and universities last year increased by 2.9 and 3.1 percent, respectively, before adjusting for inflation. Net price (published prices minus grant aid and tax benefits) of in-state tuition, fees, and room and board at public four-year colleges has been increasing incrementally, from approximately \$14,000 to \$15,000 over the last three years. However, national averages conceal considerable variation from state to state, and tax benefits do not help students and families with upfront college prices. Further, due to relatively stagnant wage growth, even modest increases in

tuition and non-tuition charges can occupy a greater share of family income.

There has been progress on affordability through state-level free college plans. The extent to which these state proposals expand—or are even maintained—in 2018 will depend on available state budget revenue.

Rhode Island, for example, approved a free college program in 2017, but had to scale back the original proposal due to state budget considerations. Likewise, the administrators of **Oregon**'s free tuition program rationed their program in 2017, due to a lack of revenue. **New York** approved a highly touted free college plan in 2017, but it comes with numerous requirements that narrow the number of eligible participants. A few other states have unveiled free tuition programs in recent years, but limited eligibility to those enrolled in certificate and associate degree programs leading to jobs in select high-demand fields.

4. Economic and Workforce Development

Public higher education has long been a centerpiece of state efforts to modernize and grow their economies, and 2018 will continue this trend. According to AASCU reviews of past gubernatorial “State of the State” addresses, governors usually discuss higher education in terms of its role in economic and workforce development. With midterm elections approaching, governors and legislators will be looking for initiatives that create pipelines to available middle- and high-wage jobs in the state. Because of limited new state revenues, concerns over student debt, and the need for skilled workers in specific state industries, governors in recent years have primarily focused on promoting and incentivizing shorter-term community and technical college programs.

While unemployment is low nationally and the stock market is booming, there are concerns about who is benefitting from this national prosperity. For example, national unemployment numbers mask wide variation by state; rates range from 2.2 to 7.2 percent. Employment rates among people aged 25 to 54 have grown, but remain below peak levels. Wage growth remains stagnant for people in many communities.

Significant economic disparities continue to exist along racial lines. While educational attainment rates are slowly increasing, many remain concerned over whether enough workers will have the knowledge and skills to fill the jobs of the coming decade.

States have taken a variety of approaches to using public colleges and universities to advance their economic and workforce development goals in 2017, including adult education, workforce grants and public-private partnerships. **Tennessee** approved Reconnect, a program that allows adults to access last-dollar free community college. The governor of **Kentucky** distributed funding for targeted workforce development grants based on a \$100 million bond initiative. **Arkansas** approved a free community college targeted at sectors with workforce needs. Governors and legislators will likely unveil similar programs in 2018.

5. Undocumented and DACA Students

In September 2017, President Trump moved to phase out the DACA program, while calling on Congress to act by creating a legislative solution before March 2018. Students with DACA permits set to expire before March 5, 2018, were given the opportunity to apply for a two-year renewal, so long as they did so by Oct. 5, 2017. Therefore, the last authorization for these students is set to end by March 5, 2020. However, on January 10, a federal judge temporarily halted the shutdown of the DACA program. Bipartisan talks on DACA continue on Capitol Hill, and some Democrats have threatened to hold up a continuing resolution to fund the federal government if lawmakers fail to make a deal.

If DACA expires without a resolution, there will be considerable fallout in states, particularly those with substantial populations of DACA students. A group of Democratic attorneys general in 15 states and the District of Columbia articulated some of the fallout in a lawsuit against the Trump administration filed in September 2017. They cited less diversity at public universities; a loss of resources spent on DACA students who might not graduate; less tuition revenue for campuses; and declining interest among undocumented populations to pursue higher education due to a loss of

work eligibility.⁶ In some states, law or university policy links in-state tuition eligibility to DACA status, and former DACA students would have to pay the higher out-of-state or international rates if the program expires. Court cases in a few states are pending on whether DACA students in those states can receive the lower in-state tuition rates.

Another immigration issue that garnered national attention in 2017, and could capture headlines in 2018, is sanctuary campuses. A few campus officials, at both public and private colleges, voiced an interest in campus-level policies that would defy federal authorities in the unlikely event of a crackdown on undocumented populations on campus. Conservative lawmakers in some states responded by banning sanctuary campuses. According to the National Conference of State Legislatures, at least 36 states and the District of Columbia considered more than 100 bills regarding sanctuary jurisdictions in 2017, and four states—**Georgia, Indiana, Mississippi** and **Texas**—enacted laws banning campus sanctuary policies.⁷

6. Guns on Campus

For the sixth year in a row, guns on campus is a top issue in state higher education policy, as gun violence remains a visible and costly problem across the country. Legislation stripping institutions of their autonomy to regulate campus safety policies now allows guns on campuses in 10 states, including the 2017 additions of **Arkansas** and **Georgia**. Nearly 20 states considered some form of legislation on this issue in 2017, from deep red states such as **Arizona** to the bluer **New York**.

Some states, such as **Florida**, came close to passing this legislation in 2017, and will likely debate the issue again in 2018. AASCU, along with an overwhelming majority of campus stakeholders, strongly opposes any effort to allow guns on campus. Further, AASCU firmly believes campus leadership should retain their authority to regulate firearms on campus to keep institutions of higher education as safe as possible.

7. State Responses to Population Shifts

As state leaders have struggled to find new resources for public higher education in recent years, they have also confronted another challenge: population shifts. The restructuring of major university systems in response to population loss and economic shifts attracted significant headlines in 2017, and all signs point to more discussions in 2018. Structural changes in university systems, such as campus mergers, usually require legislative approval.

Population shifts vary across the country. Institutions in some states have had difficulty finding enough students to fill classes and programs, while institutions in other states have grown remarkably over the last decade and struggle to meet demand. According to the Western Interstate Commission on Higher Education's (WICHE) recently released "Knocking at the College Door" report, the number of high school graduates will rise until 2024-25, only to fall by 8 percent in the 2030s. The report indicates that the Midwest and Northeast hit their peak number of graduates in 2010 and are steadily declining each year, with some states experiencing sharp declines in enrollment. In the South and West, WICHE projections cite declines in non-white high school graduates after 2025 as a driver in the demographic changes in those regions.⁸

In response to limited new resources and dwindling enrollment in some states, state and university officials have considered mergers and restructuring to become more efficient, to provide more opportunities for students and to improve outcomes. **Georgia** has been the leader in campus mergers, cutting the number of public institutions in the state from 35 to 26 over this decade. **Wisconsin** is proceeding on an ambitious restructuring plan that will merge the state's two- and four-year campuses. In New England, **Vermont** merged two four-year campuses in 2016, and **Maine's** flagship campus absorbed a struggling regional campus. **Pennsylvania's** state-owned university system, which has been struggling with enrollment decline at some campuses, had a much-anticipated report on the future of its system in 2017, but did not recommend mergers. While some within and outside higher education have

viewed mergers as a possible solution to demographic change and budget cuts, others have warned that the savings can be minimal and the change can present a host of new political and administrative challenges.

8. Performance-Based Funding and College Completion

While performance-based funding did not generate the headlines in 2017 that it had in the earlier part of the decade, the policy shift to funding universities based on various definitions of performance continued in 2017 and will remain on the higher education policy agenda in 2018. In 2017, **Arkansas, Rhode Island, Kentucky** and **Wisconsin** were among the states that approved performance-based higher education funding measures. Currently, 35 states tie at least a portion of their funding to performance.⁹

Some state leaders and national foundations view performance-based funding as a key element in their strategies to boost institutional productivity and educational attainment, but recent research casts doubt on its effectiveness. To date, there is no substantial body of work indicating extensive gains from performance-based funding; new research, in fact, has pointed to very limited gains and renewed questions regarding the equity of the performance-based approach to higher education funding. A September 2017 study in the *American Educational Research Journal* of performance-based funding systems in **Ohio** and **Tennessee** from 2005 to 2015 found that performance-based funding did not spur greater productivity in the production of associate and bachelor's degrees, but did increase the number of certificates.¹⁰ A December 2017 article published in the *American Behavioral Scientist* found that minority-serving institutions in states with performance funding lost significant funding due to performance-based funding.¹¹ As more states implement performance-based funding in 2018, scholarly evaluations of programs implemented earlier in the decade will drive the conversation on the future of this policy.

9. Campus Free Speech

In the wake of the hotly contested and polarizing 2016 presidential election, campus responses to controversial speakers and subsequent protests emerged as a major higher education issue in 2017. With midterm elections approaching in 2018, public college campuses will undoubtedly remain hotbeds of political activism.

Amid this activism, some state lawmakers—primarily conservatives—have argued that university leaders are not doing enough to protect free speech on campus. For example, lawmakers have voiced concern over campuses relegating free speech to “zones” and protestors interrupting speakers and events. In 2017, lawmakers in at least 22 states introduced legislation that would address free speech on campus, such as requiring campuses to remove free speech zones and prescribing sanctions for students who disrupt speakers. The provisions in the free speech bills vary; some simply restate existing law while others dictate campus responses to events, such as specific sanctions on those interrupting speakers. Lawmakers have not passed most of these bills, and campus boards in some states have addressed some of the concerns through new policies.

10. Combatting Campus Sexual Assault

The conversation around combatting campus sexual violence has taken on a new direction since the transition from the Obama to Trump administrations. The Obama administration brought visibility and national attention to the issue, which quickly translated into state-level legislation. The Trump administration has retracted Obama-era Title IX guidance, and created new guidance allowing colleges greater latitude in disciplinary action against students charged with misconduct.

In response to the national attention given to campus sexual assault during the Obama era, states have explored policies to crackdown on campus sexual assault in recent years. This includes legislation requiring affirmative consent for sexual relations on campus, notations on transcripts for those found guilty of sexual misconduct and those charged with

misconduct who chose to withdraw from campus, and better coordination between campus officials and law enforcement in investigating allegations of campus sexual assault.

Last year brought fewer policy proposals than prior years, and 2018 will not likely have the volume of state legislation of the Obama era. In 2017, **California** legislators approved a measure that would have codified some of the Obama-era guidance on campus assault and required institutions to adopt rules and procedures for the prevention of sexual harassment. The bill was vetoed by Gov. Jerry Brown (D), citing concerns about due process. A **Georgia** legislator also captured headlines with a measure that would have required certain university employees to report claims of felony sexual assault to law enforcement. The measure did not pass.

Honorable Mention

Dual Credit/Enrollment

In search of policy levers that simultaneously address more robust high school curricula and college costs, state lawmakers will likely continue to tout dual enrollment policies in 2018. Programs that enable high school students to earn college credit, including allowing them to take Advanced Placement and International Baccalaureate classes and college courses, are believed to boost access and improve readiness, while expediting time to degree and containing costs. This past year, lawmakers in 15 states considered legislation to make dual enrollment opportunities more accessible, to financially incentivize teachers and districts to offer such courses, and to regulate standards to ensure quality classes that transfer smoothly to other institutions. With affordability and completion top priorities for state lawmakers, many states will likely consider legislation that increases dual enrollment opportunities this year.

Concerns with quality of dual enrollment classes and the qualifications to teach dual enrollment remain a contentious issue for lawmakers to sort. Additionally, changes in the standards for eligibility to teach dual enrollment classes were recently made by the Higher Learning Commission—an accrediting association for Midwestern colleges—and will take effect in September

2022, which led states and institutions to move quickly to be in compliance.¹²

Innovation

Innovation in higher education is an emerging policy issue playing out in statehouses, with more headlines expected in 2018. With ambitious state attainment goals approaching and scarce new budget revenues, governors and legislators are looking for innovative ways to provide higher education to more people while containing costs. Over the past several years, **California** has been a leader in this arena, providing millions in awards to campuses that innovate through curriculum or instruction redesign, degree completion through demonstration of knowledge and competencies, and programs that make college more affordable. **Wisconsin**, meanwhile, in 2017 mandated a doubling of the courses offered through the UW Flexible Option program over the next two years. With a deregulatory posture in higher education coming from Washington, more attempts at innovating in higher education through new instructional delivery models and partnerships will likely occur in 2018.

Data and Privacy

With the growing reliance on data and data analytics to help states meet their attainment goals, there has been renewed concerns for data collection, use, privacy and security in statehouses. Privacy issues addressed authorized use of data, while data security measures were related to prevention and remediation of unauthorized disclosures. These bills are usually discussed in the K-12 education context, but often apply to higher education as well. **Connecticut** approved a bill requiring the state's labor and higher education departments to collaborate on linking data on employment and earnings to inform student decisions regarding college. **Illinois** lawmakers introduced a bill to regulate data collection and use by third-party entities in the higher education context. Last year, according to the Data Quality Campaign, legislators in 42 states introduced 183 bills and enacted 53 laws addressing how states collect, manage, use, report and protect data in educational contexts.¹³ More such measures can be expected this year.

Academic Issues

A nascent effort by conservative state lawmakers in recent years to make changes to tenure, shared governance and faculty hiring has played out over the last several years. **Wisconsin** has taken steps to weaken tenure and shared governance, while lawmakers in **Iowa** and **Missouri** attempted to eliminate tenure in 2017. Another lawmaker in **Iowa** sought to require public colleges and universities to hire equal numbers of faculty from both political parties. With total GOP control over half of state governments, there could be more attempts to change longstanding academic norms in 2018.

Conclusion

The year ahead will be pivotal for state higher education policy, and decisions made on Capitol Hill and in the White House, statehouses and ballot boxes could determine the fate of affordable access to college for the next generation. This spring and summer will likely bring federal policy measures related to immigration, and possibly even entitlement reform and significant movement on the reauthorization of the HEA. All of these measures will shape state higher education policy. Lawmakers in many states will contend with tight state budgets and a cloud of uncertainty stemming from tax reform approved in late 2017. As the midterm elections approach in the fall, voters will make decisions on governors and legislators that will shape political power and decisions on public higher education until 2032; choices in Congressional races will also affect key higher education issues under consideration in the years ahead on Capitol Hill.

Higher education advocates had a challenging year in 2017, and even with an improving economy, the challenges in 2018 do not look any less daunting. Public higher education has a strong case to make on its return on investment, and will need to continue the work of cultivating champions, creating partnerships and building public support to make the case to lawmakers that investing in state colleges and universities remains one of the best ways to improve individual economic security and state economic prosperity.

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