

Top 10 Higher Education State Policy Issues for 2017

By AASCU Government Relations

Introduction

In early 2017, higher education leaders in many states will confront challenging policy environments due to the return of sizable state budget deficits. While much of the nation's attention will be fixated on Washington, with the inauguration and immediate actions of the president-elect, state-level elected officials will be sworn in and renew their work on economic development, education, transportation, health care, and other traditional state-level policy issues. With a national slowdown in state tax revenues and many states facing budget gaps, governors and state legislators will explore solutions to balance holding the line on taxes and maintaining state investments. As a discretionary state budget item, higher education will be among lawmakers' top targets to balance state budgets.

With the slowdown in state economies, higher education's role in economic and workforce development will be a top-tier concern for lawmakers looking to guide state residents into available jobs. Lawmakers will also continue to focus on traditional higher education issues, such as performance-based

funding and dual enrollment. The direction of other policy concerns, such as immigration and campus sexual assault, will at least be partially influenced by the direction of policy discussions in Washington. Academic freedom and civil rights are two emerging state-level higher education issues that could be policy flashpoints in 2017.

State political stakes over the next two years could not be higher. In 2018, gubernatorial elections will take place in 36 states; governors taking office in 2019 will influence redistricting following the 2020 census, which will affect state and federal political power until 2032. In addition, with Republicans controlling Congress, the White House and half of statehouses, if voters sour on the actions of the current class of lawmakers, the conditions are in place for a wave election in 2018 that could at least partially restore power to Democrats and set the stage for the 2020 elections.

Political dynamics in most states will remain similar to 2016, with Republican power in statehouses remaining near 100-year highs. States that have gone from divided control to total Republican power stemming from the November elections will likely see dormant conservative proposals gain new life, while those now with divided control will likely see fewer legislative changes. Republicans will have almost complete control of the Southern state governments and lead most of the Midwestern states. Democrats, meanwhile, will have total control of California, while many states in the West, Mid-Atlantic and Northeast will have divided government.

This paper provides a review of higher education policy issues that state lawmakers are most likely to discuss this year. This 10th annual synopsis includes issues that have been on this list for years, such as

state budgets and college tuition, while others, like state-level solutions to student debt, have ascended as the higher education policy landscape has shifted over the last decade. Newspaper articles, state economic forecasts, gubernatorial statements, and results of last year's legislative sessions collectively informed this paper.

1. Higher Education Funding Amid "Softening" State Budgets

As state lawmakers take their seats in early 2017, the immediate challenge for many will be to craft state budgets amid sluggish tax receipts and deficit projections. While the depths of the Great Recession are long past, the growth of budget revenue in many states has slowed amid robust demand for state funds. While the overall mood on state budgets is pessimistic, each state will have unique circumstances—**Minnesota**, for example, will have a budget surplus, while **Iowa** will confront a deficit. The states facing the most difficult budget circumstances in 2017 will be those dependent on revenue from natural resource extraction. Analysts predict low prices to continue in the gas, oil and coal markets for at least the next few years,¹ forcing lawmakers in states like **Louisiana**, **Oklahoma** and **Wyoming** to make difficult budgetary choices.

Nevertheless, states that are less reliant on revenue from resource extraction will also have difficult budget environments in 2017; lawmakers from **Massachusetts** to **Oregon** will have to make tough budgetary decisions this year. According to a December 2016 report from the National Association of State Budget Officers (NASBO), 24 states have reported that state budget revenues are below forecasted levels for the current fiscal year.² With politically conservative leadership in charge of half of state governments, more states will rely on budget cuts than tax increases to balance state budgets.

For higher education, the extent of its funding will

depend on whether lawmakers make it a priority in state budget negotiations and the amount of state funding available. Higher education funding remains especially vulnerable to state budget downturns because it is a discretionary budget item, has available alternative revenue streams (i.e. tuition and fees), and does not have the bedrock of a broad, organized and well-financed political constituency of other state budget items.

In some states, the initial news has been encouraging—in **Alaska**, for example, the governor has called for no further cuts to higher education despite state budget difficulties. In other states, like **North Dakota**, the governor's budget blueprint calls for sharp reductions in state funding. Regardless of the state, advocates for public colleges and universities will likely find a competitive environment for state funding during this year's legislative sessions that will affect institutional capacity to address state needs and provide affordable educational opportunities.

2. Affordability

Intertwined with state budget dynamics is college affordability. Due to growing concerns about affordability and student debt, state lawmakers in recent years have tied higher education funding increases to commitments from university governing bodies to freeze tuition rates or cap tuition increases. As a result, tuition increases over the last few years have been mild by historical standards. According to the College Board's *Trends in College Pricing* data, tuition at public four-year colleges and universities increased 2.4 percent from 2015-16 to 2016-17 before accounting for inflation,³ similar to the 2.9 percent pre-inflation growth in the previous two years.⁴ While recent years have provided some relief from high tuition increases, constrained state budgets may lead to funding cuts for public colleges and universities and higher tuition increases in the near future.

The free tuition movement has gained national traction in recent years, but the election of Donald Trump and a Republican Congress will dampen federal policy momentum in this area. At the state level, a handful of states have approved last-dollar free tuition for resident students attending state community college in recent years, but efforts to expand these policies to other states will have to overcome difficult state budget environments. Nevertheless, in early January 2017, the governor of **New York** put forth a last-dollar grant program to provide free tuition at public community colleges and state universities for students from families making less than \$125,000 after phasing the program in for three years. The Education Commission of the States counted five states that introduced free tuition bills in the first week of the year.

While affordability remains a clear concern, the conversation about affordability cannot exclude concerns about quality. In some states, such as **Wisconsin**, state lawmakers have frozen tuition rates and made substantial cuts to public colleges and universities. This has had serious consequences on educational quality, such as shortages of required classes,⁵ as well as larger class sizes and faculty flight.⁶ The need to keep college affordable and maintain quality in environments marked by budget scarcity will be on the minds of policymakers and higher education officials throughout 2017.

3. Economic and Workforce Development—Building a Skilled Workforce to Revitalize State Economies

The 2016 election sent a clear message regarding economic distress and demand for more high-paying jobs. According to the Georgetown Center on Education and the Workforce (CEW), the post-election economic environment remains marked by a starker divide between those with and without education and training beyond high school. A June 2016 report from CEW indicates that nearly all of the jobs created during the economic recovery went

to workers with at least some postsecondary school education or training, while the vast majority of jobs lost during the recession were those that required a high school diploma or less.⁷

The nexus of available high-paying jobs, affordable education and training, and streamlined pathways to the workforce remain central to state policymakers' agendas.⁸ Lawmakers remain particularly interested in policies that promote certificates and associate degrees leading to high-wage, available jobs. Beyond this, investing in research linked to the private sector remains paramount to state economic development. Last year, governors and state lawmakers creatively sought to address this need by promoting policies to strengthen partnerships between businesses and college campuses; incentivize adult students to return to postsecondary education; and smooth transfer-pathways between the two- and four-year systems. Efforts to continue to tighten the relationship between higher education and the private sector will undoubtedly continue in 2017.

4. Undocumented and DACA Students

Policies directed at undocumented immigrants, including college students, will be one of the most closely tracked issues this year. During the 2016 campaign, Donald Trump took a hardline stance on federal immigration policy, including calling for discontinuing an Obama-era administrative action that provided temporary legal presence for certain undocumented immigrants (known as Deferred Action for Childhood Arrivals, or DACA). Since administrative actions like DACA are not laws, they can be discontinued by the next administration without Congressional approval. However, President-elect Trump has softened his tone on DACA since the election, saying that he hopes to find an immigration policy that will make people “happy and proud.”⁹

If the Trump administration eliminates DACA, there could be considerable fallout in the states. In some states, DACA classification has allowed students to

access in-state tuition rates, and ending the program would force them to pay higher out-of-state or international tuition rates. In **Georgia**, for example, a state judge ruled in January 2017 that DACA students are lawfully present in the state, and thus have a right to be charged in-state tuition rates.

Beyond changes at the federal level, some state-level lawmakers have already stated their intention to pursue immigration policies that would deny in-state tuition to undocumented students and those with DACA classification. Lawmakers in **Georgia, Florida** and **Texas**—three states with significant numbers of undocumented and DACA students—have signaled that they will introduce legislation to deny in-state tuition to these populations. Beyond this, lawmakers in a few states have also said that institutions of higher education that choose to defy federal immigration authorities will face consequences from the state government.

5. Campus Sexual Assault

For the last several years, the Obama administration has used the bully pulpit to bring visibility to campus sexual assault, and the national attention has translated into state-level policy changes. However, incoming Trump administration has given no indication that they will devote as much attention to this issue. Since the November elections, one GOP leader on Capitol Hill has called for rolling back some Obama-era federal guidance on campus sexual assault, arguing that the current policies violate due process rights.¹⁰

The lack of high visibility on this issue may affect the amount of attention it receives at the state level. Since emerging as a top issue in our Top 10 in 2014, state lawmakers have commissioned task forces and worked with institutional leaders and other stakeholders to improve the prevention, response, reporting and adjudication of campus sexual assault. From a state policy perspective, some of the most widely considered and debated policy proposals

include:

- Creating affirmative consent standards in campus student conduct policies;
- Annotating academic transcripts for students found in violation of sexual misconduct policies or for those who withdraw while a disciplinary process is pending;
- Requiring universities or victims to file a municipal police report before the college is permitted to start a disciplinary proceeding; and
- Providing victims with confidential advisors or advocates either on- or off-campus.¹¹

In 2016, 22 states introduced or enacted legislation related to campus sexual violence. In 15 states, the bills addressed one or more of the four primary themes: affirmative consent; transcript notation; the role of local law enforcement; and the role of confidential advisors or advocates.¹² Due-process advocates also joined the conversation in 2016 in an effort to ensure that adjudication is equitable for all parties. While discussions on how to best combat campus sexual assault and ensure due process will continue this year, the extent to which momentum from the Obama era continues remains unclear.

6. Guns on Campus

Due to the sheer amount of state legislation introduced in 2016 forcing campuses to allow individuals with concealed carry permits to bring their guns on college campuses, guns on campus will continue to be one of the most contentious higher education policy issues in 2017. In 2016, **Ohio** and **Tennessee** approved limited measures loosening campus weapons policies. In 14 other states, legislation related to guns on campus failed last year, however, pro-gun organizations will work to overturn campus gun laws, particularly in states like **Arkansas, Florida** and **Georgia**, where the gun lobby has previously attempted to pass such legislation. According to the National Conference

of State Legislatures (NCSL), eight states currently permit guns on college campuses.¹³ While the content of the bills vary from state to state, the overwhelming majority of campus stakeholders, including the law enforcement community, do not support allowing guns on campus in any capacity, as college campuses seek to remain among the safest enclaves in American society.

7. Institutional Productivity and Student Success

With limited revenues in many state coffers this year, there will be renewed interest in state policies aimed at incentivizing improved institutional outcomes with existing resources. The most prominent of these policies is performance-based higher education funding (PBF), a policy that has expanded to states throughout the nation since the beginning of the decade. PBF has enjoyed a rebirth in the post-recession environment; states experimented with PBF in the 1990s, but the 90s-era policies faded with the dot-com bubble burst in the early 2000s. The new “PBF 2.0” models are more nuanced than 1990s-era prototypes and about 35 states either are in the process of developing PBF or have already implemented it.¹⁴ However, there is variation in the structure of PBF models, with most states linking a relatively small portion of their higher education funding revenue to performance, while a few states, such as **Tennessee**, devote nearly all of their funding based on outcomes. The metrics to determine funding also vary from state to state.

Linking state funding to performance has been a top-tier policy recommendation from major foundations, such as Gates and the Lumina Foundation. More states, such as **Arkansas** and **Wisconsin**, are exploring linking higher education funding to performance. The governor of Arkansas, in fact, proposed funding increases for higher education contingent on creating a PBF system. **Kentucky** also unveiled a new PBF system in late 2016.

The effectiveness of most “PBF 2.0” models remains

unknown, but 2017 will likely include new research on PBF systems. Recent scholarly papers have cast doubt as to whether this policy will lead to substantial improvements in institutional outcomes. In April 2016, an analysis indicated that colleges and universities in states with PBF could be responding to the policy by enrolling fewer low-income students.¹⁵ A month later, the Century Foundation released a paper entitled “Why Performance-Based Funding Doesn’t Work,” questioning the assumptions that underlie the policy. For example, the paper argues that PBF could exacerbate the divide between the “haves” and “haves not” of higher education by pulling funding from struggling institutions, and notes the difficulties of incentivizing complex, diffuse organizations like colleges and universities.¹⁶ The debate over the effectiveness and unintended consequences of PBF will only increase with the introduction of new research in 2017.

8. Academic Freedom, Civil Rights and Social Issues

Higher education has often been accused of liberal and progressive biases and the dominance of conservative lawmakers in some states may lead to more conflicts and arguments over bias in the academy in 2017. The stark divide between campuses and statehouses on cultural and civil rights issues played out in the headlines throughout 2016. In **Wisconsin**, a few lawmakers recently voiced their objections to a course at the University of Wisconsin-Madison entitled, “The Problem of Whiteness.” Similarly, an **Iowa** lawmaker plans to introduce legislation that will target state universities that established ‘cry zones’ after the 2016 elections by subjecting them to budget cuts. **Tennessee** lawmakers pulled funding for the University of Tennessee’s Office of Diversity and Inclusion over “Sex Week” and campus efforts to be more accommodating for the LGBTQ community. Last year, **Missouri** lawmakers sought to hold the University of Missouri accountable for a series of protests that they saw as an embarrassment to the state on the national stage. In early 2017, an **Arizona** lawmaker

introduced a measure pulling funding for college social justice courses, while a top **Wisconsin** lawmaker suggested tying state funding to a measure of “intellectual diversity.” While the funding threats made by lawmakers usually do not materialize, they symbolize a divide that higher education leaders need to bridge in order to make higher education a state priority.

9. Student Debt Management

State policymakers have an increasing number of constituents who rely on debt as a mechanism for financing their postsecondary education, making student loan refinancing, loan forgiveness and related policies an emerging policy priority. In 2016, **Missouri** and **Virginia** considered joining seven other states that allow students to refinance their student loans, although the legislation did not pass. **Oregon** is exploring this issue and will likely act through legislation this year. Legislatures are also considering policy proposals that give those with student loan expenses deductions or credits on their state taxes.

Another key element of debt assistance is improving financial literacy among student borrowers, which lawmakers in **Nebraska** and **Wisconsin** have addressed through legislation to provide students with more information about their loans and repayment options. State lawmakers also want to increase awareness of federal public service loan forgiveness programs among eligible residents. As college debt affects more state residents, state policymakers will continue to explore policies to ease debt burdens in the months and years ahead.

10. Dual Enrollment

With continued concerns over college affordability and college readiness, policies that allow students to take courses that count toward a high school diploma and a college credential remain popular with governors and state legislatures. This past year,

lawmakers in several states passed bills to make dual enrollment opportunities more accessible through: financial incentives to students and districts; clarification of transfer pathways; and promulgation of courses, either in-person or online, in-district or around the state.¹⁷

State legislatures will consider proposals in 2017 that will increase access to dual enrollment opportunities and provide clarification on qualifications to teach dual enrollment courses. As noted in last year’s Top 10, the Higher Learning Commission (HLC)—an accrediting association for Midwestern colleges—stated that postsecondary instructors must have completed a designated amount of graduate-level coursework, which may reduce the number of teachers qualified to teach dual enrollment classes. **Indiana** was the only state in 2016 to address the issue through legislation, and although the standards are not in effect until 2022, 18 other states will be affected and therefore the issue will likely be a point of contention for many state lawmakers this year.

Honorable Mention

Consumer Protection and For-Profit Colleges

Fraud and abuse among for-profit college providers will likely continue to be a topic of interest for state attorneys general (AGs) in 2017, and some state legislatures may pursue policies to crack down on misconduct in the for-profit college sector this year. In addition, loan forgiveness for students who were victims of fraud from for-profit college providers could capture the attention of state AGs, but it remains unclear the extent to which the Trump administration will forgive these loans. In April 2016, 12 state attorneys general called on the U.S. Department of Education to deny federal recognition to an accreditor of for-profit colleges. The attorney general in **Massachusetts** helped students through the process of asking the U.S. Department of Education to discharge student loans after the

collapse of Corinthian Colleges. The **California** attorney general announced a \$1.1 billion settlement against Corinthian College in March 2016. Attorneys general in **Kentucky** and **Minnesota** have also been active in pursuing allegations of fraud and abuse in this sector in their respective states.

Policies to Help Vulnerable and Needy Students

In recent years, scholars and activists have given new attention to programs that help low-income students with basic needs, such as housing, food and childcare, as well as ideas to help improve the success of students transitioning from foster homes. This visibility has translated into public policy in some states. In 2016, **California** approved a bill that would allow homeless students access to shower facilities at community colleges and a measure to address food insecurity among college students. The **California** legislature granted priority enrollment for foster youth or former foster youth at their three public systems last year. **Maryland** enacted similar legislation that will provide tuition waivers for students in foster care and homeless youth. With alarming percentages of students experiencing food and housing insecurity, there are opportunities for activists, higher education officials and lawmakers to explore solutions to help the most vulnerable students with basic living needs.

College Access and Success for Veterans/Current Military

Members & Families

Governors and state legislators throughout the country have passed bills over the last several years to help veterans, current military members, and families of military members access higher education. This includes acknowledging veterans' education and skills through granting of commensurate college credit, providing support services to foster student success, and extending educational benefits to family members. The upcoming legislative sessions will likely see more legislation introduced to help these students and their families meet their educational

goals and successfully transition to civilian jobs and other opportunities.

Free Speech on Campus

There have been growing state-level efforts to eliminate free speech zones on campus, with the efforts led by 1st Amendment rights advocacy groups seeking to expand free speech to the entire campus. **Arizona** approved a bill banning free speech zones on campus in 2016, while **Missouri** and **Virginia** passed similar measures in 2015 and 2014, respectively. A bill in **Utah** failed to pass in 2016. There will likely continue to be discussion about freedom of speech on college campuses in other states throughout 2017.

Conclusion

State budgets will be the largest issue facing public colleges and universities in 2017. Beyond current budget numbers, the year ahead could also give an indication of whether the slowdown in state tax receipts is a short-term challenge or a longer-term economic issue that will shape state budgets and constrain state investment in the years ahead. Beyond this, state legislative calendars will include a mix of longstanding and emerging issues this year, with decisions made in Washington influencing some of the issues under consideration in statehouses.

Regardless of the ebb and flow of politics and economics in 2017, public higher education's mission of enhancing students' lives and improving the economic and non-economic vitality of communities remains as relevant as ever. This year will likely be more challenging for higher education advocates than past years in most states, but the return on public investment acquired through the day-to-day work of building and maintaining lawmakers' confidence in public institutions of higher education remains high and vital to the success of the next generation.

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