



Higher Education State Policy Issues for 2020

by the AASCU Government Relations and Policy Analysis Division

Introduction

Many public college and university leaders will enter the new decade with some hope and confidence in the policy arena, with the tailwinds of a strong national economy, healthier state budgets and state political environments more conducive to investments in higher education. State economic circumstances and political environments vary widely, but the budget deficits and austerity politics that marked most of the 2010s have given way to surpluses, stability and a renewed commitment to funding state services, including public higher education.

Amid this optimism, numerous challenges confront higher education in state capitals. Higher education remains one of many issues seeking attention in the upcoming legislative sessions, and other pressing policy matters, including election security, health care and public safety, will occupy time on legislative calendars. Growing costs in other state budgetary items, including Medicaid, will likely reduce the amount of available new revenue for state colleges and universities. Demographic pressures and public employee pension and health care liabilities also loom large in some states. In addition, several states have not fully shared in the national economic expansion, while others remain reliant on diminishing revenue from taxes on resource extraction. Fearing another economic downturn, many state lawmakers remain cautious in their approach to budgeting.

The upcoming year will be pivotal for public higher education, with decisions by voters and policymakers that will ripple throughout the decade. The 2020 elections will not only determine control of the White House, Congress and some state governments, they will also influence legislative redistricting following the 2020 census. Redistricting will shape federal and state political power until 2032, and the recent Supreme Court decision that federal courts cannot rule on partisan legislative maps only increases the stakes in November.

While the past year included more discussions of a potential framework for the long-overdue reauthorization of the Higher Education Act (HEA), the election cycle, crowded legislative calendar and lack of a shared vision for the federal role in higher education make a successful reauthorization unlikely in 2020. The HEA remains the main vehicle for federal higher education policy but has numerous linkages to state policy.

This paper examines the most prominent state higher education policy issues for 2020. Now entering its 13th year, this report not only includes topics of longstanding concern to state policymakers but also emerging issues that will be new to the state legislatures. AASCU's daily tracking of state policy news and trends informed this analysis.

1. The 2020 Elections

The defining higher education state policy issue for 2020 will be the fall general election. With the HEA's reauthorization, state budgetary and policy priorities, redistricting, and a host of other issues at stake, the 2020 elections will have lasting effects for state higher education policy.

On the federal level, the 2020 elections will dominate headlines throughout the year, with the presidential election, all seats of the House of Representatives, and at least 35 Senate seats at stake. The presidential election will have wide-ranging effects for the state role in public higher education. President Donald Trump's administration has an ambitious federal higher education regulatory agenda that will affect state policy. The Trump administration has also pursued changes in other policy areas, such as immigration, that are linked to college access for undocumented and DACA (Deferred Action for Childhood Arrivals) students in some states. A change in administration would lead to a different regulatory agenda, as well as likely efforts to revisit, revise and possibly rescind Trump-era regulations. Beyond regulations, policy priorities could also change with a new administration, as Democratic presidential contenders have outlined sweeping policy reforms for higher education. If enacted, these reforms would fundamentally change higher education's existing state-federal relationship.

In Congress, Democrats hold a 232 to 198 majority in the House of Representatives, with one independent and four vacancies. In the Senate, Republicans hold a majority at 53 members, with 45 Democrats and two independents aligned with Democrats. Democrats will need a net gain of three seats in the Senate for the majority if they win the presidential race, and four seats if they fail to gain control of the executive branch. Republicans will be defending 23 seats in the Senate, while Democrats will be defending 12 seats. Control of the House and Senate will influence an array of higher education policy issues starting

in 2021, including federal spending priorities, immigration and the HEA's reauthorization. These federal policy issues will affect state budgets and state policies related to college access and affordability.

The state-level races will be pivotal this year. State legislators and governors will influence redistricting following the 2020 census, and the legislative maps will be in place until 2032. The U.S. Supreme Court decision on redistricting, coupled with technological advancements leading to more partisan district maps, will increase the intensity of and investment in some state-level contests. States remain politically polarized, as Republicans have "trifectas" (control of both legislative chambers and the governor's office) in 21 states, while Democrats have trifectas in 15 states. The remaining 14 states have divided government.

The gubernatorial races mostly feature incumbents seeking re-election, as only one governor up for election is term-limited in the 11 state gubernatorial races. Legislative races will occur in 44 of the 50 states. Measures related to university governing boards and facilities have already been approved to be on the 2020 ballot in a few states (California, Nevada and North Dakota), and more ballot measures affecting higher education could be passed during the 2020 state legislative sessions. Taken together, the outcomes in November will have outsized consequences for higher education policy and set the political framework for the decade ahead.

2. The Economy

The economy will have a tremendous influence on state budgets, political dynamics and even universities in the year ahead. Nationally, the economy finished the year positive, with moderate economic growth, unemployment near 50-year lows and low inflation. Consumer spending remains strong, and recession fears from earlier in the year have largely subsided. However, state economic circumstances vary considerably—state unemployment rates in November

2019, for example, ranged from 2.3% in Vermont to 6.1% in Alaska.¹

Moderate economic growth is expected to continue into 2020. Gross domestic product (GDP) will increase by 2% in 2020 and 1.9% in 2021, and unemployment rates are expected to continue near their current levels, according to December 2019 projections from the Federal Reserve.² Similarly, the national GDP will increase, on average, by 1.8% annually from 2020–23, the Congressional Budget Office estimated in August 2019.³

Despite the upbeat economic news, there are reasons for caution and concern. The possibility of escalating trade disputes between the U.S. and China and economic slowdowns in other countries could have a ripple effect on manufacturing and other sectors of the economy. Fears of unsustainable budget deficits may also provide fewer opportunities for policymakers to increase spending in the event of an economic slowdown.⁴ In addition, Federal Reserve Chair Jerome Powell stated his concern to Congress in November over low labor-force participation rates—a measure that examines the number of people of working age who have stopped looking for work—for American workers and slow productivity growth.⁵ Lastly, growing unease remains about the unequal distribution of economic gains during this period of economic expansion and stagnant incomes in many communities.

3. State Budgets and College Affordability

Most states are in a strong fiscal position and have exceeded their general revenue collections projections in FY19, according to the latest analysis from the National Association of State Budget Officers (NASBO). This has contributed to budget surpluses and opportunities for new investments in state programs and services. No states made midyear budget cuts, according to NASBO, and the median reserves in rainy day funds have reached record highs.⁶

It is important to note that not all states will have budgets or legislative sessions this year. According to the National Conference of State Legislatures (NCSL), 31 of the 50 states have annual budgets, while the rest are on biennial budgeting cycles.⁷ Most of the 19 states with biennial budgets finished their budget work last year, but all but four of those states (Montana, Nevada, North Dakota and Texas) will have legislative sessions.

Some states will confront budget deficits in 2020 legislative sessions. New York, for example, has a \$6 billion budget deficit in 2020 due to growing Medicaid costs.⁸ States dependent on revenue from taxes on natural resource extraction, including Alaska⁹ and West Virginia,¹⁰ are also expected to tackle budget deficits in the upcoming legislative session. As a discretionary item in state budgets, higher education funding remains vulnerable to drops in state budget revenues and rising costs in other state programs.

Healthy budgets in many states have led Moody's to upgrade higher education's outlook from negative to stable and allowed policymakers to make new investments to temper rising tuition prices.¹¹ According to a January 2020 *Grapevine* analysis of FY19–20 state appropriations for higher education, all but three states increased funding for higher education last year, and state appropriations grew by 5% nationally.¹² The growth in higher education funding will likely continue into 2020, but per-student funding in most states remains below pre-recession levels.¹³

Increases in higher education funding have often been paired with commitments from university governing bodies to limit tuition increases or freeze tuition rates. This has contributed to smaller tuition increases in recent years. For example, average in-state tuition rates rose by 2.3% (without adjusting for inflation) from 2018–19 to 2019–20.¹⁴ However, stagnant incomes for many families and growth in non-tuition expenses during college years make even relatively small price increases a meaningful new burden for students and families.

4. Economic and Workforce Development

Policymakers usually frame state investments in higher education in terms of their effect on state economic and workforce development, making this issue a longstanding top higher education policy concern. Despite low unemployment, governors and legislators want to ensure that state residents are prepared for the ongoing transition to the knowledge-based economy. Investments in certificate and two-year programs that align with state workforce needs remain popular in state capitals. In addition, STEM education programs also are a favorite choice for policymakers, along with apprenticeships and work-based learning opportunities. Lawmakers continue to facilitate partnerships between different levels of government, K–12 schools, colleges and the private sector to ensure that evolving state workforce needs are being met.

Policymakers are using a variety of incentives, including loan forgiveness programs, tax credits for employer training, tuition-free college opportunities and financial aid packages, to encourage residents to pursue education and training in high-need fields. With continued discussion related to filling available higher-paying jobs in the states, lawmakers will likely pursue these strategies in the 2020 state legislative sessions.

5. Immigration

After years of policy successes and setbacks to help undocumented and DACA students access higher education, the political shift following the 2018 elections contributed to landmark legislative victories in 2019 for “Dreamers,” those who benefit from the DACA program. While the policies differed from state to state, new in-state tuition policies were approved by state policymakers or higher education governing boards in Arizona, Arkansas and Oregon. Meanwhile, Colorado, Illinois and New York all extended financial aid to eligible undocumented and DACA populations.

Substantial differences remain between states, however, with some states having financially supportive policies to help “Dreamers” access higher education, while others bar them from even enrolling in public colleges. According to an August 2019 National Conference of State Legislatures (NCSL) brief, 16 states and the District of Columbia now offer in-state tuition to unauthorized immigrants, while at least nine states extend financial aid to undocumented or DACA students. Some states allow universities to extend financial aid to these students using private dollars.¹⁵ While comprehensive federal immigration reform would be a giant step forward for these students, legislation remains stalled in Congress and is unlikely to see movement in 2020.

The upcoming U.S. Supreme Court decision on the DACA policy will play a pivotal role in college access for these populations. In November, the U.S. Supreme Court heard oral arguments on the case, with a ruling expected by June 2020. The Trump administration has sought to discontinue the DACA program, but its efforts have been halted by federal court rulings. While no first-time applications for the DACA program have been accepted since 2017, those currently with DACA status have been allowed to renew. With some state policies tied to DACA status, the ruling will have significant meaning for those students participating in the program.

6. Free College

Since the Tennessee Promise came on the scene in 2014, states have been discussing—and approving—bills providing free college. Last year included continued success for the free college movement, with Washington state approving landmark legislation, and other states, including California, Connecticut, New Jersey and West Virginia, creating new programs or expanding existing policies.

States’ free college programs vary considerably, with some states approving pilot programs and targeted

opportunities in high-need fields, while others have expansive policies at both the two- and four-year college levels requiring an influx of new resources. Program requirements also differ. States' free college programs are generally "last dollar" efforts that provide funding for tuition not already covered by the existing patchwork of state and federal financial aid. Likewise, the state-level free programs generally do not cover college expenses beyond tuition.

Greater state budget flexibility and growing calls from constituents to provide affordable opportunities could lead to more programs being enacted this year. In 2019, the governors of New Mexico¹⁶ and Virginia¹⁷ outlined plans for free college initiatives to be introduced in their 2020 legislative sessions. Other states will begin implementing free college programs approved last year. The upcoming year will also include more data and research on the effectiveness of these programs.

7. College Athletics

College athlete compensation and sports betting are two emerging issues that could garner substantial attention from state lawmakers in 2020. Compensation for college student athletes has long been discussed, but a 2019 California law allowing student athletes to be paid for use of their name, image and likeness elevated the issue to the top ranks of state higher education policy. Following the approval of this bill—which will take effect in January 2023—lawmakers in at least a dozen other states introduced similar measures.¹⁸ Recognizing the problems posed by having different state laws on college athlete compensation, Congress has had ongoing discussions about federal policy solutions to this issue.¹⁹

The California measure was opposed by the National Collegiate Athletic Association (NCAA), which argued that it would blur the distinction between college and professional athletics and would provide

an unfair advantage to California teams.²⁰ In late October, the NCAA stated it will "immediately consider modernization of bylaws and policies" based on eight guiding principles. The NCAA said its legislative working group will gather feedback on how to respond to the federal and state legislative environment through April 2020, with the goal of having changes enacted by January 2021.²¹

Beyond student athlete compensation, sports betting could also generate significant headlines for colleges and universities in the year ahead. In May 2018, the U.S. Supreme Court struck down a 1992 law banning commercial sports betting in most states.²² As a result, numerous state bills have been introduced and approved related to legalized sports betting, including on college sports. However, these bills can include provisions limiting betting on college teams and games, such as the 2019 New Hampshire law banning betting on in-state colleges and universities and the new Iowa law banning proposition bets (side bets placed on individual players or events within a game or match) on in-state college teams.²³

There are concerns that sports betting could affect the integrity of college athletics, as students remain more vulnerable to the influences of sports betting than their professional counterparts. The NCAA stated it remains opposed to all forms of legal and illegal sports betting, as it "has the potential to undermine the integrity of sports contests and jeopardizes the welfare of student-athletes and the intercollegiate athletics community."²⁴ The NCAA has signaled its support for federal legislation creating minimal federal legal standards on sports betting, along with a prohibition on betting on college sports.²⁵

8. Campus Sexual Assault

Since the Obama administration raised the visibility of campus sexual assault, state-level policies have continued to focus on this issue. Over the last several

years, states have approved bills including “yes means yes” affirmative consent requirements, transcript notations for nonacademic expulsions, greater coordination between campus authorities and law enforcement, and more resources for victims. Last year, Texas passed the most aggressive state policies in the nation to crack down on sexual assault, with measures to increase resources for victims, transcript notations for nonacademic expulsions, and penalties for university employees who fail to report knowledge of sexual misconduct to the campus Title IX coordinator.

On the federal level, 2020 will be a landmark year for this issue, which will likely prompt responses from the states. The Trump administration has rescinded Obama-era regulatory guidance under Secretary of Education Betsy DeVos and is proposing new regulations on Title IX. During most of 2019, the Department of Education reviewed over 100,000 comments on its proposed regulations, which are expected to be finalized in 2020. State laws, such as the new Texas law, could conflict with the new federal regulations, leading to more discussions in the year ahead about how to best combat campus sexual assault and the most appropriate roles for the federal government and the states.

9. Demographics

Demographic changes, particularly declining enrollment, remain a leading concern for both higher education officials and state policymakers. Some states, particularly those in the Northeast and Midwest, have had longstanding concerns about the ramifications of the shrinking number of high school graduates. This has resulted in structural changes to some university systems. Meanwhile, several public universities in other states, such as California, have reached or exceeded their capacity to serve eligible students.²⁶

Beyond these regions, most of the country is expected to experience a substantial decline in the number of high school graduates around the middle of this

decade. This issue will be compounded by increased difficulties in attracting students from abroad. While all of higher education is affected by demographic change, rural campuses and smaller, low-endowment private colleges remain most vulnerable to these shifts. In the public sector, states and higher education systems have pursued a variety of strategies to manage these changes, including campus mergers and increased recruitment of nonresident students. More colleges are also exploring strategies for attracting adult students to campus, as well as investing in creating more online programs.

The past year included more discussions and strategies on how to manage demographic change. In Pennsylvania, for example, legislators held a hearing with a leading demographer on the projections of sharply falling numbers of high school graduates in the state and the effects on the state’s colleges and universities. Massachusetts, meanwhile, approved a financial monitoring system to protect students from abrupt campus closures. More proposals to manage demographic change are likely in the year ahead.

10. Free Speech

The intensity of the 2020 election cycle will undoubtedly lead to increased political activism on college campuses this year, along with concerns over free speech rights at public colleges and universities. Free speech on college campuses remains a leading concern of conservative state lawmakers who feel that the free speech rights of conservative speakers and activists have been abridged on college campuses. This has resulted in a flurry of legislation over the last several years. While many of the free speech bills simply restate and reemphasize existing law, others create new provisions, such as prescribed disciplinary sanctions and new task forces to monitor and report on campus speech activities.

The past year included eight states approving free speech bills, with a total of 17 states having enacted

new free speech laws over the last several years.²⁷ Legislatures in other states, such as Wisconsin, have continued their discussion on the issue, while some governors, such as Florida Gov. Ron DeSantis, have promoted free speech on college campuses. President Trump also signed an executive order related to campus free speech in 2019. The issue will continue to attract national and state headlines in the year ahead.

Honorable Mention

Guns on Campus

Guns on campus bills will return to many state legislatures in 2020. Last year brought key wins in efforts to keep guns off campus, including in Florida, Missouri, South Dakota, West Virginia and Wyoming. However, a Florida lawmaker has already signaled his intent to reintroduce his campus carry bill in the 2020 state legislative session²⁸ and lawmakers in other states will also likely revive the campus gun debate this year. According to a 2018 report, 23 states allow campus or system boards to make decisions on weapons policies, while 16 states have outright prohibitions on guns on campus. Ten states allow guns on campus, and one state (Tennessee) allows faculty members, but not students, to carry guns.²⁹

Students' Basic Needs

States are continuing to look for ways to help students afford higher education, including basic food and housing needs. Research has revealed alarming levels of food and housing insecurity in higher education,³⁰ prompting responses from lawmakers. In addition, escalating housing costs in some cities have added to students' financial burdens and gained the attention of policymakers and the media.

Last year, states took a variety of approaches to this issue. New Jersey lawmakers approved the Hunger Free Campus Act, with appropriated funds to create a state grant program for institutions to address student hunger.³¹ Connecticut, meanwhile, started a

data collection effort pertaining to food insecurity.³² In California, Gov. Gavin Newsom made it easier for students to apply for the state's food assistance program and included \$15 million for each of the state's university systems in the state budget to address basic needs.³³ More measures to address the food and housing crises will be discussed in state capitals in the year ahead.

Mandatory FAFSA Completion

A new entrant into this list is the movement to make completing the Free Application for Federal Student Aid (FAFSA) a requirement for high school graduation. In December 2015, the Louisiana Board of Elementary and Secondary Education approved a FAFSA completion requirement for the class of 2018. In 2019, Illinois and Texas followed Louisiana with this policy, which will be implemented in 2020–21 and 2021–22, respectively. Lawmakers and higher education officials in several other states have introduced legislation or discussed making FAFSA completion mandatory for high school graduation.

The requirements include opt-out provisions to protect undocumented students and those facing noncooperative or otherwise challenging family situations. The opt-out possibility, however, may prove problematic for students, as they may be required to disclose reasons for exercising the option that they may not care to share with school officials. Despite this, early data from the Louisiana policy change remains encouraging. The FAFSA completion rate in the state jumped from 44% in 2013 to nearly 79% in 2017–18, according to state officials, boosting Louisiana to the top state nationally in FAFSA completion rates.³⁴ As state leaders seek strategies to meet their ambitious attainment goals, mandatory FAFSA may be one avenue to help more students move on to higher education.

Dual Enrollment

Dual enrollment continues to gain popularity as more high school students accumulate college-level credits each year. Lawmakers increasingly see dual enrollment as a way to reduce college costs, bridge the academic gap between high school and college, and expose more high school students to college. This has led to an abundance of legislative activity in recent years, a trend that will continue into 2020.

With this growth, however, are concerns over escalating costs. Georgia, for example, shifted some of the dual enrollment costs to colleges in 2019.³⁵ In Washington state, a recent report on dual enrollment noted costs as a barrier for students, as participation rates were much lower for low-income students.³⁶ In Louisiana, a task force is reviewing the state's approach to dual enrollment and will issue a report later this year.³⁷ While lawmakers remain supportive of dual enrollment, there could be more discussions on how to pay the growing costs of these programs.

Enhanced Consumer Protections for Student Loan Borrowers

Continued allegations of improper student loan servicing in the \$1.5 trillion student loan market have led state lawmakers to pass consumer protection bills. Some features of these bills include creating a student loan ombudsman, requiring student loan services to obtain a license to operate in the state, and listing prohibited acts by servicers. Eight states passed laws creating new consumer protection requirements in 2019 (California, Colorado, Maine, Maryland, Nevada, New Jersey, New York and Rhode Island),³⁸ and more states will likely pursue similar legislation in 2020. These new regulations have put states in conflict with the Trump administration, which has argued that regulating student loan servicers falls under the purview of the federal government.

Conclusion

This will be a pivotal year for state higher education policy. For most states with annual budgets, improved budgetary conditions should lead to increased investments in higher education. More jobs require education and skills. State investments in higher education remain essential to providing students access to high-quality, affordable college opportunities. To meet their ambitious attainment goals, states will need to continue to make higher education a priority.

Beyond the budget, the upcoming year will have a mix of perennial and new state higher education policy issues but will remain dominated by the dynamics of the 2020 election cycle. With growing student debt and concerns over college affordability and economic mobility, higher education will be increasingly discussed by candidates seeking office. With all the higher education issues at stake in the 2020 elections, it is important for students, faculty, parents and others in the campus community to remain engaged in the political process and vote in November. The decisions made in 2020 will be felt for years to come. ■

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³⁷ Will Sentell, “Task Force Created to Study Louisiana Dual Enrollment Classes, But ‘Still a Lot of Legwork’ Needed.” *The Advocate*, June 6, 2019, www.theadvocate.com/baton_rouge/news/politics/legislature/article_af489a52-8866-11e9-a633-ab2413b77176.html.

³⁸ Andrew Kreighbaum, “States Put Stamp on Student Loan Oversight.” *Inside Higher Ed*, July 19, 2019, www.insidehighered.com/news/2019/07/19/states-pass-flurry-bills-targeting-loan-servicers.

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