



STATE GOVERNANCE ACTION REPORT (SGAR)

State Policies and Legislation Affecting Public Higher
Education Governance and Leadership / December 2016

**Association of Governing Boards
of Universities and Colleges**

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ABOUT AGB

Since 1921, the Association of Governing Boards of Universities and Colleges (AGB) has had one mission: to strengthen and protect this country's unique form of institutional governance through its research, services, and advocacy. Serving more than 1,300 member boards, 1,900 institutions, and 38,000 individuals, AGB is the only national organization providing university and college presidents, board chairs, trustees, and board professionals of both public and private institutions and systems and institutionally related foundations with resources that enhance their effectiveness.

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PREFACE

This report by AGB's Center for Public Trusteeship and Governance focuses on state legislation and higher education proposals and actions affecting institution and system governance and leadership in states for the years 2015–2016. At the heart of these actions and ongoing dialogues is public funding for public colleges and universities, including state investments in student aid programs and other initiatives to improve affordability and college-completion rates. This comes at a time when lawmakers are debating the value proposition of a postsecondary degree or credential, including personal and public returns on postsecondary investments. As education leaders and policymakers grapple with these tensions, they are also being called on to address serious issues related to campus safety, sexual assault, and guns on campus, as well as growing concerns related to diversity, inclusion, and civility at institutions of higher learning.

I. FISCAL CONDITIONS

FINANCIAL CONDITIONS IN THE STATES

It is difficult to describe public higher education governance and leadership actions without first providing a sense of the financial conditions in the states. A recent report by the National Association of State Budget Officers, the *Spring 2016 Fiscal Survey of the States*, concludes that “state fiscal conditions are stable overall, but progress is uneven and challenges remain.” For the first time since the recession, some states are seeing their revenues and expenditures surpass pre-recession numbers (adjusted for inflation). However, the majority of these states—29, to be exact—do not fall into this category. Some that are lagging behind are energy-dependent states that have experienced changes in oil and coal prices, while other state fiscal constraints reflect mandates or obligations commonly in healthcare and pension programs. State budget projections for 2017 are forecasted to follow these trend lines, with some state budgets mirroring revenues from peak economies, while policymakers in other states aim to prevent additional revenue shortfalls and budget cuts by stimulating revenue growth through tax reforms and the recruitment/revitalization of businesses and industries.

FUNDING FOR HIGHER EDUCATION

According to a report by the State Higher Education Executive Officers group (SHEEO), 40 states increased per-student spending on public higher education in fiscal year 2015 (FY 2015). While this is encouraging, the average amount of state spending per student was almost 15 percent less in FY 2015 than it was in FY 2008. And overall, 36 states experienced decreases in state appropriations for higher education from 2008 to 2015.

During this time, the most significant cuts took place in Alabama, Arizona, Louisiana, Pennsylvania, and South Carolina. For most public institutions and systems, this has resulted in tuition and fee increases, which can jeopardize access and affordability. However, despite these increases, overall student enrollment and college completion rates are up. The SHEEO report states that between 2008-2015, the number of students who have completed degrees and certificates has increased by more than 30 percent. While this is significant and demonstrates effective institutional and system responses to urgent calls to improve access and completion, there is significant progress that must

be made in all states, particularly those still struggling from the recession, if the U.S. is to reach its national attainment goal for postsecondary education.

FISCAL YEARS 2015 AND 2016

In FY 2015, the most significant revenue and funding shortfalls were in Arizona, Illinois, Louisiana, and Wisconsin. Unlike Illinois and Louisiana, where state legislators raised taxes to offset cuts, legislators in Arizona and Wisconsin have not shown an interest in tax increases to lessen the severity of proposed funding cuts to public higher education.

For FY 2016, the Grapevine Data Project, a project of the Center for the Study of Education Policy at Illinois State University and SHEEO, reveals that state funding has continued to be erratic and unpredictable in a handful of states, making it incredibly difficult for educational leaders to implement strategic policies and plans. Illinois and Pennsylvania are experiencing the worst of this—Illinois still does not have a budget, much less an appropriation for public higher education. Lawmakers in Pennsylvania did not pass a budget until late spring, well after most states had already done so, leaving little time for chief executives and board members to respond and prepare for the year ahead.

OUTLOOK FOR FISCAL YEAR 2017 AND BEYOND

Many public presidents/chancellors and board members have stated that the nation is not truly out of the 2008–2009 economic downturn. Various reports, editorials, and news outlets are documenting the erosion of states’ commitments to sufficiently support public higher education, and in the *2016 Inside Higher Ed Survey of College and University Business Officers*, 63 percent of all business officers reported that higher education is in the midst of a financial crisis. Additionally, 15 percent disagree or strongly disagree that their institutions will be financially sustainable in the next five years.

MINIMUM WAGE

While Arizona, Colorado, Maine, and Washington considered legislation to increase the minimum wage, South Dakota considered a ballot measure to reduce the minimum wage for workers under the age of 18 by one dollar, to \$7.50 per hour. In Kentucky and Missouri, the Supreme Court and the legislature determined that minimum wage should be set by the

state—municipalities cannot set a minimum wage for the cities and counties. Colleges and universities are likely to be impacted by new or modified minimum-wage policies.

GOVERNANCE IN TIMES OF FISCAL STRESS

Illinois

The use of stopgap budgets in Illinois has created an atmosphere of anxiety about whether institutions will be able to pay employees, offer financial aid, and generally pay the bills to keep the lights on and doors open. Several institutions have declared a state of financial exigency in response to the budget situation, laying off tenured faculty members, eliminating academic programs, and initiating other serious actions. To date, Chicago State University has laid off almost 400 faculty, staff, and employees, including tenured professors; Eastern Illinois University has laid off almost 300 people; and other public colleges and universities in the state have similar stories. Moody's has downgraded the rating of 15 institutions, and 23 have been labeled with negative outlooks.

Illinois Governor Bruce Rauner's (R) latest action to rectify the instability was to sign a temporary budget allocating short-term funding for colleges and universities through the end of December 2016. Currently, there is not a plan for what will happen in 2017. This uncertainty has fueled public anxiety about what the future holds for these institutions. *"It creates enormous inefficiencies in the system when you can't predict anything from year to year. The unpredictability cripples the ability to engage in planning, and that's crucial,"* said Jim Applegate, executive director of the Illinois Board of Higher Education, the state's coordinating board for higher education.

Pennsylvania

There are mounting concerns about the institutional viability and sustainability of the state system's 14 four-year institutions. These discussions are compounded by demands for salary increases and premium benefits for healthcare services. Faculty members at each of the 14 institutions within the Pennsylvania State System of Higher Education (PASSHE) voted to strike and did so on October 19, 2016, after several failed negotiations between system and union leaders. Governor Tom Wolf (D) encouraged continued dialogue between the system and union leaders to avert the first-ever faculty strike,

but he was unsuccessful in his efforts. Fortunately, the strike ended five days later.

The faculty union, the Association of Pennsylvania State College and University Faculties (APSCUF), represents about 5,500 faculty members. State system spokesman Kenn Marshall said, *"We are committed to providing our faculty raises, but some cost savings are necessary to ensure the financial sustainability of the system. We need to achieve a resolution that will ensure our students continued, uninterrupted access to a high-quality, affordable education."* PASSHE leaders are continuing negotiations with the governor and faculty union to prevent further strikes.

Wisconsin

In the 2015–2017 budget, funding for the University of Wisconsin System (UW) was cut by \$250 million, resulting in reduced courses and student services. In August 2016, after Governor Scott Walker (R) announced his plan to continue the three-year tuition freeze, system leaders expressed their concerns. *"Continued budget cuts and frozen tuition cannot be sustained. Wisconsin is at a crossroads. We can either choose to invest in our future, in the future of our children, and in the future of our state, or we can give UW a lower priority and put our future at risk,"* said UW System President Ray Cross. *"We're really not on a sustainable path if we're concerned about a quality experience for our students,"* said UW-Stout Chancellor Bob Meyer.

In early October 2016, in preparation for the 2017 legislative session, members of the UW Board of Regents called on legislators to allow the system governing board to set tuition—without caps or freezes. While the regents discussed affordability, there was also an acknowledgement that they were appointed by the governor and confirmed by the legislature to govern, and as fiduciaries, they must have the autonomy to do so.

As a result of UW's fiscal concerns, coupled with recent threats to shared governance and tenure policies, campus leaders have reported the loss of excellent faculty, staff, and students. In 2015, the legislature and governor enacted legislation eliminating "financial stress" as a precursor for the removal of tenured faculty. Although elected officials removed shared governance and tenure protections from statute, UW's board of regents restored them by inclusion in system governance policies. However, with several months between the governor's and legislature's actions and the board of regents' vote, many faculty members left (or announced plans to leave) the system.

Kentucky

Kentucky Governor Matt Bevin (R) and state Attorney General Andy Beshear argued their differences over the governor's executive order to take back state appropriations already approved by the legislature and allocated to public colleges and universities by the state Supreme Court on August 18, 2016. *"It is solely about whether a governor can unilaterally reduce an appropriation by the General Assembly to our universities in a time of surplus,"* said Attorney General Beshear.

On September 22, 2016, the state's Supreme Court ruled that Governor Bevin could not enact these cuts. In the 5 to 2 ruling, the court upheld that the governor cannot impose cuts of \$41 million across the state's nine public institutions without the threat of a budget shortfall. This ruling is significant not only to Kentucky and for the protection of state appropriations to colleges and universities, but as a possible precedent and reference point for other states.

Puerto Rico

On September 1, 2016, the Obama Administration announced the appointment of seven members to the financial-control board charged with reorganizing and overseeing all of Puerto Rico's fiscal decisions, including those for the University of Puerto Rico System. The board includes four Republican members and three Democrats; four of the seven are Puerto Rican. Governor Alejandro Padilla will serve on the board until November 2016, when his successor will be elected and assume the position.

The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) was enacted to establish a board that could restructure the island's debt, which totals \$72 billion as of this writing. The board will remain in place until the island is able to strengthen its economy and begin to lessen its debt burdens. The board was also created to protect Puerto Rico from creditor lawsuits while it improves its financial circumstances and outlook. During this time, the University of Puerto Rico System will address its serious financial difficulties and plan a path forward. Conversations about restructuring the system could be on the table as a means to create effective strategies for a collaborative and less redundant system, while laying the groundwork to lower costs and be more innovative and entrepreneurial.

II. GOVERNANCE RESTRUCTURING AND STATEWIDE COORDINATION

INSTITUTIONAL AUTONOMY

Oregon

Over the past few years, public higher education was restructured from a centralized system of colleges and universities to a decentralized structure with institutional governing boards. Two of Oregon's principles for restructuring included:

- sustaining both research and regional campuses to support students in rural and urban environments; and
- placing a premium on collaboration among the campuses to establish and maintain a high degree of coordination in efficiently delivering academic programs and education services across the state.

In July 2014, governing boards at the University of Oregon, Oregon State University, and Portland State University were officially recognized and began formal meetings. In July 2015, the four regional colleges and universities received their own institutional governing boards; as a result, the Oregon University System was officially eliminated. However, recognizing a need for statewide coordination, the legislature created the Oregon Higher Education Coordinating Commission (HECC). HECC is a 14-member commission responsible for advising the Oregon Legislature, the governor, and the Chief Education Office on higher education policy. Like most coordinating boards, its statutory authorities include the development of biennial budget recommendations, approving new academic programs, allocating state need-based student aid, authorizing degrees that are proposed by private and out-of-state (distance) providers, overseeing programs for veterans, and implementing other legislative directives.

As of FY 2016, all legislative restructuring efforts were implemented and directives completed.

Tennessee

Governor Bill Haslam's (R) Focus on College and University Success Act (FOCUS Act) was proposed in the 2016 legislative session as a means to restructure public higher education to focus on the state's attainment goal of 55 percent of Tennesseans with a postsecondary degree or credential by 2025. As stated in the governor's press release, the FOCUS Act will *"better align our postsecondary education system toward meeting the Drive to 55 by providing a sharpened focus on*

the governance of our community colleges and colleges of applied technology (TCATs), while granting our four-year state universities additional autonomy as we seek to empower each institution to be successful in this new environment.” The act includes:

- the creation of institutional governing boards for the state’s six public universities: Austin Peay State University, East Tennessee State University, Middle Tennessee State University, Tennessee State University, Tennessee Technological University, and the University of Memphis.
- an enhanced role for the Tennessee Higher Education Commission (THEC), the statewide coordinating board, to provide greater coordination across the state in the areas of capital project management, institutional mission approval, and higher education finance.
- the creation of a transition task force consisting of higher education, business, and community leaders from around the state who will serve as the administrative and advisory body throughout the transition.

While the Tennessee Board of Regents no longer governs four-year institutions, it continues to govern the state’s 13 community colleges and 27 technical colleges. Official board appointments for the six four-year institutional governing boards will occur in spring 2017.

From the time that the FOCUS Act was introduced until the legislation was enacted, both support and skepticism about its intent and potential implications was evident. Some presidents of the four-year institutions welcomed the change (a few have been advocating for more autonomy for some time), while others were skeptical about whether or not the act would have its intended outcomes and improve college completion and attainment rates. This bill moved quickly: it was introduced on January 21, 2016, and became law on May 2, 2016.

MERGERS AND CONSOLIDATIONS

It was reported several system leaders are considering the need for and viability of their campuses, answering the questions: Are all of our campuses sustainable and is our system structured to do what it needs to do moving forward?

Georgia

In August 2013, the board of regents of the University System of Georgia voted in favor of a series of consolidations and mergers to address challenges that the

state and institutions were facing, including declining state revenue and debt from capital expansion; declining enrollments, and thus declining completion rates; and changing demographics. As in Oregon, the University System of Georgia developed a set of principles to guide its restructuring efforts, including:

- improving accessibility, regional identity, and compatibility;
- minimizing duplication of academic programs and optimizing access to high-need programs that equip more people with needed skill sets for high-demand jobs; and
- streamlining administrative and educational services while maintaining quality.

Six consolidations/mergers have taken place, and these institutions have redirected more than \$19 million towards student success initiatives. Currently, the system is in its seventh consolidation, that of Albany State University and Darton State College. The system reported that consolidation is not easy, but *“it’s a strategic effort to adapt to significant state and system changes.”*

While there are challenges to institutional consolidations and mergers—such as blending campus cultures and institutional missions; overseeing complexities associated with specialized academic programs; and the relocation of faculty, staff, and students—system leaders report that the outcomes outweigh the tensions for change. In an August 11, 2016, presentation about the mergers, Shelley Nickel, the system’s vice chancellor for fiscal affairs and planning of the University System of Georgia, highlighted some of the outcomes and opportunities, including increasing student access to more course offerings and academic programs, streamlining transfer pathways, and combining institutional resources to respond to community and regional needs. Given the success of the system’s institutional mergers and consolidations, it is highly likely that system leaders in other states will consider similar plans.

Connecticut

In 2011, Governor Dannel Malloy (D) announced his proposal to create one board to oversee all public colleges and universities, except for the University of Connecticut. The governor announced that Connecticut’s new structure would parallel several other systems in the country. *“The facts are clear: every state is growing in the percentage of adults with degrees, but Connecticut’s rate of increase for young adults has dropped to 34th out of 50 states,”* said Governor Malloy. *“Tuition has increased, and the time it takes to earn a*

degree at these institutions exceeds the traditional four- or two-year curriculum.” Some of the core elements of the governor’s plan were to:

- eliminate the boards for the Connecticut State University (CSU) System, the community colleges, Charter Oak State College (an online institution), and the Board of Governors for Higher Education and combine their authority into one board of regents;
- consolidate the central offices of CSU and the community college system and the management of Department of Higher Education and Charter Oak State College into one office reporting to one CEO;
- direct the board of regents and CEO to develop a strategic plan with public and stakeholder participation to increase Connecticut’s educational attainment;
- direct the board of regents to develop a funding formula based on enrollment, attainment, or other policy goals; and
- require the board to develop annual reports on: student outcomes, such as retention and graduation rates; revenues and expenditures; affordability studies; and alumni employment and earnings (in partnership with the state Department of Labor).

The Connecticut State College & Universities system currently includes 17 colleges and universities and is led by Mark Ojakian, the former chief of staff to Governor Malloy. Since the restructuring, two community colleges within the system were ranked as top institutions in the nation for educating and graduating low-income students. Another system restructuring success includes “300 Jobs, 300 Days,” a campaign to enroll and graduate a minimum of 300 students beginning in the fall 2016 semester.

South Carolina

In the fall of 2015, South Carolina’s legislature reviewed the structure of public higher education governance in the state. The South Carolina House Education and Public Works Committee, Higher Education Governance Ad Hoc Committee, held hearings—in which AGB participated—to discuss policies and practices of coordinating boards, agencies, and commissions, and the role of the South Carolina Commission on Higher Education, the state’s coordinating board (SCCHE).

As a result of these and other conversations related to the merits of having a comprehensive statewide system to govern all public colleges and universities,

the SCCHE developed a report, *Providing Clarity, Best Practices, and Sustainability*, that outlines the role of the coordinating board, its statutory authority, obligations, analysis of budgetary needs, and internal policies for improved operations. The spring 2016 report aims to provide clarity, meet best governance practices, and ensure sustainability of SCCHE and public colleges and universities in the state.

STATEWIDE COORDINATION

West Virginia

Since early 2016, West Virginia’s Joint Standing Committee on Education has held hearings about a January 2016 report by the state’s auditor that claims that the state’s two coordinating boards—the West Virginia Higher Education Policy Commission (WVHEPC) and the Council for Community and Technical College Education (CCTCE)—are not fulfilling statutorily mandated oversight of higher education.

While there were hearings related to the state auditor’s report during the 2015 legislative session, accusations in the report were dismissed by legislators who disapproved of the process that was used to develop the report and the lack of transparency about its intended goals. Some educational leaders have observed that the report and subsequent hearings are intended to be more for political purposes than for true accountability. The tuition and fee increases that the coordinating boards approved were not viewed as responsible; however, they were the result of severe state budget cuts to public colleges and universities.

Louisiana

In Louisiana, several proposals and pieces of legislation were related to higher education, with two focused on governance restructuring. HB 507 was introduced as a constitutional amendment to strengthen and clarify the roles and responsibilities of the Louisiana Board of Regents, the state’s coordinating board. This bill did not pass. The regents supported this bill and hope that it will be proposed in the 2017 legislative session. This bill was pre-filed on March 3, 2016, and referred to the education committee on March 14, 2016.

A subsequent bill, HB 511, would have authorized the board of regents to coordinate new programs and initiatives as necessary to improve the efficiency of public colleges and universities. This bill is a response to a severe budget shortfall and a legislative inquiry to

ensure that public colleges and universities are making the best of each dollar received and that graduation rates are improving on all campuses. This bill was pre-filed on March 3, 2016, and referred to the Education Committee on March 14, 2016.

California

The following three bills demonstrate significant legislative interest in some type of state entity (board, agency, commission) that could coordinate higher education in the state and develop a renewed state master plan or public agenda for postsecondary education.

In the 2016 legislative session, Assembly Bill 1837 (AB 1837) was proposed to reestablish a coordinating board for higher education—specifically, an eight-member advisory board that would provide oversight to the Office of Higher Education Performance and Accountability, a successor agency to the former California Postsecondary Education Commission (CPEC), the coordinating board that state policymakers eliminated in 2011. The Office of Higher Education Performance and Accountability was proposed to advise the governor, legislature, and other government officials and institutions/systems about public policy issues related to postsecondary education. This bill was introduced on February 9, 2016, and died in the appropriations committee on August 11, 2016.

Legislators also proposed AB 2434 with the goal of establishing a nine-member commission to make recommendations about improving access and affordability in public postsecondary education. This legislation did not pass, but if it were enacted, it would have created the Office of the Blue Ribbon Commission on Public Postsecondary Education as a means to conduct public hearings throughout the state, to assess higher education issues, and to develop a report for legislators, the governor, and system governing boards by March 31, 2018. This bill was introduced on February 19, 2016, and died in the appropriations committee on May 27, 2016.

A third bill, AB 2419, was proposed to establish the New University of California as a “4th segment of public postsecondary education” in the state. The University of California System, California State University System, and California Community College System were referred to as segments one, two, and three. The New University would provide no instruction, but rather it would issue credit to persons who pass its examinations. The bill proposed an 11-member governing board to provide oversight and hire a chief executive officer. The bill was introduced on February 19, 2016,

and died in the higher education committee on April 19, 2016.

While this bill failed early on in the legislative process, it demonstrates an attempt to create a statewide entity that would facilitate examinations for competency-based education. The bill’s author provided that the New University would be self-sustaining—fees from students to take tests would provide revenue to sustain its functions and operations.

Alabama

In 2015, the legislature enacted SB 191—removing two-year institutions from the governance of the State Board of Education—and created a new board of trustees (appointed by the governor) to govern the Alabama Community College System (ACCS). In 2016, policymakers proposed SB 246, a governance change affecting both ACCS and the state’s coordinating board, the Alabama Commission on Higher Education (ACHE).

SB 246 proposed that ACHE no longer perform certain functions and services for community colleges, as it currently does for the state’s four-year institutions. The bill died on the last day of the 2016 legislative session. However, if it had been enacted, it is uncertain what interactions and coordination ACHE would have had with community colleges—for instance, whether it would review or address potential campus mergers or consolidations, or continue to collect and report data for the state’s longitudinal database, which is often used to inform policy decisions.

III. STATE MASTER PLANS ADVANCING ACCESS, AFFORDABILITY, AND COLLEGE COMPLETION

MASTER PLANS

Arkansas

In October 2015, Arkansas’ statewide coordinating board, the Arkansas Department of Higher Education, approved a new master plan and public agenda for higher education, titled *Closing the Gap 2020*. The five-year plan aims to educate more adults and increase the degree attainment rate to 60 percent. The current attainment rate is about 44 percent. Key goals of the plan include:

- raising graduation rates of colleges and universities by 10 percent, with a special focus on graduating students from underserved populations;
- reducing the percentage of students who need remediation (and the time it takes to complete remedial courses);
- raising first-year retention rates of students to regional averages;
- improving communication of the value proposition of higher education; and
- improving affordability through the reallocation of funds toward need-based aid.

College Completion and Performance Funding for Arkansas in 2017

In July 2016, Governor Asa Hutchinson (R) announced support of a plan to fundamentally change the funding formula of the state's higher education institutions. The proposed Higher Education Productivity Funding Model follows an outcomes-based approach that places a higher priority on program completion than the previous formula. The coordinating board approved the proposal in a unanimous vote. The proposal will now go before the legislature during the 2017 general session.

Texas

In July 2015, the Texas Higher Education Coordinating Board approved a 15-year state master plan for higher education, titled 60x30TX, a short title with a big goal—for at least 60 percent of Texans ages 25-34 to hold a certificate or degree by 2030. Other key goals include:

- At least 550,000 students in 2030 with a certificate or degree from an institution of higher education in Texas, which requires that colleges and universities reach out to underserved populations;
- The promotion of marketable skills through public-private partnerships and a more intentional connection to workforce development goals and employment opportunities in the state, which requires an emphasis on the value and utility of higher education;
- A focus on affordability with the goal that undergraduate student loan debt will not exceed 60 percent of first-year wages for graduates of public colleges and universities in the state.

Missouri

In December 2015, Missouri developed a new coordinated plan for higher education, *Preparing Missourians*

to Succeed: A Blueprint for Higher Education. Much like the plans in other states, Missouri's plan focuses on:

- increasing the proportion of working-age adults with high-quality, affordable postsecondary credentials to 60 percent by 2025;
- becoming one of the 10 most affordable states in which to obtain a postsecondary degree or certificate by 2025;
- awarding high-quality postsecondary degrees and certificates that are valuable and relevant to individuals, employers, communities, and the state;
- focusing on making Missouri a top 10 state for investment in academic research and innovation by 2025; and
- promoting and investing in a culture of postsecondary education through increased advocacy and powerful partnerships with education, business, government, and communities.

Oregon

In June 2016, Oregon's newly established coordinating board, the Oregon Higher Education Coordinating Commission (HECC), released its first-ever strategic plan for higher education in the state. *"This plan addresses the complexity of the higher education system, the myriad obstacles students currently face, and the specific opportunities and levers the HECC has to change them. It is both a realistic and deeply optimistic plan for us to work together as a state so that all Oregonians meet their highest education and career potential, and have the opportunity to prosper in a global economy,"* said Neil Bryant, chair of HECC, in the plan's press release. As stated in the plan, priorities include:

- sharpening state higher education goals in specific areas, especially for working-age adults, and reporting progress towards goals;
- supporting sustainable state funding linked to student success;
- simplifying and aligning student pathways from "cradle to career";
- enhancing student support services;
- making/keeping college affordable for Oregonians; and
- contributing to a prosperous workforce and economy.

This new plan was influenced by the state's 40-40-20 goal: by 2025, 40 percent of Oregonians will have a bachelor's or advanced degree, 40 percent will hold an associate's degree or certificate in a skilled occupation, and the remaining 20 percent will hold at least a high

school diploma or equivalent. The 40-40-20 goal was established in 2011 through passage of SB 253. Since then, HECC has carried its charge. The new strategic plan is also influenced by the commission's Equity Lens, which ensures that policies and funding allocations promote equity.

North Dakota

In May 2016, Chancellor Mark Hagerott and board leaders announced that the North Dakota University System would begin developing a new long-term master plan for public higher education. The plan is set to reflect discussions taking place across the state, with a strong focus on student needs and a changing workforce. The final plan, Envision 2030, will be released in spring 2017.

It is noteworthy that state legislators have also demonstrated interest in studying higher education governance and leadership. In April 2015, House Concurrent Resolution 3046 was enacted, directing a study of public higher education for the purpose of developing and implementing a governance model that reflects the roles and responsibilities of the State Board of Higher Education, the commissioner of higher education, and institutional presidents. The legislature has held hearings and received testimony about: public higher education governance structures throughout the nation; the leadership dynamic in public college and university systems (system board governance vs. institutional governance); the roles and responsibilities of a chief executive, institutional president, and board chair (in the case of North Dakota, board president); tuition-setting authority; strategic planning; accountability measures; and monitoring performance.

New Mexico

On September 20, 2016, Dr. Barbara Damron, cabinet secretary for New Mexico's Department of Higher Education, announced that the department would begin developing a new strategic plan for higher education. *"We are definitely in an imminent era of innovation and adaptation,"* said Secretary Damron. *"The fates of universities are to be shaped by political, economic and social factors."* Focusing on governance and funding, Secretary Damron acknowledged that the 32 public colleges and universities in the state are heavily dependent on state appropriations while maintaining significant autonomy and that a new strategic plan could help to bridge concerns from all stakeholders. Secretary Damron's office will be working from now until September 2017 to develop a strategic

plan that responds to the needs of the state, students, and institutions. Some preliminary goals include:

- an evaluation of state funding balanced with tuition and fees;
- reversing declining enrollment at public institutions; and
- communication regarding the value proposition of higher education.

Overall, strategic planning efforts will focus on the state's attainment goal—that 66 percent of New Mexico's population will have an associate's degree or higher by 2030. Secretary Damron is also encouraging opportunities for institutional collaborations and acknowledging that institutional consolidations or mergers could be on the horizon given the state's economic circumstances and the funding shortfalls for higher education.

New Jersey

In August 2015, Governor Chris Christie (R) signed a bill requiring a new strategic plan for higher education to be in place by February 2016, but the office of the secretary has yet to propose one.

In the meantime, and after passage of SB 979, a College Affordability Study Commission is underway, created in February 2015 with a report that was released on September 27, 2016. While the governor "conditionally vetoed" the legislation to remove the executive branch's participation, there is significant support for the work of the commission, which is led by Senate President Stephen Sweeney (D). The commission is chaired by Dr. Frederick Keating, president of Rowan College.

The commission held three public hearings to invite students, parents, and other members of the public to provide their thoughts and recommendations about increasing college access and affordability in New Jersey. As stated in an opinion piece by state Sen. Sandra Cunningham (D), chair of the senate higher education committee, and Sen. Sweeney, three ideas at the core of these conversations are:

- requiring school districts with high schools to enter into a dual enrollment agreement with their county college(s) to offer college courses for credit to high school students, giving them a head start on their college education;
- requiring all four-year public colleges/universities to offer three-year baccalaureate degree programs that students can complete by taking summer courses;
- allowing county colleges to submit an

application to the secretary of higher education for permission to offer certain bachelor of applied science degrees to address unmet workforce development goals; and

- expanding the current high school requirement about financial literacy to include instruction on available state and federal tuition assistance programs—grants, scholarships, student loans, and issues associated with student debt.

The commission's findings are included in the final report of the College Affordability Study Commission, which recommends an emphasis on:

- approaches that reduce time to degree, such as dual-enrollment opportunities, guided pathways and improved advising, reverse-transfer programs, and three-year degrees;
- enhancing postsecondary financial literacy for students, parents, and guidance counselors in both high school and college;
- more state need-based aid for students and income tax deductions on interest paid on student loans; and
- development of more public-private partnerships that strengthen links between regional employers and colleges, among others.

The commission's recommendations will be discussed in the next legislative session, which begins in January 2017. State Sen. Sweeney and other officials are likely to push for ways that the state and higher education community can better guide students from orientation to graduation, through the implementation of common sense policies that reduce students' time to degree and afford them greater access to information on the costs of higher education and the means to finance those costs.

IV. STATE AUTHORIZATION RECIPROCITY AGREEMENTS

State authorization and reciprocity agreements aim to address the problem that the country lags behind many others in the educational attainment of those ages 18-34. The National Council for State Authorization Reciprocity Agreements advocates that distance education can play an important role in increasing attainment.

COLLEGE COMPLETION AND STATE AUTHORIZATION AND RECIPROCITY AGREEMENTS

The National Council for State Authorization Reciprocity Agreements (SARA) is a voluntary, regional approach to state oversight of distance education. As of July 2016, 41 states and the District of Columbia have passed legislation in favor of state reciprocity or were approved as a SARA state through their regional compact. Twenty-three states were approved in 2015-2016: Alabama, Arkansas, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Vermont, and Wyoming. These states are now in agreement with other states, districts, and territories that require national standards for postsecondary distance education courses and programs. The agreements are intended to make it easier for students to take online courses offered by postsecondary institutions based in other states. SARA is overseen by a national council and administered by the four regional education compacts.

V. TENSIONS OVER AFFORDABILITY, TUITION-SETTING AUTHORITY, AND DROPPING ENROLLMENTS

Louisiana

In Louisiana, lawmakers passed SB 80, a constitutional amendment allowing college and university governing boards to set tuition and fees. Since this is a constitutional amendment, it requires a statewide election and was on the ballot this November 2016 and failed. Public colleges and universities would have needed a two-thirds vote of the legislature to increase tuition.

Some are concerned that if the amendment passes, it could lead to additional increases in tuition and fees, which is a high probability since mid-year budget cuts of \$50 million dollars are already on this table for this academic year. *"The state is not funding higher education,"* said state Rep. Dee Richard (I). *"I think it's time that we allow them to have some autonomy."*

Idaho

In response to declining enrollments at almost all public colleges and universities in the state, Governor C.L. "Butch" Otter (R) and legislators discussed several proposals and bills to invest in state scholarship

programs to make college more affordable for in-state students, therefore advancing the state's goal of 60 percent of the population, ages 25-34, with a postsecondary degree or credential.

Two bills, HB 477a and HB 645, were enacted to support in-state students pursuing a degree or certificate. However, the governor and state board of education (the comprehensive statewide governing system for higher education) raised concerns over whether these programs would really help the students who need it the most, and whether the appropriation is sufficient to cover all eligible students. These bills aim to support students who are taking dual enrollment courses in high school, many of whom will likely receive institutional scholarships. Students must secure matching scholarships from private industry, and they must attend college in Idaho. Governor Otter has asked the legislature and state board of education to monitor the effectiveness of these programs.

In addition, while legislators funded an expansion of the Idaho Opportunity Scholarship, the senate rejected a scholarship bill aimed at adults returning to college to finish their degree or credential, along with the governor's "tuition lock" bill that would freeze tuition rates for a cohort of students for four consecutive years. Illinois, Oklahoma, and Texas are the only other states with "tuition-lock" programs.

Arkansas and Connecticut

Arkansas and Connecticut are two additional states that are facing significant declines in public college and university enrollments. While leaders in Arkansas highlight their new master plan/public agenda for higher education, which focuses on various pathways to college completion, leaders in Connecticut are considering offering in-state tuition to students living in New York.

Virginia

In 2015, Virginia enacted HB 1897, which took effect July 1, 2016—impacting the amount and use of athletics fees at colleges and universities. As summarized in a recent AGB *Trusteeship* article by John Casteen, President Emeritus of the University of Virginia, *"The bill was enacted to limit the percentage of athletic program budgets that can be paid through mandatory student fees—and makes governing boards accountable to the governor and general assembly for fee increases to enhance varsity sports."* This legislation is largely the results of a 2014 report by the Joint Legislative Audit and Review Commission (JLARC), *Adding the Cost of*

Public Higher Education in Virginia, which reported a 56 percent increase in institutional spending (from 2002-2014) on auxiliary services, such as athletics, housing, dining, and security. More specifically, JLARC reported fee increases for "varsity sports upgrades," mainly for football and basketball, in order to move from one NCAA division to another.

This bill is not against athletics, rather its intent—as introduced by Delegate M. Kirkland Cox (R)—is to require transparency regarding the amount and purpose of student fees.

When asked about the implications of this legislation on boards, Casteen stated that *"it encourages boosters to ante up and makes governing boards account for spending increases from fees and for the policies behind them."* Overall, and up to this point, there seems to be bipartisan support for this bill, and it is likely that other states will partake in a review of institutional spending and policies related to student fees—particularly as they relate to auxiliary services such as athletics.

COLLEGE PROMISE PROGRAMS

State and county promise programs are expanding or developing across the nation with the goal of helping qualified students enroll in community college courses. Perhaps the most visible promise program is Tennessee's "Free Community College" program, which President Obama and other elected and appointed officials have endorsed. While some states have not implemented statewide promise programs, some of their counties have—this is the case in both Kalamazoo and Northport, Michigan, and in Pittsburgh, Pennsylvania. According to the College Promise Campaign, the national effort endorsing and supporting these programs, there are now 150 promise programs in 37 states.

These programs are not all created equal and are funded in different ways. While Tennessee's "free community college/promise program" is funded with lottery revenue, Oregon's is funded by an appropriation from the legislature. However, many of the basic requirements for these programs are the same or similar, like income and GPA requirements, and all require completion of the Free Application for Federal Student Aid (FAFSA).

In upcoming legislative sessions, it is likely that we will see more states develop free community college or promise programs—even in states like Illinois that have severe fiscal challenges. In fact, Illinois state Sen.

Will Guzzardi (D) has already pledged to introduce “tuition free” college in the 2017 legislative session.

California

In September 2016, Governor Jerry Brown (D) signed into law two California promise bills to support programs that advance degree completion—one at California State University System and the other at the California Community College System.

California SB 412 provides resources for a program at California State University (CSU) to help students from low-income households graduate in four years, or two-years for qualifying students who transfer from community colleges. According to bill analyses, interested freshmen and transfer students pledge to take five courses each semester while maintaining a specific grade point average. In return, students are given flat tuition, extra support for academic advisors, and priority registration in order to get the classes they need to graduate on time.

This program is designed to support California residents from low-income households, and preference is given to first-generation and community-college students from communities with low college-going rates. The bill’s sponsor, state Sen. Steve Glazer (D) said, *“Many students at the CSU want to finish in four years, but they need help in charting the path. This bill directs resources to students who likely need the most help and will boost their chances of getting a bachelor’s degree in four years.”* CSU leaders advocated passage of this bill in the hopes that it will help them meet goals established in CSU’s Graduation Initiative 2025, to improve the system’s graduate rate to 40 percent by 2025. Governor Brown commended the CSU Board of Trustees for the initiative. The state is providing \$35 million in one-time funding to jump-start these efforts.

On the same day, the governor also signed a second bill, AB 1471, which allocates \$15 million in grant funding for community colleges to improve college graduation rates by partnering with high schools and public universities. *“I am excited to bring this opportunity to areas like Pomona and Ontario, where there is a clear need. Students here and throughout the state will greatly benefit from the preparation and guidance offered by California’s College Promise,”* said assembly member Freddie Rodriguez, one of the bill’s sponsors.

TUITION-EQUITY BILLS

While 16 states have enacted policies allowing in-state tuition rates for undocumented students, some states,

such as Tennessee, have had a difficult time enacting such legislation. This being an election year, these bills have been discussed by both state and federal officials, and legislation of this kind is often accompanied by a partisan vote.

VI. BOARD VS. LEGISLATIVE AUTHORITY—HIRING AND ASSESSING THE CHANCELLOR

Maryland

In 2015, the chair of the Senate Education, Health and Environmental Affairs Committee proposed SB 332—similar in scope to SB 19 in 2014—which proposed stripping the University System of Maryland Board of Regents of its fiduciary authority to select and confirm a chancellor for the system. This bill did not pass, but if it had, it would have dramatically weakened the board’s autonomy, authority, and independence.

From recruitment to hiring, the selection of a chief executive of a college, university, or university system is among the paramount responsibilities for which a governing body assumes full authority. AGB offered testimony against SB 332 as it was in direct conflict with Maryland’s Education Code and the regional agency that accredits Maryland’s colleges and universities, the Middle States Commission on Higher Education (MSCHE). Middle States standards state: *“The governance structure should provide for a governing body with sufficient independence and expertise to assure the academic integrity of the institution and for a Chief Executive Officer, appointed by the governing body, whose primary responsibility is to lead the institution toward the achievement of its goals.”*

VII. BOARD APPOINTMENTS, COMPOSITION, AND STRUCTURE

Concerns about board appointments were seen in Arizona and Alaska and are still playing out in Kentucky and Colorado.

Kentucky

Kentucky Governor Matt Bevin (R) has created quite a stir at the University of Louisville and in the state’s higher education community.

To begin, the governor disapproved of actions by both the president and institutional governing board, dismissed all members of the institution's 20-member board, and encouraged the president to resign. The governor reported that his decision was based on the board's "dysfunction," indicating that it was a distraction to the campus and community. Part of the "dysfunction" that the governor described stemmed from a divided board; half of the board did not support President James Ramsey and called for a vote of no confidence, while the other half of the board gave the president high marks and did not want him to leave. Governor Bevin's executive order called for the resignation of all institutional governing board members, as well as the university's president. In the governing board's place, the governor proposed a 13-member board (10 gubernatorial appointments along with a faculty, staff, and student representative); however, state law requires a 20-member board.

Upon review of the executive order, Kentucky's Attorney General Andy Beshear sued Governor Bevin, claiming that he did not have the authority to dismiss and replace the University of Louisville governing board. At the same time, a judge temporarily blocked the governor's executive order, but Governor Bevin responded by appealing the injunction. On September 28, 2016, a circuit court judge ruled against Governor Bevin's executive order, stating, *"The governance of public universities has been carefully structured to insulate institutions of higher education from the direct influence of partisan politics. The governor's assertion of the right to unilaterally abolish and recreate the Board of Trustees during the interim between legislative sessions is wholly inconsistent with the statutory framework of higher education in Kentucky."* This ruling is a huge disappointment to the governor and a victory for those who were against the executive order and described it as a threat to institutional governance and board autonomy, one that might have raised red flags with accreditors.

University of Louisville Foundation Board

Citing concerns about questionable spending and a lack of transparency, major donors to the University of Louisville Foundation are withholding grants until the organization hires a forensic accountant to examine its books. The foundation is also facing lawsuits by the university and The Kentucky Center for Investigative Reporting to force the release of documents under Kentucky's Open Records Act, to which the foundation is subject.

Colorado

In November, three of the seven elected seats on the University of Colorado Board of Regents were voted on in a statewide election, one of the most anticipated elections in the state. Since all seven members are elected, and their political party preferences often dictate issues that the board will address, this election is one that had Republicans and Democrats closely following regent campaigns. Candidates' views are very different on everything from state funding and diversifying revenue streams to climate change and research. Result: two Republicans won and one Democrat. No change in board composition.

If Democrats would have won the open seats, the board would have switched from its Republican stronghold to a board governed by Democrats who would hire the next president, if circumstances led to that action. With the Republican majority, it is likely that current university policies and positions will stay intact, along with the current president of the university.

Arizona

In a move to give Governor Doug Ducey (R) more authority over board and commission appointments, HB 2526 was proposed and enacted, allowing the governor to remove one or more board members from the Arizona Board of Regents, the state's university governing system, for reasons other than malfeasance in office, or for any cause that would render a member ineligible for appointment or incapable of discharging duties. HB 2526 related to board members of government entities with fixed terms, like the Arizona Board of Regents as well as the K-12 board and the state board of education. This bill was proposed in March 2015 and enacted in April 2016. One newspaper article summed it up this way: *"An unnoticed amendment to an uncontroversial bill has vastly expanded Governor Doug Ducey's ability to fire board and commission appointees who don't toe the company line."* The former president of the Arizona Board of Regents, Chris Herstam, questioned how the amendment passed without protest from boards and commissions. *"Fixed terms for board members—such as regents or appellate court commissioners—provide protection from potential political intimidation and often contribute to sound policymaking,"* he said.

Mike Luburdi, the governor's general counsel, defended the bill by pointing to the 1969 Arizona Supreme Court ruling in *Ahearn v. Bailey*, *"The governor is charged with the duty of taking care that the laws are faithfully executed. He must, therefore, have*

the power to select subordinates and to remove them if they are unfaithful.” Daniel Scarpinato (Ducey spokesman) referred to concerns with the performance of state boards like the K-12 Board of Education as an example of why this bill is needed. *“Ultimately the governor is held to account for the conduct and performance of these boards and commissions, so it stands to reason that he has the ability to get rid of bad apples,”* Scarpinato said. Some higher education and community leaders were not concerned about the bill, indicating that it was aimed at the K-12 Board of Education, not the board of regents; however, the regents were included in a broader, sweeping bill to include all boards and commissions.

Alaska

Representatives in the House proposed HB 107 to require regional representation on the Board of Regents of the University of Alaska. Bill sponsors advocated the presence of a regent from Mat-Su Valley on the Kenai Peninsula, citing that the region has significantly grown over the last 40 years, outpacing the growth of other regions in the state. Governor Bill Walker (I) disagreed with the provision requiring regional representation and the two-year residency in region requirement.

Sponsors will likely propose the bill in the next legislative session. It is not uncommon for system governing boards to have residency requirements or regional representation.

VIII. BOARD MEMBER EDUCATION AND TRAINING

More and more, state leaders are acknowledging the value of board member education and training. Six states proposed policies or enacted legislation.

Illinois

In Illinois, two bills were enacted requiring annual board education and training for public board members and trustees. SB 2174 requires each board member serving a public four-year institution to complete a minimum of four hours of professional development/leadership training covering (but not limited to): public university and labor law, contract law, ethics, sexual violence on campus, financial oversight and accountability, audits, and fiduciary responsibilities of a member of a governing board. Like most statewide

programs for public board members and trustees, this leadership training is to be facilitated by the Illinois Board of Higher Education (IBHE), the state’s coordinating commission. IBHE partnered with AGB to host its statewide program for board members and trustees on October 27, 2016.

All board members and trustees appointed to a public higher education governing or coordinating board for a term beginning after January 1, 2016 must attend this training opportunity; this includes student members. Members appointed prior to the date are encouraged to attend but not required to do so.

All voting members must complete the required four hours of professional leadership training within the first two years of board service. This bill became law on July 29, 2016.

Community college board members and trustees are also subject to annual board education requirements, thanks to the enactment of SB 2157. The legislation requires every voting member of a board of trustees to complete a minimum of four hours of professional development leadership training during the first, third, and fifth year of his or her term covering topics that include, but are not limited to: open meetings law, community college and labor law, freedom of information law, ethics, sexual violence on campus, financial oversight and accountability, audits, and fiduciary responsibilities of a community college trustee. SB 2157 stipulates that the community college district shall maintain a public list (using its website) of elected or appointed voting trustees who have not successfully completed the training. Trustees must certify completion of the training to the secretary of the board. This bill became law on July 29, 2016.

Kentucky

In Kentucky, HB 15 was enacted to require annual board education and training for public board members and trustees. In cooperation with each public university and the Kentucky Community & Technical College System, the Kentucky Council on Postsecondary Education (KCPE) developed a comprehensive orientation and education program for new board members, consisting of:

- six hours of orientation and education focused on the roles and responsibilities of council and governing board members;
- the state’s public agenda for higher education;
- institutional missions, finances, strategic plans, policies, and procedures;

- board fiduciary duties and fundamental governance responsibilities; and
- legal considerations, including open records and open meetings requirements, and ethics/conflict of interest policies.

This bill includes an additional component that requires the KCPE to establish an online orientation course or other method by which board members can receive education and training electronically. The legislation also requires that the KCPE invite independent colleges and universities to participate in orientation and education programs. As a follow-up to these board education and development opportunities, the KCPE will provide an annual report to the governor and legislative research commission, which will include the names of board members who do not complete the required orientation and education programs. This bill was signed by Governor Bevin on April 27, 2016.

Tennessee

The aforementioned Focus on College and University Act (FOCUS Act), in addition to restructuring the state's public higher education system, also contains provisions requiring the Tennessee higher education commission to facilitate an orientation training program (and a continuing education program) for public board members. As stated in the legislation, orientation topics will focus on board fiduciary duties and fundamental board responsibilities, including the legal and ethical responsibilities of trustees.

Additional topics may include:

- the board's role in upholding academic standards, intellectual diversity, and academic freedom;
- presidential searches and evaluation; and
- statewide planning for education—e.g. higher education and K-12 collaborations.

Board education for all members will be completed in the spring of 2017, prior to institutional board meetings. After that time, only newly appointed board members will be required to participate in these programs.

Virginia

While newly appointed public board members and trustees have participated in annual board member education programs for the past three years, there was no penalty for not attending the trainings, until the recent passage of HB 1303. The legislation prohibits the reappointment of any college or university board member who fails to attend the state's annual program

for board members and trustees during his/her first four-year term. The statutorily required educational programs provided by the State Council of Higher Education for Virginia address the fundamental responsibilities of governing boards and state laws regarding ethics and conflict of interest, among other topics. This bill is broadly considered to be a good piece of legislation, but it is unlikely to apply to many board members since most do not serve more than one term due to the cycle of gubernatorial elections. It was signed by the governor and enacted on March 25, 2016.

IX. OPEN RECORDS AND MEETINGS—INFORMATION DISCLOSURE AND TRANSPARENCY

Hawaii and Nebraska proposed legislation related to open records and meetings, while Texas settled a court case regarding information disclosure.

Texas

In 2013, a regent on the board of the University of Texas System (UT), Wallace Hall, accused the former President of UT-Austin, William Powers, of admitting students into the system based on their connections to prominent legislators and benefactors, rather than on merit.

During the 2013 legislative session, Lieutenant Governor David Dewhurst (R) and Speaker of the House Joe Straus empowered the Select Committee on Transparency in State Agency Operations to investigate Hall's conduct. The committee produced a 174-page report accusing Hall of *"disclosing confidential student information, pressuring [Transparency] Committee witnesses to change their testimony, and burdening UT-Austin with impossible document production demands."* However, Regent Hall persisted that, as a regent, he had the right to unlimited access to UT-Austin's admissions records to prove that unqualified students were admitted into the institution. The new system chancellor, William H. McRaven, refused to turn over these records. Even though a lower court agreed with UT System representatives and Chancellor McRaven, Regent Hall appealed the court's decision and the Texas Third Court of Appeals heard this case.

On September 16, 2016, the Third Court of Appeals affirmed the lower court's decision in favor of Chancellor McRaven and the UT System. Regent Hall continues to serve on the board of the UT System. His

term began when he was appointed by Governor Rick Perry (R) and it will conclude on February 1, 2017.

Montana

As in Texas, courts in Montana also grappled with open-record requests and student privacy laws. In 2014, using the state's "right to know laws," a well-known author requested information about a sexual assault case at the University of Montana. Initially, his request was denied by the university, but the trial court ruled in his favor. The university then appealed the court's decision. Finally, on September 19, 2016, the state's appellate court ruled that the Family Educational Rights and Privacy Act (FERPA) prevents the release of student information when the student is identified by name in the request. However, there are exceptions, such as the final outcomes of select disciplinary proceedings or compliance with a judicial order/subpoena. A court must perform a constitutional balancing test before enforcing an order or subpoena. Specifically, a trial court must "balance the privacy rights of all of the individuals involved in the case against the public's right to know."

The appellate court reversed and remanded the case back to the trial court to confidentially perform the balancing test to determine what records, if any, may be released with appropriate redactions. The test is still pending in the trial court. Other states may refer to this case for guidance about how to determine whether to release information included in student records, especially when requests identify students by name.

Hawaii

In Hawaii, HB 1532 was proposed to reverse some of the intrusiveness that came with a 2015 bill about the many pieces of personal information that a member of the University of Hawaii System Board of Regents must disclose. The bill was enacted late during Hawaii's 2014 legislative session, and without the governor's signature. The follow-up bill, HB 1532, relates to the types of disclosure questions asked of board members, their spouses, and their dependents, and who may see this information. While many members publicly supported HB 1532 and submitted testimony in support of the bill, it did not pass. Rather, it was referred to the Judiciary Committee on February 11, 2016.

Most states do not have disclosure policies that parallel current legislation in Hawaii, which requires public financial disclosure of not only the volunteer board member, but also his/her spouse/partner and children/dependents at 100 percent of income and assets, etc. While California requires disclosure forms for members of the system governing boards, the information stays with the system office, as the agency of record. They use the same disclosure form as elected officials and those who can make purchasing/investment decisions within the system. Board members are required to report 50 percent of spousal income and investments and nothing about dependents.

Nebraska

Nebraska enacted a bill regarding information disclosure and search/selection processes of presidents for the University of Nebraska. Legislative Bill 1109 (LB 1109), also referred to as "The Enhanced Public Scrutiny Hiring Process," updates the board of regents' current search process for the University of Nebraska president or campus chancellor positions. According to the bill's brief, LB 1109 was enacted to:

- establish a 30-day public vetting period for a single priority candidate for president or chancellor, prior to any board action;
- provide a public vetting process for priority candidate (to include the candidate's application materials and mandated participation in public forums) in which university affiliates, news media, and Nebraskans can participate and provide input;
- streamline the search process to be more consistent with those of other Big Ten institutions, including those in Ohio, Illinois, Indiana, Minnesota, Maryland, and Pennsylvania; and
- remove unnecessary limitations for highly sought-after candidates to enter the search process for president or chancellor, including impediments to confidentiality that heavily recruited candidates have said would preclude them from entering into a search process.

LB 1109 was signed by the governor and enacted into law on March 30, 2016.

X. OTHER ISSUES AND STATE POLICIES THAT ARE TRENDING: TENSIONS OVER CAMPUS SAFETY, DIVERSITY, INCLUSION, AND CIVILITY

SEXUAL ASSAULTS

Both state and federal leaders are collaborating with educational leaders on difficult health and safety concerns facing colleges and universities. In 2015, 12 states enacted legislation to address sexual misconduct on college and university campuses; eight states enacted legislation in 2016, including “affirmative consent” laws in five states

Illinois

Governor Bruce Rauner (R) signed the Preventing Sexual Violence in Higher Education Act (HB 821) into law on August 21, 2015. The act requires that on or before August 1, 2016, all higher education institutions in the state must adopt a comprehensive policy to address sexual violence, domestic violence, dating violence, and stalking, and all policies should be consistent with state and federal laws. The act requires campus training, education, and awareness. In the spring 2016 legislative session, a related bill (SB 2839) was brought forth to clarify sanctions that may be imposed for violations of institutional policies. This bill was signed into law on August 5, 2016.

Connecticut

In the 2016 legislative session, lawmakers passed HB 5376 to bring a standard definition of “affirmative consent” that could be applicable to all colleges and universities. The bill requires the inclusion of affirmative consent as a standard in every institution of higher education’s policy or policies regarding sexual assault, stalking, and partner violence.

Mark Ojakian, president of the Connecticut State Colleges & Universities (CSCU) System, who testified in support of this bill, stated that the language in the bill is consistent with, and expands upon, the language of the current CSCU policy. President Ojakian commended the legislature for its passage and articulated commitment to work with trustees and institutional executives to improve upon current efforts related to prevention and awareness.

Delaware

In June 2016, HB 1 was signed by Governor Jack Markell (D) to expand current legislation and

strengthen sexual assault reporting, training, and outreach resources to colleges and universities. One of the bill’s sponsors, state Rep. Kim Williams (D), stated, *“Delaware’s colleges and universities must do more to not only prevent sexual assaults on their campuses, but to support and respond to victims properly when they disclose these crimes to university employees.”*

This legislation differs from previous state legislation in that it allows for “responsible employees” to offer a police report on victims’ behalf, but only if the victim agrees/wishes to do so. It also requires “responsible employees” to offer resources for medical attention. Another component of the legislation includes the reporting of Title IX data on sexual assault incidents to the state general assembly. If institutions do not comply, the state can issue fines to institutions of between \$10,000 and \$50,000. The bill also includes penalties for institutions that do not meet standards for teaching their staff and students about sexual violence, rules for reporting, and resources available to victims. This bill’s cosponsor, state Rep. Valerie Longhurst (D), concluded that, *“This bill will ensure that Delaware universities are doing more to respond to victims of sexual assault in an appropriate manner and will hold these institutions of higher learning accountable for their response to victims.”*

California

On September 30, 2016, Governor Jerry Brown (R) signed SB 1146 into law, requiring private institutions that receive state funds of any kind to disclose their policies on sexual orientation, gender identity, or gender expression. Sponsors reported that this legislation is to ensure that colleges and universities benefiting from public dollars are not discriminating against lesbian, gay, bisexual, and transgender persons. *“No university should have the license to discriminate, especially those receiving state funds,”* said state Sen. Ricardo Lara (D), the bill’s sponsor. A second aim is to help students and staff members identify institutional policies related to sexual orientation, gender identity, or gender expression. It has been reported that students and staff do not always learn about discriminatory policies until they are asked to leave campus based on their orientation and preferences. The law takes effect in August 2017.

Maryland

In Maryland, HB 1142 was proposed to require that all institutional governing boards adopt sexual assault policies, which should include:

- a standard for affirmative consent, defined as clear, unambiguous, knowing, informed, and voluntary agreement among all participants;
- policies to provide that specified circumstances negate a valid excuse to an alleged lack of affirmative consent; and
- a focus on a preponderance of the evidence standard in campus hearings.

The bill did not pass, but it did raise the visibility of sexual assault issues and led to updated institution/system policies to protect students. Governing boards must approve these policies before they are presented to the Maryland Higher Education Commission for review and approval.

At the federal level

The Campus Accountability and Safety Act (CASA), introduced by Senators Claire McCaskill (D-MO) and Kirsten Gillibrand (D-NY) in February 2015, has bipartisan support and the backing of 37 senators. It is likely that hearings for CASA will continue into the next Congress; for many, the hope is that it will be included in the reauthorization of the Higher Education Act. Congress is also pursuing ways to hold colleges and universities accountable for campus sexual assaults. In response to inquiries from AGB members about what CASA might mean for their institutions and systems, AGB developed an advisory statement on sexual misconduct and an AGB Alert.

GUNS ON CAMPUS

Recent legislation

In 2015-2016, 19 states considered legislation related to guns on public college and university campuses: Alaska, Arkansas, California, Florida, Georgia, Indiana, Maryland, Missouri, Montana, New Jersey, Nevada, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, and West Virginia. Of the proposed bills, four were enacted: one in California prohibiting possession of guns on campus; one in Texas allowing licensed, concealed weapons on campus; one in Arizona allowing guns on roadways surrounding campuses; and one in Tennessee permitting faculty and staff to carry guns, with the provision that they register their firearms with campus police. Arkansas enacted a similar policy in 2013.

It is noteworthy that in 2013, the legislature in Kansas passed and Governor Sam Brownback (R) signed HB 2052, allowing concealed carry on college

and university campuses. However, the bill allowed institution and system governing boards and leaders to “opt out” of HB 2052 for up to four years/until 2017, and public colleges and universities are not certain that they will be able to receive a permanent opt-out extension. In fact, on October 7, 2016, the state’s attorney general denied a request from the University of Kansas to continue banning guns on campus in secure areas such as research labs. The Kansas Board of Regents continues to pursue governance policy options/responses to the state mandate to allow guns on campuses. If there are no changes in policies, colleges and universities will be required to allow guns on campuses as of July 1, 2017.

Arizona

Arizona has always relied on its college and university governing boards to set policies related to guns on campus. However, in May 2016, Governor Doug Ducey (R) signed HB 2338 into law. It states that, *“The governing board of an educational institution may not adopt or enforce any policy or rule that prohibits the lawful possession or carrying of a deadly weapon on a public right-of-way by a person or on or within a person’s means of transportation.”* During hearings, legislators testified that this bill is in response to constituents who would like to have their gun in their cars while driving through or parked on Central Avenue in Phoenix, Arizona, near Arizona State University’s downtown campus. However, the language in this bill applies to all public college/university campuses. The Arizona Board of Regents, the state’s university governing system, opposed HB 2338 and HB 2072, another new piece of legislation that would have allowed any person on campus with a gun license to carry their firearms with them. *“My fundamental concern with both bills is this is our jurisdiction,”* Regents Vice Chairman Greg Patterson said before the unanimous vote. In both cases, the board of regents opposed the bills.

While HB 2338 was signed by the governor on May 10, 2016, HB 2072 was not enacted.

Texas

In 2015, legislators passed SB 11, allowing guns and concealed carry on all public college and university campuses. The bill went into effect on August 1, 2016. Many higher education leaders voiced their skepticism of the bill and its intent. Some argued that the legislation would actually create more safety concerns and unintended consequences. Others expressed concern about guns and limits to free speech and academic

freedom, as well as the costs associated with preparing campuses (buildings and facilities) for this change. Many state policymakers and college and university leaders are looking to Texas to observe the effects of the new legislation.

CAMPUS CLIMATE, INCLUSION, DIVERSITY, CIVILITY, AND FREE SPEECH

Throughout 2015-2016, many higher education communities experienced student unrest, campus protests, and controversial (and discriminatory) bills from state lawmakers. In addition, the U.S. Supreme Court upheld affirmative action in college admissions. Some institutional leaders are grappling with internal policies and procedures that support the true value of inclusion and civility. AGB's new "Board of Directors' Statement on Governing Board Accountability for Campus Climate, Inclusion, and Civility" was developed to address the role of boards in these critically important conversations.

Missouri

Perhaps some of the most visible challenges related to these topics and issues took place in Missouri. At the University of Missouri, students protested in response to incidents of racism on campus that were not addressed by campus or system leaders. Members of the Mizzou football team also joined the protest in support of their campus peers—engaging in hunger strikes and refusing to compete until the system president and campus chancellor resigned, which eventually happened. Since that time, several legislators demonstrated disapproval of the resignations and of giving in to student demands. As a result, the legislature proposed annual audits for the University of Missouri System and threatened to hold back public funding/state appropriations.

HB 2179 was proposed to mandate professional diversity on governing boards. This bill followed the resignations of the only two African-American board members on the University of Missouri System Board of Curators. Many questioned the lack of diversity that remained, and whether or not the current board was reflective of student and faculty makeup and sufficient to meet system governance and leadership needs. While this bill did not pass, it did raise important issues about board member selection and appointment processes.

North Carolina

In response to HB 2, often referred to as the "bathroom bill," requiring people to use the bathrooms corresponding to their biological sex or their sex at the time of birth, the UNC System sent a letter to its campuses that "*transgender individuals may not use facilities that correspond with their gender identity*" and offered to clearly mark and share the locations of "gender-neutral restrooms." However, after the U.S. Department of Justice reviewed HB 2 and concluded that it constitutes discrimination and violates federal civil rights laws, Governor Pat McCrory (R), Secretary of Public Safety Frank Perry, and President Margaret Spellings of the UNC System were asked to roll back the legislation. Since then, and with millions of federal dollars at stake for the UNC system, President Spellings reversed the system's stance that it would implement HB 2 and that instead it would not discriminate on the basis of gender identity, sex, or sexual orientation.

Tennessee

Tennessee also considered a similar "bathroom bill," HB 2414, during its legislative session. The bill would have deeply affected federal funds for public education to the tune of \$1.2 billion in federal dollars, according to the state's attorney general. However, after the U.S. Department of Justice ruled on HB 2 in North Carolina, the bill's sponsor withdrew the legislation.

Washington

HB 2488 was proposed to create an academic bill of rights for colleges and universities, with free speech for faculty and students at the heart of this legislation. The bill offered penalties for the institution, board members, deans, chairs, faculty, or staff members who "violate" a person's free speech.

The legislation outlined the following provisions:

- All public colleges and universities must allow a faculty or staff member to use trigger warnings if they choose to do so, and an institution cannot take punitive action against a faculty or staff member for not using trigger warnings. A surprising component of this bill is that an institution may not take adverse action against a student or faculty member for microaggressions.
- With regard to academic freedom and whistleblower protections, institutions would not be able to take "adverse action against a faculty [member] in retaliation for expression related to scholarship, research, or teaching, including social media and membership in organizations."

This bill has prompted college and university boards to review their institutional policies related to free expression and generated much discussion of the need for institutional policies on trigger warnings and microaggressions as they relate to free expression. It is likely that these conversations will continue into the next legislative session. HB 2488 was introduced and retained in the House on March 10, 2016.

XI. INSTITUTIONALLY RELATED FOUNDATION BOARDS/ AFFILIATED ENTITIES

Connecticut

In Connecticut, SB 333 proposed reporting requirements on foundations affiliated with Connecticut colleges and universities, mandating reductions in payments from institutions to foundations when foundation endowments reach certain thresholds and imposing other governance practices. The bill requires that foundation boards affiliated with public colleges and universities include the institutional chief executive or his or her designee, a student of the institution, and a faculty member of the institution in board membership.

The legislation imposes reporting requirements on foundations with endowments of \$1.5 million or greater. Foundations are required to provide the legislature with: a current list of board members and officers; an annual financial report; copies of audited financial statements and management letters; the foundation's IRS Form 990; governance documents; reports on the number and amount of endowment disbursements for a wide range of specified purposes; lists of all donors excepting those explicitly requesting anonymity; and lists of faculty positions, academic units, and facilities named in recognition of donors. SB 333 was signed by the governor and enacted into law on May 31, 2016.

Two additional bills, SB 413 and SB 414, were also proposed in Connecticut. In March, the Finance, Revenue, and Bonding Committee of the Connecticut General Assembly introduced two bills that would, for institutions with endowments of \$10 billion or greater, tax endowment earnings in excess of what universities might reinvest in their campus, strategic initiatives or the economy. The bills, directly targeting Yale's

\$26 billion endowment, were described by lawmakers as creating an incentive to encourage universities to spend more of their endowments on higher education. These bills were not enacted.

XII. CLOSING OBSERVATIONS

This report is a glimpse into some of the recent governance actions affecting colleges and universities in states. As debates about state funding for higher education continue, so will public concerns about college costs and the ability of students to receive positive returns on their investments. Board members must serve as effective advocates and storytellers for the value of postsecondary education. And to fulfill their fiduciary duties, board members must understand current policy trends and state actions—anticipating how enacted legislation or proposals will affect their institutions and systems.

Colleges and universities are often asked to do more with less, while being more transparent and accountable. These tensions highlight the importance of good governance and leadership—planning and communication—and the understanding that board autonomy and independence must never be compromised by external influences and political pressures.

Policymakers rely on higher education as both a public and private good—and colleges and universities rely on state leaders to invest in the capacity of their colleges and universities to educate students and enhance their communities and regions. This mutual reliance demands that policymakers, board members, presidents and chancellors, and community leaders come together to develop mutual expectations for effective leadership, which we have seen in some state master plans for education. It also begs for collaboration to ensure that public colleges and universities remain viable in the years to come—and that they are accessible, affordable, and focused on the issues that are of greatest consequence to academic missions—and to state needs.

For all state legislation that the Center for Public Trusteeship and Governance is tracking, please visit: <https://goo.gl/aktOhN>

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