

2017 Higher Education Legislative Activity in the West: What You Need to Know

Introduction

2017 saw every legislature in the West in session—including the 15 Western states, **the Commonwealth of the Northern Mariana Islands**, and **Guam**—with legislators addressing a diverse array of higher education topics and dealing with an equally wide variety of budgetary outlooks. As in past years, Western states featured some of the largest percentage increases in state higher education funding as well as some of the deepest cuts.¹ States with economies reliant on oil, natural gas, and coal extraction continued to adapt to an era of difficult discussions and tight budgets brought on by low energy prices, while states with expanding economies explored new ways to invest in their higher education systems.

Despite the variation in state budgets, some common themes arose during the 2017 sessions. First and foremost, legislators were especially focused on keeping students at the center of their higher education legislative activity. Bills regarding affordability, students' right to privacy and free speech, streamlining pathways to credential attainment, and clarifying the cost and value of higher education appeared in legislatures across the West. Other topics of interest included altering higher education governance structures and more effectively using data.

Continued Divergence in Economic Trends

Many Western states enjoyed another year of stable or positive economic position, such as **Nevada**, which had a banner biennium for higher education funding, increasing state support by an average of 12.5 percent over the next two years.² **Utah's** higher education system also benefited from a robust economic picture in the state, with a 6.9 percent increase in its appropriation compared to the previous year—including a 6.2 percent increase in ongoing funds and a one-time increase of 0.7 percent.³

The budgetary focus in **Washington** was largely on K-12 spending as the state legislature sought to comply with the 2012 state Supreme Court *McCleary v. State of Washington* decision, which requires fully funding the state's program of basic education.⁴ However, higher education still received a 4.6 percent increase in state support compared to the 2015-17 biennium.⁵ Higher education in the **Commonwealth of the Northern Mariana Islands** (CNMI) also received a boost in FY18, with operating support to Northern Marianas College increasing by 5.9 percent from FY17 and funding for the CNMI Scholarship Office increasing by 9.4 percent.⁶

Idaho and **California** both shifted their increases in state funding of higher education toward their community college systems, with **Idaho** increasing their state appropriation to four-year colleges and universities by 2.7 percent and to community colleges by 6.7 percent.⁷ **California** took a similar approach, increasing funding for higher education overall by 2.7 percent, with the California Community Colleges receiving a \$382 million increase in their Proposition 98 General Fund appropriation, the

KEY TAKEAWAYS

- Energy-dependent Western states saw shrinking budgets; yet other state budgets grew robustly.
- High on legislative agendas: Student-centric cost and value concerns, with an emphasis on “free-college” programs and credential attainment.
- Bills related to governance and data were among ways legislators grappled with the productivity and effectiveness of public higher education.

California State University system a \$182.2 million General Fund increase, and the University of California an increase of \$136.5 million in General Fund support.⁸ Even in states with relatively positive economic outlooks, a trend of revenues falling short of estimates affected some.⁹ Nonetheless, **Oregon**, which projected the state's revenues to fall short of current service-level spending, continued its trend of increases to higher education funding from the previous biennium with a 9.5 percent increase over the 2015-17 allocation, which represents a 4 percent increase over the state's current service levels on postsecondary education.¹⁰

Colorado saw a more modest increase, with higher education receiving an additional 2.7 percent from the state's General Fund.¹¹ In a similar vein, higher education in **Arizona** also saw a small increase, with state general fund spending for four-year colleges and universities increasing by just under one percent and by 1.4 percent for community colleges.¹² In **Hawai'i**, the general fund appropriation to the University of Hawai'i System remained essentially flat, increasing by less than 0.1 percent.¹³ **Guam** Community College also received a small increase in their General Fund appropriation—with funding increasing by 0.1 percent over FY17—while state funding for the University of Guam remained level between FY17 and FY18.¹⁴

Meanwhile, ongoing low energy prices continue to present serious challenges to certain state budgets. **Alaska** has long relied on its oil industry to support state revenues in the absence of a state sales or income tax. Therefore, the multi-year drop in global oil prices has had a significant negative impact on the state budget, forcing the state to dip into reserves to cover spending.¹⁵ The University of Alaska system faced a fourth year of budget cuts in FY18,¹⁶ with a 2.4 percent reduction in the state appropriation to their operating budget.¹⁷

Wyoming, another Western state with an energy-focused economy, passed a biennial budget for 2017-18 in 2016 with a 3.5 percent cut to general fund expenditures on higher education, and has seen further cuts to funding as state revenues continue to lag.¹⁸ Facing declining revenues from oil and natural gas extraction as well as lower-than-expected income tax revenue, **Montana** cut overall state funding to the Montana University System by 3.4 percent over the next two years.¹⁹

South Dakota's economy is more agricultural in nature, yet sales tax revenues falling below projections and decreases in farm income also led to a legislative session focused on trimming state expenditures. Higher education ultimately emerged with a 1.7 percent reduction to the general fund base.²⁰ **North Dakota**, which relies on both oil and agriculture, faced a significant budget shortfall and ended their session with a 7.8 percent cut to the North Dakota University System's ongoing general fund appropriation for the 2017-19 biennium.²¹

Perhaps the most dramatic higher education funding scenario in the West played out in **New Mexico**, where the state's governor vetoed higher education funding in the budget passed by the legislature, a move designed to protest included tax increases and spending.²² In the end, legislators returned for a special session and passed a supplemental general appropriations bill, largely mirroring the funding levels originally proposed with a 1 percent cut for higher education compared to adjusted FY17 spending.²³

Student-Centered Sessions

Regardless of states' budget outlooks, legislators exhibited a clear concern for postsecondary students, addressing a range of topics aimed at improving students' experiences with higher education in their states.

Affordability

Unsurprisingly, legislative concerns regarding the postsecondary system were often centered around affordability. The issue continues to be top of mind for legislators across the country, and in the West the accessibility of public institutions to a state's own residents is a particular focus. Interest in "promise programs," or so-called free college plans, has spread quickly over the past few years, gaining momentum in the region as a potential route to affordability of higher education for students.

Hawai'i and **Nevada** both created new promise programs, **Hawai'i** after several attempts to pass legislation in previous sessions. **Hawai'i's** program will provide a "last-dollar" scholarship—meeting financial need after all other forms of aid have been applied—to resident students taking six or more credits at Hawai'i's community colleges. The bill proposing the program, HB 1594, did not pass the legislature; nonetheless, the program was eventually funded via the appropriations bill HB 100 CD1—which allocated \$1.8 million for the program over each of the next two years.²⁴

The Nevada Promise scholarship, created by SB 391, will also cover last-dollar tuition and fees at community colleges. **Nevada's** legislation is closely modeled on Tennessee's program, with its requirement that recipients take a minimum of 12 credits and participate in community service, as well as its establishment of a mentoring program for participants. Another notable feature of the **Nevada** legislation is that the scholarship funds will cover remedial coursework, which many other sources of aid do not.²⁵ The state's biennial budget includes \$3.5 million in funding for the program.²⁶

California passed AB 19 to establish the California College Promise, which is centered around waiving first-year fees at the state's community colleges for students who do not already qualify for the state's income-based Board of Governors fee waiver.²⁷

Promise program legislation in **Montana** and **Washington** faced challenges, with Montana passing yet not funding the Montana Promise Grant Program proposed in HB 185, essentially scuttling the effort in the short term.²⁸ **Washington's** HB 1840 sought to establish the Washington Promise Program by offering free tuition toward associate's degrees and certificates at the state's community colleges, but did not make it out of committee during the 2017 session. However, Washington continued to show commitment to increased affordability through additional funding to serve more students in the foundational financial aid program, the State Need Grant, and provided boosts for other targeted financial aid programs. At the same time Washington held steady on a tuition cap, set in statute in 2015, that limits tuition increases to increases in median earnings.²⁹

The West's first statewide free college effort—the Oregon Promise—was revisited by the state's legislature this session, offering an important lesson to younger programs. The Oregon Promise was originally designed to cover tuition for all **Oregon** community college students, regardless of income, who met program criteria. However, the legislature did not appropriate funding to cover the full cost of the program in the 2017-19 budget cycle, forcing the Higher Education Coordinating Commission to establish new limits on program eligibility based on expected family contribution to education costs.³⁰ The unexpected change in eligibility criteria so early in the program has drawn widespread criticism from students and families across the state.³¹

From a regional perspective, promise programs tended to dominate the affordability conversation in 2017, with relatively little discussion of strategies such as tuition caps and freezes which have in past sessions enjoyed greater popularity. Though one emerging subset of affordability, open educational resources (OER)—educational materials that are openly licensed and free to access, use, and repurpose—continues to garner legislative attention. In the West, for example, **Colorado** and **Oregon** appropriated \$25,000 and \$1 million respectively for OER initiatives aimed at expanding postsecondary students' access to no-cost course materials.³²

Cost & Value of Higher Education

Alongside issues of affordability, legislators also expressed an increasing desire to not only contain the cost of higher education, but to better understand that cost and its relationship to value. These efforts ranged from determining the unit cost of institutions' academic offerings and their contributions to various state goals to ensuring students have the information they need on the real costs and expected outcomes of higher education.

SB 1528 in **Arizona** and AB 202 in **Nevada** called for cost studies of their public institutions, while **Colorado** enacted legislation requiring its institutions to report annually on how they are specifically contributing to the Department of Higher Education's Master Plan goals.³³ Using a different approach, **Utah** passed HB 100, requiring institutions to disclose information including student job placement figures, average student debt, and tax subsidies they receive from the state.³⁴

Other bills focused on providing students with direct information and education regarding the costs and in some cases potential return on investment associated with postsecondary choices. These included **Nevada's** SB 259, **Utah's** HB 249 and **Washington's** SSB 5022, SSB 5100, and E2SHB 1375. The strategies outlined in these bills varied from integrating financial-literacy instruction focused on higher education affordability into high school requirements in **Nevada**, to requiring that the cost of textbooks and other course materials at community colleges are clearly published for students selecting courses in **Washington**. However, bills in Washington that proposed more far-reaching strategies for assisting students with education debt management and a student bill of rights—HB 1169 and SB 5210, respectively—did not pass.³⁵

Students' Rights

Beyond affordability and cost, another key issue for legislators in relation to postsecondary students was the protection of their rights. Legislation on this topic fell mostly into two camps: bills focused on free speech, and bills focused on privacy and confidentiality. With free speech on college campuses firmly entrenched in news headlines over the course of 2017, it is no surprise that legislators have been increasingly interested in the topic.

While some states considered free speech legislation with provisions that generated significant debate, their Western counterparts did not seem to encounter the same level of controversy. The enacted version of **Colorado's** SB17-062, which focused on prohibiting the use of restricted areas for free speech—or "free speech zones"—on public campuses, enjoyed

support from legislators on both sides of the aisle, the governor, and the University of Colorado after initial revisions.³⁶

Utah passed HB 54 designating outdoor campus areas at public institutions as public forums and noting that institutions can only restrict speech according to specifications outlined in case law: for example, requiring that restrictions be content- and viewpoint neutral.³⁷ A similar bill in **California**, SB 472, did not pass the legislature.³⁸

Many states considered and passed legislation focused on student privacy, although with a host of different motivations. For example, **California** passed AB 21 to protect the data and information of undocumented constituents of their public higher education system in part by requiring institutions to refrain from disclosing information concerning students, faculty, and staff, except under specified circumstances.³⁹ Meanwhile, **Utah** and **North Dakota** passed legislation to protect the privacy of students seeking campus services, with Utah enacting HB 251 to ensure the confidentiality of advocacy services on campuses and **North Dakota's** SB 2295 exempting Title IX records from open records requests.⁴⁰

Other states focused more on the privacy of electronic records. For example, **Wyoming** passed HB 009 to clarify students' ownership of their writings and electronic communications.⁴¹ Meanwhile, **Colorado's** SB17-304 added cybersecurity and data privacy to issues that its legislative joint technology committee may consider—effectively granting the state legislature some degree of oversight over security controls and the types of data being collected by state agencies.⁴²

Alternatively, an issue relating to students' rights not particularly prevalent in 2017 sessions was guns on campus. Though often a topic of discussion in Western legislatures, few states considered legislation in 2017 and perhaps the most publicized bill of its kind this year—**Wyoming's** HB 136, which would have allowed concealed carry on public institutions' campuses—did not pass.⁴³

Strategies for Completion

Of course, supporting postsecondary students goes beyond promoting affordability and protecting their rights. Legislators also worked throughout 2017 to ensure that students were able to not only access higher education, but also to succeed. Student-success legislation took many forms, but with a common goal: supporting students in attaining credentials of value from states' public institutions.

States continue to look at dual and concurrent enrollment policies and practices as a mechanism for decreasing time to degree. Though many states already have programs in place, they continue to work to fine-tune the process of delivering

college-level courses to high school students. For example, **North Dakota's** SB 2244 offers incentives to high school instructors pursuing continuing education to deliver dual enrollment coursework, and **Montana's** HB 232 clarified statutory language related to community college districts so that they are able to serve high school students.⁴⁴

Another popular strategy for promoting credential completion was the use of guided pathways, which presents college courses "in the context of highly structured, educationally coherent program maps."⁴⁵ **California's** SB 539 expanded the scope of its Guided Pathways initiative to include terminal associate's degrees, and **Washington** appropriated \$3 million for further implementation of its Guided Pathways efforts.⁴⁶

Other initiatives included **Oregon** and **New Mexico's** ambitious efforts to standardize transfer across their states with HB 2998 and SB 103, respectively.⁴⁷ **CNMI** passed legislation to join WICHE's own Professional Student Exchange Program, allowing students to pursue degrees in healthcare fields at certain out-of-state Western U.S. professional healthcare programs at reduced tuition rates.⁴⁸

Data

Many Western states also considered, and in some cases passed, legislation related to education data, including topics such as linkages to multiple sectors, data privacy and security, and data governance. **Nevada** enacted SB 516 and SB 458 related to its State Longitudinal Data System (SLDS); the bills have the effect of changing the overall governance structure of the system so that it is administered by a newly created Office of Workforce Innovation housed in the Governor's office. Previously, the system had been administered by the state's P-20W Advisory Council.⁴⁹

Utah's SB 194 followed a similar approach by restructuring its SLDS and placing it under the Department of Workforce Services. The previous incarnation of its system had been a collaborative effort overseen by a board consisting of representatives from the K-12, postsecondary education, and workforce sectors.⁵⁰

North Dakota passed SB 2104, which clarified that its Information Technology department can request data from educational and workforce agencies necessary to populate its SLDS. The legislation further clarified that the department can only redisclose identifiable employment data after entering into a written agreement with the state's workforce agency.⁵¹

States also considered legislation that focused on standards or assessments of all state data systems, which would have significant implications for state longitudinal data systems and other data resources. **California** considered but did not pass AB 650, which would have mandated that its Director of

Technology develop security protocols for state systems based on standards of the National Institute for Standards and Technology, and would have required state agencies comply with these standards.⁵²

Governance

A more unexpected trend in the West was the rise of higher education governance as a topic of debate in several legislatures. Five Western states considered the issue, with three passing legislation, and one state setting in motion the proceedings for an amendment to the state's constitution. This constitutional amendment approach took place in **Nevada**, which has long discussed changes to the state's higher education governance structure. In 2017, the state passed AJR 5, laying the groundwork to remove Nevada's Board of Regents from the state constitution, ultimately allowing the legislature more control over the body.⁵³ **Arizona's** HB 2359 also considered governance change, suggesting the abolition of the Board of Regents and the shifting of governance of four-year institutions to local boards: however, this did not pass.⁵⁴

South Dakota also took a new step with SB 65, creating a new governing board for the state's technical institutes, after a constitutional amendment passed in 2016 made it clear the institutions should be governed separately from the Board of Regents.⁵⁵ **Utah's** legislation—SB 238—focused on clarifying the Regents' roles and responsibilities, while **New Mexico's** SJM 8 took a step back and asked the Higher Education Department to explore different models of governance and report back to the governor and the legislature.⁵⁶

Looking Forward

Looking ahead to 2018, it seems likely that legislatures across the West will further embrace the question of what role public higher education plays in their states and how they can best support their students in accessing and succeeding at these institutions. However, the diverse range of answers and solutions proposed, considered, and adopted in 2017 suggest that few legislatures will arrive at the same conclusions. While perennial issues such as volatile state budgets, affordability, and credential attainment will no doubt remain on legislative agendas, the exploration of emerging issues related to data and governance seems poised to grow. Moreover, an unpredictable federal policy landscape may shape state sessions in 2018 in new ways. In the end, it is clear that legislators across the West—no matter their budget situation—have heard the rising student voices on their campuses, and will focus their efforts on addressing those concerns most important to their student constituents.

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