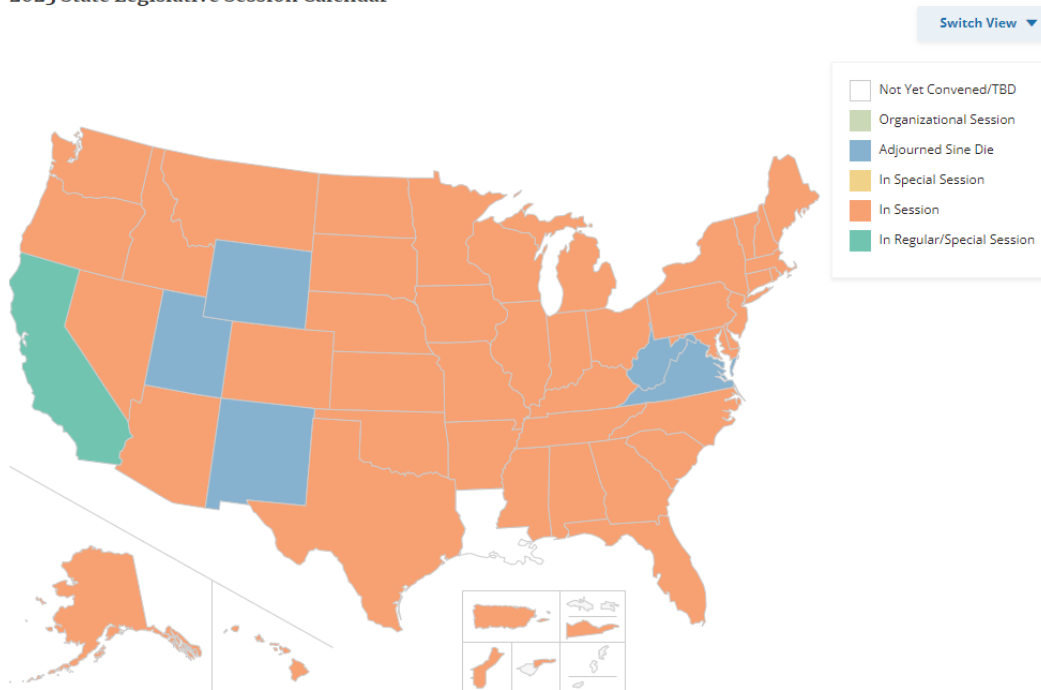


Congress Stalls, States Move

By [William Crozer](#)

2023 has been another active year in state legislatures across the country. Every state legislature, including Montana, Nevada, North Dakota, and Texas, all of which hold session in odd-numbered years, has or will be in session with many coming to their conclusion. As we reach the end of the first quarter of 2023, common themes and issues have emerged, some bipartisan, others along party lines.

2023 State Legislative Session Calendar



Map courtesy of the National Conference of State Legislatures (NCSL)

Budgets, Taxation, & Revenue

Several States Are Using Their Surpluses to Reduce Taxes

Several states are enjoying a budget surplus and have discussed significant tax reforms. Lowering property, income, and corporate tax rates are among the most common reforms. These states include Arizona, Connecticut, Colorado, Florida, Delaware, Idaho, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Utah, West Virginia, Oklahoma, and Texas. Other reforms include calls for a flat tax and eliminating equipment tax in Wisconsin, and states such as Mississippi and Arizona are considering eliminating income tax altogether.

States are Making Education Funding a Priority

State budget negotiations reflect an increased focus on education-related funding, including across childcare and expanded Pre-K to teacher recruitment and retention.

On childcare, for example, Ohio Governor Mike DeWine (R) has called for an investment of \$150 million of federal COVID-19 funds to provide childcare scholarships and increase capacity for infants and toddlers. DeWine also called for an expansion of the state's publicly funded childcare program from 142% of the federal poverty line to 160%, which would get 15,000 more children and families access to care. In Delaware, Governor Jay Carney (D) [outlined](#) several policy proposals, including doubling funding to the Early Childhood Assistance Program, to provide more childcare programs and resources.

Governors and state lawmakers are also focused on expanding access to pre-kindergarten. In Missouri, Governor Mike Parson (R) is focused on expanding pre-kindergarten options for families with lower incomes through additional state investments. Missouri is among the half of states without a version of the federal tax credit to assist parents with child care, according to the [Committee for Economic Development](#). In Michigan, Governor Gretchen Whitmer (D) [outlined plans](#) and called on state lawmakers to expand pre-K for all 4-year-olds.

States Better Prepared for Economic Downturn

As [outlined by](#) the National Association of State Budget Officers, after two consecutive years of widespread and sizeable budget surpluses and recent state policy actions to strengthen their reserves, states are now more financially prepared than ever to handle an economic downturn. Rainy day fund balances reached new heights in fiscal 2022, after already growing sharply in fiscal 2021. Based on enacted fiscal 2023 budgets, state reserves are projected to increase further by the end of the current year. While not all states would necessarily have to tap their reserves in the event of a recession, having a robust rainy-day fund is a helpful tool many states rely on to manage fiscal uncertainty.

Trouble could be on the horizon. In California, for example, lawmakers are anticipating a more than \$20 billion budget deficit. In response, Governor Gavin Newsom's (D) FY24 budget proposal included spending cuts to public health, transit, housing, and climate programs. State legislative leadership has said they intend to avoid budget cuts. More to come.

Republican Lawmakers and Officials Target ESG Investments

Republican lawmakers and officials have criticized Environmental, Social, and Governance (ESG) investing, particularly when it comes to money from government employees and taxpayers. Republican Chief State Financial Officers – led by TX and WV – have led the way after flipping five auditor/controller/treasurer seats in 2022 (KS, IA, MO, NV, and WI) and focused their attention on divesting state pension funds from financial institutions that incorporate ESG in investment decisions, among other policy proposals. Governors have also weighed in, most notably the recent anti-ESG coalition of 18 Republican governors led by Governor Ron DeSantis in Florida. At least seven states, including Oklahoma, Texas and West Virginia, have already enacted anti-ESG laws.

Infrastructure

States Are Prioritizing Broadband Expansion

Fueled by federal stimulus dollars, states are driving historic investment into broadband expansion. Several states, including Alaska and Nebraska, recently stood up new statewide broadband offices. In Pennsylvania, Colorado, Connecticut, Idaho, Montana, Nebraska, New Mexico, New York, Virginia, South Carolina, Texas, Virginia, Wisconsin, Wyoming, and Alabama have all introduced broadband bills. In Texas, [legislation](#) would create a \$5 billion Texas Broadband Infrastructure Fund, which would be administered by the Texas Comptroller's Office. In Alabama, Governor Kay Ivey (R) recently signed legislation making an additional \$260 million in funding from the American Rescue Plan Act available for broadband deployment.

The National Telecommunications and Information Administration (NTIA) is expected to announce in June how much funding each state will receive from its \$42.5 billion Broadband, Equity, Access and Deployment, or BEAD, grant program, which promises to set off a flurry of activity.

States Aim to Improve Water Infrastructure

Aside from broadband, roads, and bridges, another recurring issue in several states is the need to develop, repair, and maintain water infrastructure. California, Colorado, Michigan, Nebraska, New Mexico, Texas, Utah, and Minnesota are just a few of the states that are prioritizing the issue. In Michigan, Governor Gretchen Whitmer (D) has proposed investments to replace thousands of lead pipes across the state. In Texas, [legislation](#) is moving that would create a new Water Supply for Texas Fund to pay for new water projects and upgraded infrastructure.

Driven by drought and general water availability concerns, western states lawmakers are also focused on water infrastructure and access both through additional investments and other measures. In Arizona, California, Texas, Utah and Washington state, for example, lawmakers are considering legislation that aims to protect their states' water supplies by banning foreign companies from owning or leasing land. This mirrors similar efforts in other states to prohibit foreign land ownership, principally from Chinese investors.

Some States Have Focused on Housing Infrastructure

Lastly, some states are looking closely at housing infrastructure, including Arizona, Colorado, New York, Oregon, South Dakota, Vermont, and Washington, among others. In South Dakota, Governor Krisi Noem (R) signed into law a \$200 million housing infrastructure [bill](#) that will provide loans and grants for the construction of affordable housing, with a focus on workforce housing.

In Oregon, two measures (HB [2001](#) and [5019](#)) is making its way through the legislature that dedicate resources to building more affordable housing in the state and help address homelessness. The state's Democratic governor, Tina Kotek, had issued an executive order immediately after taking office in January calling on Oregon to produce 36,000 new housing units a year, up from 22,000 or so builders now create in a year. In Washington, Governor Jay Inslee (D) has proposed borrowing billions to accelerate housing construction, though the proposal is [meeting resistance](#) in the state legislature. In Florida, Governor Ron DeSantis (R) recently signed a [bill](#) into law that provides over \$700 million to the Florida Housing Finance Corporation for programs to increase workforce housing options as well as help workers buy homes. The measure also strips local governments of the power to pass rent control measures.

Education

Addressing Learning Loss Still a Priority

According to the latest National Assessment of Educational Progress (NAEP), nearly two decades of learning progress have been wiped out. Average math scores for fourth and eighth graders in 2022 fell by five and eight points, respectively, compared with 2019 levels, while average reading scores fell by three points. Buoyed by federal stimulus, states have and continue to respond in a variety of ways, including through grant programs for students and families, increased tutoring resources, and out of school programs. In Virginia, for example, Governor Glenn Youngkin (R) recently announced a [plan](#) to provide grants for qualifying families to cover extra educational expenses and a web tool to provide comprehensive data on student learning for parents and teachers. In Connecticut, Governor Ned Lamont (D) launched an intensive math tutoring program for students in grade 6-9, who suffered learning loss during the pandemic. In Washington state, State Senate budget writers have proposed new investment of \$2.9 billion into the state's K-12 schools to address learning loss.

School Choice

School choice expansion has caught fire in Republican-led states. Republican lawmakers in [more than 30 states](#) have proposed legislation to create or expand tax-funded programs to help parents cover the cost of private education. This school choice trend follows Arizona and West Virginia, which implemented programs in 2022 and 2021 respectively. Arkansas, Iowa, and Utah are the latest states to expand school choice. In Utah, all families will be eligible to apply for up to \$8,000 for private school tuition and related expenses starting with the program's launch for the 2024-25 school year. Iowa and Arkansas will eventually make all families eligible for their respective programs after giving certain lower-income families preference as the programs are phased in.

Healthcare

Drug Pricing Legislation

Addressing rising healthcare costs remains a priority for state policymakers across the country. One area that has drawn bipartisan focus is the cost of prescription drugs. Lawmakers are exploring and deploying a host of policies to address this issue from establishing prescription drug affordability boards to authorizing drug importation to setting upper payment limits. Colorado, Florida, Maine, New Hampshire, New Mexico, and Vermont have enacted laws establishing importation programs for prescription drugs from Canada. All are waiting for Food and Drug Administration (FDA) approval. In Virginia, House Republicans, backed by Governor Glenn Youngkin (R), defeated a measure that would establish a state prescription drug affordability board.

Colorado continues to be a leader in this space with bills designed to regulate PBMs business practices (HB [1201](#) and [1227](#)), reduce premiums, increase hospital transparency, and lower the price of prescription drugs (HB [1195](#) and [1002](#)). Governor Jared Polis and legislative Democrats are also pushing a [bill](#) that would lift the limit on the number of drugs the state's prescription drug affordability board could cap prices on each year and also extend the board's authority from five to 10 years. Other states, led by California, have proposed legislation that would cap monthly insulin costs, such as Nebraska, North Dakota, and West Virginia.

In Connecticut, a bill backed by legislative Democrats is moving that would tie drug prices in the state to national prices negotiated by Medicare under the Inflation Reduction Act (IRA). Governor Ned Lamont (D)

had previously backed a comprehensive set of policies in his budget ([HB 6669](#)) and that would require the state to annually publish a list of prescription drugs that are experiencing major price spikes and commit the state to joint a multistate bulk purchasing consortium to negotiate prescription drug discounts.

In Florida, Governor Ron DeSantis (R) is pushing a [legislative proposal](#) targeting pharmacy benefit managers (PBMs). Among other provisions, the measure would prohibit PBMs from requiring customers to use a mail-in service for drugs and would ban spread pricing.

Mental and Behavioral Health Resources

States are also driving unprecedented resources into expanding mental and behavioral health services. In North Carolina, the state recently unveiled the [North Carolina School Behavioral Health Action Plan](#) that outlines a number of strategies, including establishing a telehealth pilot program in high-need and rural districts and increasing the ability of schools to identify health needs through student-focused prevention and support groups. In Nevada, legislators have proposed creating a Behavioral Health Workforce Development Center to train future staff ([AB 37](#)) and expanding the state health care provider student loan repayment program to behavioral health care providers who are not eligible under existing state laws ([AB 69](#)). In Ohio, two bills have been introduced in an effort to increase mental health awareness in schools. [House Bill 82](#) requires mental health training for school athletic coaches, and [House Bill 38](#) allows students to take three mental health days per year.

Medicaid Expansion

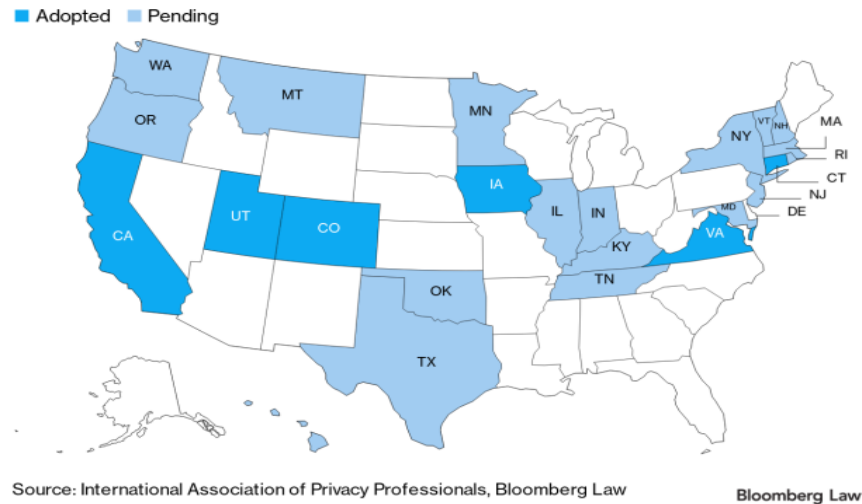
In North Carolina, where Democrats control the governorship and Republicans the legislature, lawmakers reached consensus to expand Medicaid. North Carolina's approval now leaves just 10 states - Wyoming, Kansas, Texas, Wisconsin, Tennessee, Mississippi, Alabama, Georgia, South Carolina, and Florida – that have not approved expansion. South Dakota voters previously approved expansion by ballot referendum.

Technology

More States Explore Privacy Legislation

With relative inaction on Capitol Hill, states are filling the void on the data privacy front. Iowa is the 6th state to enact a comprehensive [data privacy law](#). The structure of Iowa's legislation is like existing data privacy laws in Colorado, Connecticut, Utah, and Virginia. Upwards of 20 states are also considering privacy legislation. For example, lawmakers in Indiana, Iowa, Kentucky, Mississippi, New York, Oklahoma, Oregon, and Tennessee have proposed bolstering company disclosure and consumer consent over how their information is collected and processed. A New York bill also includes the right to review automated decisions that affect a consumer's access to housing, insurance, health care, and other services (read more from Bloomberg, [Data Privacy 'Panoply' Looms as States Move to Fill Federal Hole](#)).

States Forge Ahead on Data Privacy Laws as Congress Stalls



Targeting Social Media

Big tech is under fire on Capitol Hill and in states across the country. Policymakers are concerned about a variety of issues from market concentration and real or perceived anticompetitive practices to the role of algorithms in delivering content, content moderation, child safety, and other consumer protection concerns. An undercurrent to this dynamic is an increasing concern about foreign control and competition over platforms and supply chains with a strong eye towards China.

Social media platforms have drawn scrutiny. State legislatures have introduced a number of bills intended to limit mental health and safety risks that social networks, multiplayer video games and other online services may pose to some children and teenagers. Utah recently became the first state in the country to pass a measure requiring age verification and parental consent for individuals under 18. Similar measures are being pursued in Arkansas and Ohio. Utah also joined California in passing an age-appropriate design code bill that prohibits social media companies from employing features or design techniques leading to platform addiction for minors.

Environment

States are Taking the Lead on PFAS Legislation

Per- and poly-fluoroalkyl substances (PFAS), or forever chemicals, have garnered much attention lately both on the state and federal levels. Per Pew, several states have passed landmark laws in recent years, and now dozens of legislatures are considering hundreds of bills to crack down on using such compounds. The legislation would strengthen product disclosure laws, increase liability for polluters, bolster testing plans and enact water quality standards (see more, [A Slew of State Proposals Shows the Threat of 'Forever Chemicals'](#)). In Minnesota, one [bill](#) moving through the legislature would ban non-essential uses of PFAS in children's products, cookware, cosmetics, dental floss, and other products. In West Virginia, Governor Jim Justice (R) signed [legislation](#) into law that requires the state to find ways to dispose of firefighting foam linked to PFAS pollution. Find an overview of recently introduced PFAS-related bills [here](#).

Climate and Renewable Energy Bills

Climate and renewable energy bills are proliferating in Democratic-led states. Because states are the primary regulators of energy utilities, the environment is conducive for action. For example, a package of climate bills was introduced in California to hold corporations accountable for their greenhouse gas emissions. In New York, [legislation](#) has been introduced that would create a Climate Change Super Fund, which would require oil and gas producers to pay \$3 billion dollars a year for the next 25 years for their share of total greenhouse gas emissions. In Minnesota, lawmakers are weighing the strictest clean transportation standard in the nation on the heels of Governor Tim Walz signing a bill that requires 100 percent clean electricity in the state by 2040. The new bill – [SF 2584](#) – would require a reduction in the carbon intensity of transportation fuels by 25 percent below 2018 levels by 2030, 75 percent by 2040, and 100 percent by 2050.

Other

A Continued Push for Online Sports Wagering

This year, sports betting has remained a hot topic in state legislatures. Most notably, legislation to legalize sports betting was resurrected just in time for Georgia's Crossover Day deadline. While authorizing legislation in the long sought-after state of Georgia failed, other states, including North Carolina and Vermont, appears poised to expand online sports betting. Furthermore, Texas has a pair of bills that seek to legalize and regulate mobile sports betting, which could draw bipartisan support.