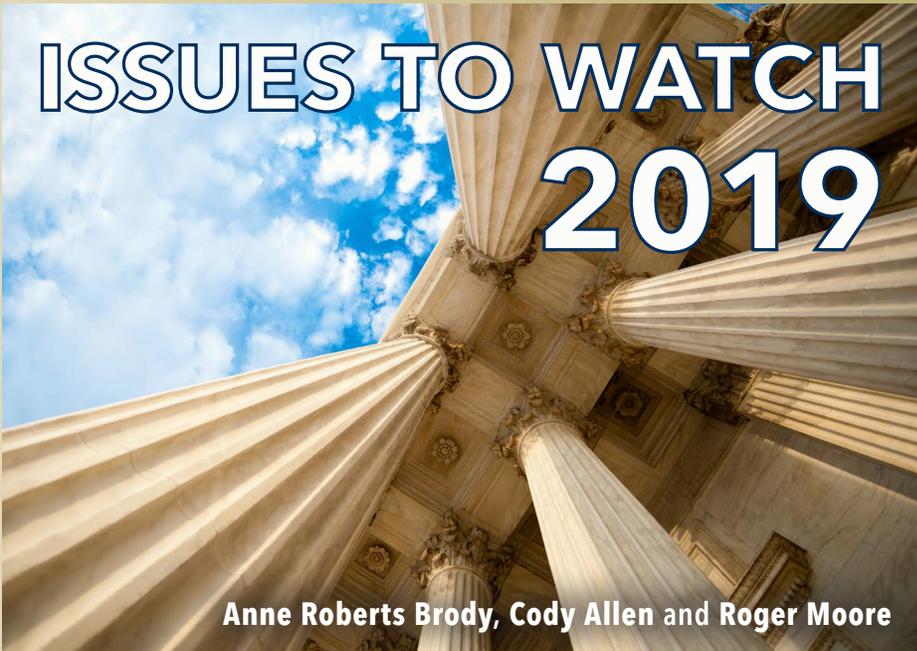


**Southern
Office of
The Council
of State
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As the 2019 legislative cycle begins, legislators across the South are preparing and pre-filing legislation to address emerging and relevant policy issues in their states. With its regional focus, the **Southern Legislative Conference (SLC)** is uniquely positioned to research and identify current and emerging policy issues and trends. This report was prepared by SLC policy analysts **Anne Roberts Brody, Cody Allen and Roger Moore** as a snapshot of issues and trends that are anticipated to emerge during the 2019 legislative term.

This report previews current and emerging trends that have been identified under the purview of the SLC’s six standing committees, which are relevant to policymakers across the South. The **Agriculture and Rural Development** preview discusses industrial hemp cultivation and the struggles of rural hospitals, while the **Economic Development, Transportation and Cultural Affairs** preview considers occupational licensing regulations and the funding of transportation and state infrastructure. In **Education** policy, teacher pay legislation and school counseling are trends to watch for the 2019 legislative term, while the management of coal combustion residuals—commonly referred to as coal ash—is an important emerging issue in the **Energy and Environment** arena. The **Fiscal Affairs and Government Operations** preview compares online sales tax legislation in the wake of the *South Dakota v. Wayfair* decision, and the **Human Services and Public Safety** preview examines balance billing policy at both the state and federal level.

Additional information about these or other issues that may be addressed in 2019 are available by contacting the SLC. Policy analysts are available throughout the year to provide expert assistance on various policy issues important to state legislatures and, when needed, can leverage the organization’s resources to provide additional support for both legislators and staff.

Hemp

On December 20, 2018, President Trump signed the 2018 Farm Bill into law. The bill establishes important changes for the hemp industry, including the legalization of hemp cultivation by defining hemp as an agricultural commodity, removing it from the list of federally controlled substances and making hemp farmers eligible for federal crop insurance. Furthermore, it explicitly allows the transfer of hemp-derived products across state lines for commercial or other purposes and places no restrictions on the sale, transport or possession of hemp-derived products. The bill also creates shared state-federal regulatory power over hemp cultivation and production, requiring state departments of agriculture to consult with the state's governor and chief law enforcement officer to devise a plan that must be approved by the secretary of the U.S. Department of Agriculture (USDA).

A majority of SLC states – 11 of 15 – have adopted legislation to allow the cultivation of industrial hemp for research purposes, consistent with federal law, as authorized by the 2014 Farm Bill. In 2019, one or more of the remaining SLC states may seek to legalize industrial hemp, while states with existing programs may continue to refine their policies while seeking USDA approval of a comprehensive regulatory framework. On December 20, the same day the 2018 Farm Bill was signed, Kentucky Agriculture Commissioner Ryan Quarles submitted a regulatory plan to USDA. Other SLC states may look to Kentucky as a model when crafting their comprehensive plans.

Of the four SLC states that have not legalized the cultivation of industrial hemp for research purposes – Texas, Louisiana, Georgia and Mississippi – future legalization likely could be in Texas and Georgia. In Texas, the House Agriculture and Livestock Committee heard testimony in July 2018 on the uses of industrial hemp and the economic feasibility of developing a market under existing or future state and federal regulations. The same committee unanimously passed House Bill 3587 (2017), but the legislation did not receive a vote in the full chamber. As the Texas Legislature convenes biennially, the 2019 legislative session presents the first opportunity in two years to consider hemp legislation. Meanwhile, in Georgia, House



Resolution 1473 (2018) created a House Study Committee on Industrial Hemp Production. The House Study Committee's final report recommends the state move forward in legalizing industrial hemp production in a manner which creates a safe and effective program within federal regulations.

Rural Hospitals

Rural hospitals continue to struggle to remain viable, their troubles both a symptom of economic distress in rural America and a harbinger of further decline. A recent study by the North Carolina Rural Health Research Program found that since 2010, 89 rural hospitals have closed nationwide. SLC states have been disproportionately impacted by the rural healthcare crisis, with 65 of the 89 closures occurring in SLC member states. Texas, Tennessee and Georgia have seen the most closures (15, 9 and 7, respectively). Notably, Arkansas, Louisiana and West Virginia – all states which expanded Medicaid – did not experience any rural hospital closures during this period.

As access to healthcare increasingly is a central focus of elections, aid to rural hospitals may take many forms during the 2019 legislative session. Some states may consider expanding Medicaid, as Virginia did in 2018. Other states may look to replicate the promising outcomes of Georgia's Rural Hospital Tax Credit Program, which has helped stem the loss of hospitals in the state since 2017. In South Carolina, lawmakers may seek to fortify the state's Rural Hospital Transformation Program. Meanwhile, states across the region likely will continue to pursue policies supporting and expanding telehealth services.

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Millions of occupations in the United States require licensing. If designed and implemented correctly, occupational licenses improve health and safety standards. However, studies suggest that excessive licensing requirements often block many Americans from pursuing occupations because the time and resources required to obtain and hold a license are too prohibitive.

Occupational Licensing

Millions of Americans work in occupations that require credentialing before they legally can work in their respective fields, a practice known as occupational licensing. According to the Bureau of Labor Statistics, nearly 25 percent of U.S. workers are required to obtain and hold a license to work, a five-fold increase since the 1950s.

If designed and implemented correctly, occupational licenses can improve health and safety standards by preventing unqualified individuals from practicing a profession. This ensures high-quality services for consumers and facilitates professional development and training for licensed employees. However, studies suggest that excessive licensing requirements often block many Americans from pursuing certain occupations because the time and resources required to obtain and hold a license are too prohibitive, leading to reduced competition in many fields and higher prices for consumers with few tangible benefits.

SLC states have taken steps in recent years to reform their occupational licensing requirements to promote greater economic opportunity, while preserving regulations that benefit public health and safety. In 2017, the Mississippi Legislature passed the Occupational Board Compliance Act, which created a three-person commission consisting of the governor, secretary of state and attorney general to oversee all proposed regulations by the state's various licensing boards. Similarly, in 2018, the Oklahoma Legislature passed a bill that establishes the Occupational Licensing Advisory Commission to review all licensing regulations in the state at least once every four years. Another bill in Louisiana, the Occupational License Review Act, also passed in 2018, examines the necessity of proposed and existing regulations. Additional efforts across the region to reform occupational licensing requirements are likely in 2019.

Transportation and Infrastructure Funding

Funding for transportation and other infrastructure needs, an important issue across the region in recent years, likely will remain a high priority in 2019. Since 2013, nine of the 15 SLC states have enacted legislation to increase their motor fuel taxes, most recently in 2018, when Missouri and Oklahoma both passed legislation. In Missouri, the proposed increase, which would have generated an additional \$420 million after increasing the tax by 10 cents, was rejected by voters during the November elections. Leaders in Alabama already have indicated that infrastructure funding, and perhaps a gas tax increase, will be a priority during the 2019 legislative session. These measures follow similar pieces of legislation that South Carolina, Tennessee and West Virginia passed in 2017.

In 2018, the Georgia General Assembly passed landmark mass transit legislation creating a new entity for coordinating transit planning and funding for the 13-county Atlanta metropolitan region. The bill was part of a broader transportation initiative that also allotted an additional \$100 million in bond money for infrastructure projects across the state. Similarly, the Mississippi Legislature passed the Infrastructure Modernization Act with bipartisan support during a special session in 2018, which dedicates hundreds of millions of dollars from tax revenues and bonds for building and repairing highways and bridges. North Carolina passed a bill, known as the Build NC Bond Act of 2018, that establishes a new financing tool for expediting critical highway projects. The new law authorizes the issuance of up to \$300 million annually through 2028 for road projects, repaid through transportation revenues from the Highway Trust Fund.

Teacher Pay

The 2018 legislative sessions were marked by teacher demonstrations across the country, with the SLC states featuring prominently as teachers protested low wages. According to the most recently available data, in 2017 the average annual wage for teachers was \$58,780 nationally and \$52,093 in SLC states. For new teachers, the salaries were even lower, averaging \$38,617 nationally and \$36,075 in SLC states.

Teacher demonstrations in West Virginia, Kentucky, Oklahoma and North Carolina gained national attention and – in West Virginia, Oklahoma and North Carolina – led to the passage of legislation addressing teacher pay. In West Virginia, lawmakers increased the annual salaries of public school teachers by 5 percent. Lawmakers in Oklahoma passed legislation to increase teacher pay by \$6,000. Teachers in North Carolina received a 6.5 percent increase, along with an additional raise of \$70 per month for veteran teachers with more than 25 years of experience. Performance-based bonuses of up to \$2,000 also were granted for middle school reading and math teachers.

Revenue sources supporting these pay increases varied. In West Virginia, lawmakers redirected \$82 million in proposed budget increases for other departments to avoid increasing taxes. Lawmakers in Oklahoma funded the salary increase through two separate measures: a funding bill increasing oil and gas production, cigarette and motor fuel taxes; and a second bill capping itemized deductions at \$17,000. The North Carolina teacher pay increase and bonuses were funded via the state's revenue surplus.

Education funding – with an emphasis on teacher salaries and performance-based bonuses – will continue to be a focus during next year's legislative sessions. Governors in Arkansas, Louisiana, Mississippi and Texas already have pledged to address this issue in 2019.

School Counseling

Recent school shootings have underscored the importance of identifying and addressing students' mental and behavioral health. School counselors can be a valuable resource for schools in this area, however, existing statutes and regulations in Southern states do not provide sufficient frameworks for providing adequate counseling services in public schools.



According to the American School Counselor Association (ASCA), best practices for the mental and educational wellbeing of students necessitate school counselors spend at least 80 percent of their work time providing direct services to students and only 20 percent tending to other tasks. Direct services include: individual and small group counseling, crisis counseling, facilitation of peer counseling, prevention and intervention counseling, and referral services for students and families. Only two states in the nation – North Carolina and Tennessee – meet the ASCA recommended guidelines for counseling services.

In 2013, North Carolina passed legislation specifying the duties of school counselors and requiring that at least 80 percent of their work time be spent providing ASCA-recommended direct services to students. Additionally, North Carolina ranks fourth among SLC states – and 13th nationally – with an average student-to-counselor ratio of 375-to-1, well below both the national and SLC averages (464-to-1 and 411-to-1, respectively).

In Tennessee, the State Board of Education is authorized by statute to set the guidelines and operations of school counseling programs. In 2017, the Board set standards requiring counselors to meet the ASCA recommended 80-20 direct services ratio. The rule also specifies the duties and tasks that constitute direct and support services to students to meet these guidelines. Tennessee ranks first among SLC states – and eighth nationally – with an average student-to-counselor ratio of 336-to-1. In 2019, further developments in both school counseling policy and increased funding at both the federal and state levels are likely as ongoing school safety commissions begin to release their recommendations.

In June 2018, Oklahoma became the first state in the nation to receive approval from the EPA to operate a permit program for disposing of CCRs. The approval authorizes the state Department of Environmental Quality to process permit applications and enforce violations for existing and future coal ash units based on state requirements, rather than federal regulations. Oklahoma's CCR permit program likely will serve as a replicable model by other SLC states in 2019.

Coal Ash

Coal combustion residuals (CCRs), commonly known as coal ash, are created when coal is burned to produce electricity and contain an amalgamation of toxic elements including mercury, cadmium and arsenic. Most coal ash is captured by control devices; approximately 45 percent of captured coal ash is recycled to make concrete, pavement and other materials, with the remaining product stored in landfills, quarries and ponds. Nationwide, there are approximately 2,000 coal ash storage facilities, including more than 400 landfills and 676 ponds.

When the structural integrity of a coal ash storage facility is compromised, the toxic elements contained in the coal ash can be released into ground and surface water, causing contamination. Concerns over water contamination caused by coal ash have permeated SLC states for nearly a decade. In 2008, a facility dike at the Tennessee Valley Authority's Kingston Fossil Fuel Power Plant gave way, releasing 5.4 million cubic yards of coal ash, smothering 300 acres of land and more than two dozen homes in Tennessee. As with the Kingston incident, contamination often is caused by structural deficiencies such as unlined landfills or breaches in storage ponds.

Water quality concerns recently have been revived following ground and surface water contamination in several SLC states. In North Carolina, flooding caused by Hurricane Florence inundated coal ash storage pits, leading to discharges in two rivers—Neuse and Cape Fear—though state environmental officials found that the contamination did not occur at levels dangerous



to human health. Meanwhile, groundwater contamination, believed to be caused by coal ash buried in landfills and submerged in ponds, has been identified in Kentucky and Tennessee.

Given the numerous floods—caused by hurricanes and other severe storm systems—experienced by SLC states in recent years, policies encouraging utilities to fortify or relocate coal ash facilities in flood-prone areas could be considered in the 2019 legislative cycle. Lawmakers also may consider requiring assessments of site stability for new and existing coal ash facilities. In Virginia, for example, a joint subcommittee is studying options for dealing with more than 27 million cubic yards of coal ash stored in ponds and landfills at four sites in the vulnerable Chesapeake Bay watershed.

Beyond policies aimed at assessing and enhancing the stability of coal ash storage facilities, states may seek approval from the U.S. Environmental Protection Agency (EPA) to oversee their own coal ash programs. In 2016, the Water Infrastructure Improvements for the Nation Act amended Section 4005 of the Resource Conservation and Recovery Act to provide for state CCR programs, granting the EPA authority to review and approve state CCR permit programs.

In June 2018, Oklahoma became the first state in the nation to receive approval from the EPA to operate a permit program for disposing of CCRs. The approval authorizes the state Department of Environmental Quality to process permit applications and enforce violations for existing and future coal ash units based on state requirements, rather than federal regulations. Oklahoma's CCR permit program likely will serve as a replicable model by other SLC states in 2019.

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Online Sales Tax

In *South Dakota v. Wayfair, Inc.* (2018) the U.S. Supreme Court overturned a longstanding decision impacting the collection of online sales tax. Previous case law, set by *Quill Corp v. North Dakota* (1992), held that the Dormant Commerce Clause barred individual states from compelling retailers to collect taxes from remote mail order or online sales, unless the corporation had a physical presence in the state – commonly referred to as the nexus provision. The removal of the physical nexus requirement, in favor of an economic one, was widely anticipated and South Dakota’s petition to the Court was supported by 40 other states. In anticipation of the Court’s decision, 20 states had pending or already enacted legislation challenging *Quill* and ready to take effect upon its overturning.

South Dakota’s Senate Bill 106 (2016), which was the subject of the successful legal challenge, set the standard for the minimum thresholds – referred to as an economic nexus requirement – remote sellers must exceed in order to be responsible for the collection and remittance of state sales tax. The two thresholds, calculated from sales made to South Dakota purchasers in the previous or current calendar year, are: gross revenue for goods and services exceeding \$100,000; or if the seller sold tangible personal property or products in 200 or more separate transactions. This created a safe harbor for smaller sellers, addressing a primary concern held by opponents of the nexus provision. The bill also did not obligate sellers to remit taxes retroactively, another pre-petition concern of opponents. As South Dakota’s SB 106 survived a review by the U.S. Supreme Court, it may serve as a model for other states seeking to implement tax collection of remote retailers.

SLC State Legislation, Regulations and Rules for State Sales Tax Collection by Remote Sellers

Alabama	HB470 (2018)
Georgia	HB61 (2018)
Kentucky	HB366 (2018)
Louisiana	HB 17 (2nd Ex. Sess. 2018)
Mississippi	MSDOR Rule 35.4.03.09 (2017)
North Carolina	NCDOR SD-18-6 (2018)
Oklahoma	HB1019 (2nd Ex. Sess. 2018)
South Carolina	SCDOR Ruling #18-14 (2018)
Tennessee	Tenn. Comp. R. & Regs.1320-05-01-129(2) (2017)
West Virginia	WV State Tax Dept. Admin. Notice 2018-18 (2018)

Nine Southern states began enforcing the economic nexus requirement prior to the end of 2018. Three of these states – Alabama, Georgia and Mississippi – set their threshold at sales exceeding \$250,000. For Alabama and Georgia, the amount is calculated for sales that occurred in the previous or current calendar year, while Mississippi calculates for sales during the prior 12-month period. Georgia also included an alternate threshold of 200 or more separate transactions in the current or previous calendar year.

Meanwhile, five Southern states – Kentucky, Louisiana, North Carolina, South Carolina and West Virginia – passed legislation similar to South Dakota’s SB 106. The remote seller threshold was set at sales exceeding \$100,000 in the current or previous calendar year or, alternatively, for sellers who conducted 200 or more separate transactions in the state for the current or previous calendar year. South Carolina, however, did not include an alternative transaction threshold in its statutory language.

Oklahoma, an outlier among Southern states, set a lower requirement for remote sellers. Any remote sellers who have sold at least \$10,000 worth of taxable goods during the previous 12-month period must collect and remit taxes. In Tennessee, rules are in place to enforce an economic nexus requirement on sellers whose taxable sales exceed \$500,000, but enforcement is pending the General Assembly’s review of the *Wayfair* decision. Remote sellers are encouraged and able to voluntarily collect and remit sales taxes to the state Department of Revenue, however, it is likely this matter will be revised during the 2019 session to enforce mandatory collection.

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allow providers and insurers to identify an appropriate amount to be charged for patient care. Partial protections support patients in some, but not all, cases by limiting balance billing in specified care settings, such as emergency departments, or putting restrictions on insurers but not providers. Comprehensive protections generally do not have such limitations.

Balance Billing

Balance billing, also frequently referred to as “surprise medical billing,” occurs when a patient inadvertently receives treatment from an out-of-network healthcare provider and subsequently is billed for the difference between the insurance company’s reimbursement rate and the amount charged by the out-of-network provider. Balance billing concerns have attracted the attention of lawmakers at both the state and federal level, particularly as they relate to patients seeking care at hospitals, emergency departments or other facilities that are in their insurance network, though some of the individual healthcare providers within those facilities are not. Bills for services provided can amount to hundreds or thousands of dollars; in extreme cases, patients have received bills surpassing \$100,000.

According to the Commonwealth Fund, a New York-based nonprofit focusing on healthcare policy, 21 states have enacted patient protections against balance billing as of June 2017. Four SLC states – Mississippi, North Carolina, Texas and West Virginia – have passed laws providing partial balance billing protections for patients, while Florida has more comprehensive protections, the only state in the region to do so. In 2018, Missouri became the most recent SLC state to successfully pass a bill providing protections from balance billing.

Protections may include restrictions on healthcare providers by prohibiting or limiting charges sent to patients for out-of-network care. Alternatively, health insurers may be required to pay a provider the entire cost of care beyond negotiated rates. In some states, dispute resolution mechanisms have been established to

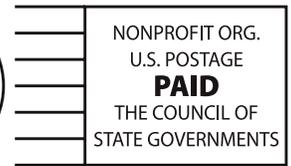
Other SLC states introduced legislation in 2018 to address some of the most contentious issues surrounding balance billing. In Georgia, the General Assembly attempted to pass a bill that would have forced insurance companies to cover services received at emergency rooms by forcing them to accept rates from a New York-based, independently maintained database in the event charges cannot be negotiated between the out-of-network provider and the insurance company. The bill, supported by physicians’ groups but opposed by insurers, failed to pass.

Similarly, in Virginia, a bill was introduced in the House of Delegates to prohibit out-of-network providers from balance billing a patient for specified services beyond the amount allowed by the patient’s health insurance plan. According to the proposed legislation, only ancillary services would be included, such as screenings, diagnostics or laboratory services in connection with other healthcare received at an in-network facility. The bill did not pass, though similar legislation may be considered during the 2019 session.

In September 2018, a bipartisan group of U.S. senators released draft balance billing legislation that mirrors efforts at the state level. The bill, as proposed, would apply to emergency services from an out-of-network provider at an out-of-network facility; non-emergency services following an emergency service from an out-of-network facility; and non-emergency services performed by an out-of-network provider at an in-network facility. Under all three scenarios, patients would be protected from costly and confusing medical bills resulting from inadvertently visiting out-of-network providers.



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Founded in 1933, **The Council of State Governments (CSG)** is our nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national and international opportunities to network, develop leaders, collaborate and create problem-solving partnerships.

Opened in 1959 as the final regional office of CSG, the mission of the Southern Office is to promote and strengthen intergovernmental cooperation among its 15-member states, predominantly through the programs and services provided by its **Southern Legislative Conference (SLC)**. Legislative leadership, members and staff depend on the SLC to identify and analyze solutions for the most prevalent and unique

state government policy issues facing Southern states. Member outreach in state capitols, leadership development and staff exchange programs, meetings, domestic and international delegation study tours, and policy fly-ins by the Southern Office support state policymakers and legislative staff in their work to build a stronger region.

Established in 1947, the SLC is a member-driven organization and serves as the **premier public policy forum for Southern state legislatures**. The SLC Annual Meeting and a broad array of similarly well-established and successful SLC programs — focusing on both existing and emerging state government innovations and solutions — provide policymakers diverse opportunities to interact with policy experts and share their knowledge with colleagues.