

Notable Bills and Trends in 2013 State Legislatures



Introduction

- As the only national organization that represents county governments in the U.S., NACo focuses its lobbying and policy making efforts on federal legislation, which impacts all counties across the country.
- NACo recognizes, however, that legislation at the state level is also important to counties, which are directly affected by bills that move through their state capitols. Aside from the effect of an individual state's legislation on its counties, state legislation on a particular issue, especially when it occurs across several states, can also portend federal legislation that will impact all counties.
- As such, NACo has set out to gain a better understanding of legislation at the state level that affects counties. This project aims to highlight legislative trends occurring across states, as well as individual pieces of legislation that are particularly noteworthy.
- State associations have been immensely helpful in providing legislative summaries that have made this project manageable, and NACo will continue to rely on productive collaboration with state associations to increase our knowledge of key state legislative activities.

Introduction

Highlighted Issues

- Online Sales Tax
- Voting Rights
- Transportation
- Justice and Mental Health

States' Role in Online Sales Tax Debate

- With the fate of the Marketplace Fairness Act yet to be determined, several states introduced legislation in the 2013 session aimed at collecting taxes from online sales.
- *Quill v. North Dakota*, a 1992 Supreme Court case, ruled that a state could not require retailers to collect sales tax unless those retailers had a “physical presence” in the state.
- The Court in *Quill* explicitly stated, however, that Congress could overrule its decision through legislation, and the Marketplace Fairness Act, if passed, would supersede *Quill*.
- States cannot overrule *Quill* in this way, and thus must operate around its contours. As a result, several states passed laws in 2013 sessions that explicitly assert that retailers have a “physical presence” in their state if they operate through affiliates or subsidiaries within the state’s borders, even if they don’t necessarily have a brick-and-mortar version of their online store in the state.

Online Sales Tax

Notable State Legislation in 2013

“Physical Presence” Bills	Bills on the Marketplace Fairness Act (MFA)
<p>Minnesota: H.F. 677 creates a rebuttable presumption that sellers have a physical presence if they have affiliates in the state and garner more than \$100,000 in sales to state residents. This law led Amazon to end its relationships with Minnesota affiliates. <i>Signed into law on May 23, 2013.</i></p>	<p>Virginia: H.B. 2313 states that the majority of revenues from MFA, should it be passed, will be allocated to transportation funding. One percent of revenues would go to counties, who must spend at least half of the funding on transportation needs. <i>Signed into law on May 13, 2013.</i></p>
<p>Maine: L.D. 346 creates a rebuttable presumption that sellers who are affiliated to a person, aside from common carriers, with a substantial physical presence in the state, must collect online taxes. <i>Signed into law on June 5, 2013.</i></p>	<p>Maryland: H.B. 1515 sets forth incremental yearly gas tax increases beginning in 2014, but if the MFA is enacted by December 2015, the gas tax increase would be substituted by the online sales tax and its revenue. The Maryland Association of Counties did not take a position on H.B. 1515 because revenue from the bill’s tax increases is not shared with counties, although gas tax revenue has traditionally been shared. <i>Signed into law on May 16, 2013.</i></p>
<p>Iowa: H.F. 625 is similar to Maine law; examples in both laws include affiliates who sell similar products under the same name as the seller; deliverymen and installation experts and individuals who perform services and repairs. <i>Signed into law on June 11, 2013.</i></p>	<p>Colorado: HB13-1295 sets out to position Colorado to meet the requirements of MFA, should it become law, so that the state can begin collecting taxes on online sales. <i>Signed into law on May 28, 2013.</i></p>
<p>Michigan: H.B. 4202 creates the presumption that sellers have a physical presence in the state if they have affiliates in the state who are subject to taxation. <i>Introduced on February 6, 2013.</i></p>	<p>Ohio: H.B. 59 would have created a rebuttable presumption of physical presence for sellers with affiliates in Ohio and annual sales of greater than \$1 million, but Governor John Kasich used a line item veto to strike that provision, citing the federal government’s right to regulate interstate commerce. The surviving portions of H.B. 59 express the intent of the Ohio General Assembly to enact conforming state legislation upon the enactment of the Marketplace Fairness Act in Congress. <i>Signed into law on June 30, 2013.</i></p>

Voting Rights

State Voting Laws and *Shelby County*

- In June of this year, the Supreme Court decided in *Shelby County v. Holder* that Section 4 of the Voting Rights Act was unconstitutional. Section 4 contained a formula, deemed by the Court to be outdated, that determined which states and local governments had to seek federal preclearance before implementing changes to their voting laws.
- Fifteen states fell under this preclearance requirement and were considered “covered jurisdictions”: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia were covered as a whole, while California, Florida, Michigan, New York, North Carolina and South Dakota were covered in part.
- Shortly after the *Shelby* ruling, Texas announced that it would begin implementing S.B. 14, which was passed in 2011 but had not received federal preclearance. S.B. 14 requires voters to show government-issued photo ID, and is considered one of the strictest voter ID laws in the U.S. The Department of Justice is suing Texas to stop implementation of the law.
- Similarly, North Carolina passed H.B. 589 after the *Shelby* ruling, and is currently being sued by the Department of Justice over the law. H.B. 589 is also falls into the category of the most strict voter ID laws, requiring voters to present acceptable forms of ID, which are listed and limited to government-issued photo IDs.
- Other formerly “covered jurisdictions” could introduce new voting laws in their next legislative session, or begin implementation of previously passed legislation that had not obtained federal preclearance. It is likely that such actions would lead to litigation with the Department of Justice.
- Of course, the majority of states were not directly affected by *Shelby County*, since they were not “covered jurisdictions.” Many of these states introduced legislation in 2013 that would change their voting laws. This report focuses on laws pertaining to acceptable forms of voter identification; voter registration and early voting were also commonly found issues.

Voting Rights

Voter ID Laws in 2013 State Legislatures

Enacted Laws that Tighten ID Requirements

more restrictive

North Carolina: H.B. 589 will require voters to show acceptable photo IDs beginning in 2016. Acceptable forms of ID are enumerated as follows: state driver's licenses and special identification cards, as well as U.S. passports and military or veteran IDs. Student IDs will not be accepted. *Signed into law on August 12, 2013.*

Tennessee: S.B. 125 requires voters to show valid photo IDs issued by the U.S. government or Tennessee. The measure explicitly prohibits the use of county or municipal identifications for voting purposes. Student IDs are not accepted. *Signed into law on April 23, 2013.*

Oklahoma: S.B. 282 strengthens voter ID requirements, limiting acceptable forms to government issued photo IDs that are unexpired, except for voter ID cards, which do not have photographs. *Signed into law on April 12, 2013.*

North Dakota: H.B. 1332 requires voters to present photo ID. Driver's licenses and identification cards issued by the state, as well as tribal IDs, are acceptable, as are "forms of identification prescribed by the Secretary of State." The North Dakota Association of Counties is collaborating with the Secretary's office to create an acceptable ID for students. *Signed into law on April 18, 2013.*

less restrictive

Arkansas: S.B. 2 was vetoed by Governor Beebe, but the legislature was able to override the veto. S.B. 2 requires voters to present photo IDs, but is not as restrictive as North Carolina and Tennessee's laws in that it allows student IDs, handgun permits, employee IDs and public assistance IDs. Will take effect when the state provides free ID cards or January 2014, whichever is later.

Virginia: H.B. 1337 and S.B. 1256 combined require voters to present ID that has a photograph and is current and valid. Student IDs are still acceptable. Previously, social security cards, utility bills, bank statements, government checks or paychecks that showed the name and address of the voter were acceptable. *Signed into law on March 23, 2013.*

Voting Rights

Voter ID Laws in 2013 State Legislatures

Pending Legislation Introduced in 2013 that would Tighten Voter ID Laws

Illinois: H.B. 976, S.B. 1393, S.B. 1682 would all require specified forms of photo ID for voting. *Legislative session ongoing.*

Iowa: S.S.B. 1012 would specify acceptable forms of photo ID for voting. *Legislative session carries over to 2014.*

Massachusetts: H.B. 592 would require specified forms of photo ID for voting. *Legislative session ongoing.*

Nebraska: L.B. 381 would require specified forms of photo ID for voting. *Legislative session carries over to 2014.*

New York: A.B. 3789 would require valid government-issued photo ID for voting. *Legislative session ongoing.*

Enacted and Pending 2013 Legislation that would Ease Voter ID Laws

New Hampshire: H.B. 595 eases voter ID laws by repealing a restrictive measure (S.B. 289) that was passed in 2012 and set to take effect on September 1, 2013. The 2012 law would have removed student IDs and photo IDs issued by local governments from the list of acceptable forms of ID. HB 595 restores those forms of ID to the list. *Signed into law on July 25, 2013.*

Michigan: H.B. 4938 would set forth a list of acceptable forms of voter ID that includes utility bills, paychecks, bank statements, student IDs and unemployment benefits cards, as well as numerous forms of photo ID. *Legislative session ongoing.*

Pennsylvania: S.B. 69 would set forth an expansive list of acceptable forms of ID for voters without driver's licenses, including paystubs, leases, credit card bills, vehicle registration cards or "any government issued documentation issued within the last year." *Legislative session ongoing.*

Transportation

2013 State Legislation that Increases County Transportation Funding Through Tax or Fee Revenue Reallocation or Expansion

Alabama: HB 514 authorizes counties to use funds from the state's 4-cent excise gas tax on vegetation management on county rights of way. Previously, such funds could only be used on resurfacing, restoring and rehabilitating paved roads and bridges or on replacing bridges. HB 514 was a priority bill for the Association of County Commissioners of Alabama. *Effective August 1, 2013.*

Colorado: HB 1110 enacts a new \$30 fee on electric vehicles and makes other changes to the process of collecting taxes and fees from electric and natural gas vehicles, resulting in additional Highway Users Tax Fund monies for state and local governments. *Signed into law on May 15, 2013.*

Indiana: HB 1001 appropriates 1% of state sales tax and 20% of sales tax on gasoline to state and local roads, and also eliminates gas tax diversions to state police. These changes will result in roughly \$65 million in additional annual funding for county roads. *Signed into law on May 8, 2013.*

Minnesota: Chapter 117 gives all counties the option to levy a \$10 per vehicle wheelage tax. Previously, only 5 counties were authorized to levy a \$5 per vehicle tax. Funds from this tax can only be used for "highway purposes." 47 of Minnesota's 87 counties have signed on to levy the tax. *Signed into law.*

Oklahoma: HB 1080 would apportion 5% of funds from motor vehicle fees to county bridge and road improvement over the course of two years. Both chambers passed the bill, but conferees were unable to agree and the measure is being held in conference until the legislative session resumes in 2014. HB 1080 is an agenda bill for the Association of County Commissioners of Oklahoma. *Held in conference.*

Texas: SB 1747 amends the Transportation Code to allow counties to designate County Energy Transportation Reinvestment Zones (CETRZ) in order to promote transportation infrastructure projects in areas affected by oil and gas exploration and production activities. The bill would allow counties to use revenue from taxes designated to a CETRZ to finance certain transportation projects. *Signed into law on June 14, 2013.*

Transportation

2013 State Legislation on Transportation Project Bidding

Nebraska: LB623 gives counties more flexibility in road and bridge projects by increasing the amount at which competitive bidding is required, from \$60,000 to \$100,000. The bidding amount for materials for these projects is increased from \$10,000 to \$20,000. *Signed into law on May 29, 2013.*

Nevada: SB 217 authorizes counties with population under 100,000 to perform their own work, rather than opening up competitive bidding, on projects that cost less than \$100,000. Counties with populations less than 45,000 can determine, at a hearing, whether they can perform their own work on projects ranging between \$100,000 and \$250,000. *Signed into law on June 2, 2013.*

North Carolina: S372 raises the Department of Transportation's informal bid limit for smaller infrastructure projects approved at the local level from \$1.2 million to \$2.5 million. Such a raise in bid limits was among the North Carolina Association of County Commissioners' legislative goals in 2013. *Signed into law on June 2, 2013.*

Other Notable State Legislation in 2013

- **Alabama:** S.B. 192 authorizes the sale of bonds by state DOT to fund the Rural Assistance Match Program (RAMP) portion of the Alabama Transportation Rehabilitation and Improvement Program (ATRIP). RAMP gives eligible counties \$1M to put towards the 20% match requirement for Federal Highway funds distributed under ATRIP, effectively granting those counties \$5M in overall funding for transportation projects.
- **Colorado:** S.B. 48 authorizes counties to utilize highway users tax fund (HUTF) dollars for transit-related projects, such as bicycle or pedestrian lanes, under the logic that developing such projects will decrease traffic on highways and ultimately require less highway maintenance spending. State DOT already had authorization to spend HUTF funds on transit projects, counties are now on equal footing.
- **Florida:** H.B. 319 applies proportionate share funding process to counties that opt out of traditional transportation concurrency systems. The measure removes the ability of such counties to deny development projects based on transportation capacity concerns, so long as the developer agrees to make partial payment towards improvements, even if additional funds are not available to enact such improvements.

Notable State Legislation in 2013

- **Nebraska:** LB561 makes significant changes to the state's juvenile justice system, most notably shifting the supervision of juvenile offenders from the state's Department of Health and Human Services to the state's probation system. LB561 also features increased funding to county and community-based juvenile aid programs and calls for collaboration between state and local governments on juvenile justice issues. *Signed into law on May 29, 2013.*
- **New York:** A. 7695 authorizes attorneys employed by the State Commission of Correction to issue substitute jail designations, allowing counties to send inmates to other suitable places within the county or to other counties when a jail becomes overcrowded, unfit or unsafe for the confinement of inmates. *Signed into law on July 12, 2013.*
- **North Carolina:** S. 321 addresses county inmate medical costs by capping the rate at which counties are required to reimburse medical providers for costs of medical care provided to inmates. The cap is the lesser of 70 percent of the then-prevailing rate or twice the Medicaid rate for the particular service. *Signed into law on August 23, 2013.*
- **Texas:** S.B. 1185 authorizes Harris County to launch a pilot program aimed at diverting mentally ill residents from local jails into appropriate medical and social programs for treatment by providing such residents with medical, social and housing assistance before and after their release from jail. Texas and Harris County will each contribute \$5 million per year to the program, which will be assessed at the end of 2016. *Signed into law on June 14, 2013.*