
LEGAL UPDATE

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NATIONAL CONFERENCE OF STATE LEGISLATURES STATE RESILIENCE POLICY AND PRACTICES COHORT MEETINGS

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Date and Location. A series of six meetings of the National Conference of State Legislatures (NCSL) State Resilience Policy and Practices Cohort took place between February 17, 2022, and August 15, 2023. The first five meetings were conducted as a videoconference and the sixth meeting occurred at the NCSL Annual Summit in Indianapolis. Members were also invited to attend and participate in the NCSL Task Force on Energy Supply meeting that took place in San Diego in December 2022.

Introduction and Purpose. The State Resilience Policy and Practices Cohort consists of 18 members, both elected officials and staff, representing 16 states. The purpose of the cohort is for members to share expertise and learn about innovative policies and programs related to resilience from disasters.

Available Federal Funding Programs. Members of the cohort were presented with information about federal funding available for states to use for mitigation purposes, primarily due to the passage of the federal Infrastructure Investment and Jobs Act (IIJA). The information presented focused on six types of core infrastructure: transportation, broadband, water, energy, cybersecurity, and disaster mitigation and resiliency projects. Mr. Ryan Berni, White House Senior Advisor for Infrastructure Implementation, discussed programs and strategies that have been adopted to spread information about the IIJA. Mr. Steve Cochran, Associate Vice President of State Affairs, Environmental Defense Fund, Ms. Kristen Hildreth, Legislative Director of Natural Resources and Infrastructure, NCSL, and Ms. Nicole Ezeh, Legislative Specialist, NCSL, all provided more detailed explanations of programs under the IIJA.

Multiple new funding opportunities are available to state and local governments through the Department of Energy. One such opportunity is a new grant program for states to improve electric grid resiliency and prevent power outages. Five hundred million dollars is available to states each year for FFY 2022 through FFY 2026. A grant under this program requires the state to match 15 percent of the funding for a project. Another program to upgrade electric grids and ensure reliability and resiliency makes \$5 billion available to states, tribes, and local governments that demonstrate innovative approaches to transmission, storage, and distribution infrastructure. A third opportunity is the establishment of an energy efficiency revolving loan fund in the existing State Energy Program to aid building owners with energy audits and efficiency upgrades.

The IIJA amended the federal Stafford Disaster Relief and Emergency Assistance Act to expand eligibilities within the Hazard Mitigation Grant Program to include the replacement or installation of wildfire-resilient electrical transmission or utility poles. The program requires a 25 percent match from the non-federal entity, which may be waived for insular areas. The IIJA more than triples the amount of funding available for future flood mitigation projects. The IIJA makes \$200 million available each year for FFY 2022 through FFY 2026 for the Building Resilient Infrastructure and Communities (BRIC) program.

The IJA appropriates \$100 million per year for FFY 2022 through FFY 2026 for infrastructure grant programs developed pursuant to the Safeguarding Tomorrow through Ongoing Risk Management (STORM) Act. The IJA also invests billions of dollars to programs related to transportation, wildfire management, Army Corps of Engineers projects, western water conservation, flood mitigation, weatherization, and cybersecurity.

Managing and Spending Federal Funds. Mr. Bryan Koon, Vice President of Homeland Security and Emergency Management, IEM, presented information on how states can maximize the effect of federal moneys received for disaster resilience projects. Mr. Koon emphasized the need for legislatures to coordinate with executive branch agencies on staffing, funding, and planning; make themselves aware of federal funding opportunities; and work with local governments and private sector businesses to share costs for projects. Mr. Koon highlighted cost-saving opportunities available through the National Flood Insurance Program (NFIP). States that participate in enhanced mitigation planning are eligible for a 33 percent increase in post-disaster mitigation funding. Of the 22,000 communities that participate in the NFIP, only about 7 percent partake in the Community Rating System, which is a discount program that incentivizes communities that exceed the minimum NFIP requirements. As of the second meeting, only two communities achieved the full 45 percent discount for exceeding minimum NFIP requirements.

Statewide Leadership on Resilience. Ms. Natalie Snider, Associate Vice President of Climate Resilient Coasts and Watersheds, Environmental Defense Fund, presented information on the trend of some states to establish a position or office dedicated to resiliency planning. Using Louisiana as an example, Ms. Snider explained that statewide resiliency planning often involves a chief resiliency officer and can also include resiliency coordinators within agencies, who assess agency vulnerabilities, identify adaptation actions, and incorporate results into strategic plans. Ms. Snider noted that disasters can leave lingering impacts on the ability of a state to provide services because damage and utility outages might require state offices to relocate, which can impact the public's ability to access state services and strain state employees.

Mr. Mark Rupp, Adaptation Program Director, Georgetown Climate Center, noted that chief resilience officers are often placed within state environmental agencies and emergency response agencies. Mr. Rupp stated that a benefit of establishing a chief resiliency office legislatively, rather than through an executive order subject to a governor's appointment, is the increased likelihood that a chief resiliency officer can continue in the role regardless of a change of governorship and therefore retain institutional knowledge within the office. Mr. Rupp also mentioned that federal lawmakers have introduced legislation to establish a national climate adaptation and resilience strategy that would involve a national chief resiliency officer, but the legislation has yet to gain traction.

Ms. Anne Miller, Resiliency Office Director, Colorado Resiliency Office, and Mr. Charles Sutcliffe, Chief Resilience Officer, Louisiana Governor's Office, explained how their offices provide statewide coordination to address risk and resilience within their respective states. The Colorado Resiliency Office is located within the state's Department of Local Affairs. Colorado uses a definition of resiliency that focuses on adapting and thriving in changing circumstances, including both natural and human-caused disasters, and includes social and economic factors. Colorado has launched a resiliency website that includes helpful documents and a dashboard for tracking community progress. Colorado's resiliency framework influenced the Championing Local Efforts to Advance Resilience Act introduced in the United States House of Representatives in March 2022.

In 2020, the Louisiana governor issued an executive order to create the position of Chief Resilience Officer and to coordinate resiliency efforts among the state's executive branch agencies. Louisiana also added a resiliency coordinator to each state agency. Each state agency assessed its vulnerability to disasters and identified unique challenges. Mr. Sutcliffe noted that public health offices have closed numerous times due to natural disasters. Additionally, seven disasters in 2020 prompted the evacuation of correctional facilities in the coastal regions of the state.

Ms. Shelly Oren, Energy, Environment and Transportation Program Policy Associate, NCSL, presented information about chief resiliency officers in each state that has established or considered establishing the position. By the summer of 2022, 13 states and the District of Columbia had established a chief resiliency officer or similar position. Three other states have considered legislation to establish a chief resiliency officer. States have established the chief resiliency officer position using both executive orders and legislation. States that have invested in mitigation strategies have an estimated return on investment of up to \$13 for every dollar invested in mitigation.

STORM Act. Ms. Tee Thomas, Director, Quantified Ventures, provided information on the STORM Act. The STORM Act creates a revolving loan fund, modeled after revolving funds in states, to provide sustainable funding for hazard mitigation projects. The revolving loan fund is administered by the Federal Emergency Management Agency (FEMA). Quantified Ventures worked with the Environmental Defense Fund to provide recommendations for FEMA to consider in administering the revolving loan fund.

Mr. Daniel Schreiber, Attorney Advisor, Federal Insurance and Mitigation Legal Division, FEMA, and Ms. Jennie Orenstein, Policy and Regulation Branch Chief, Hazard Mitigation Division, FEMA, both presented information on the implementation of the STORM Act funding programs for states. States do not need to enact enabling legislation to acquire funding, but the STORM Act does provide requirements for how funds may be spent.

Flooding. Ms. Kate Giannini, Program and Communications Specialist, Iowa Watershed Approach, and Iowa State Senator Joe Bolkcom presented information on flooding in Iowa and strategies the state is taking to mitigate future damages. The Iowa Flood Center was established in 2009 under Iowa Code section 466C.1. The Iowa Flood Center uses sensors to provide real-time flood forecasting and monitoring. Iowa also passed enabling legislation to authorize political subdivisions to invoke Iowa Code chapter 28E to establish watershed management authorities. As of May 2022, 27 watershed management authorities have combined to construct nearly 800 projects, with about \$30 million allocated to flood mitigation projects. The city of Dubuque operates the Bee Branch Healthy Homes Resiliency Program, which made available \$8.4 million in forgivable loans for the purpose of weatherproofing homes and installing other safety features. Iowa also authorizes the use of a calculated amount of sales tax revenue to be used for flood mitigation projects pursuant to Iowa Code chapter 418.

Ms. Oren and Ms. Snider presented information about state flood policies throughout the United States. Flooding is the most common damaging disaster in the United States, but many states do not have laws to require the disclosure of flood risk or previous flood damage. Actions that states have taken include resilience and mitigation planning, using infrastructure- and nature-based storage solutions, and implementing buyout programs. States have also used monetary solutions, such as implementing loan and grant programs and creating infrastructure banks, which make loans available for environmental infrastructure programs such as flood control programs.

Resilience Planning Tools for States. Mr. Adam Smith, Applied Climatologist, National Oceanic and Atmospheric Administration (NOAA), and Mr. David Herring, Communications, Education and Engagement Division Manager, NOAA, both presented information on risk analysis and mitigation and resilience strategies. When adjusted for inflation, the states that have endured the greatest costs due to natural disasters since 1980 are Texas, Louisiana, and Florida. Because Louisiana does not have the same available economic capital as more populous states like Texas and Florida, costs from natural disasters could limit up to 20 percent of Louisiana's gross domestic product (GDP). In 2020, Iowa had the second highest cost impact on GDP, behind Louisiana, because of the August 10 derecho. When disasters occur in the same place within a short period of time, the impacts are compounded and recovery from the first disaster becomes more difficult.

NOAA has developed mapping tools that state and local governments can use to determine which areas are at greatest risk of certain climate-related disasters. A risk assessment is based on the risk of an event occurring, vulnerabilities in that location that can amplify risk, and the ability of that location to recover from a disaster. Vulnerabilities and ability to recover can depend on natural features and also local economics.

Disaster Resiliency Sessions — 2023 NCSL Legislative Summit. Members of the cohort were invited to the 2023 NCSL Legislative Summit in Indianapolis, specifically to attend a panel on mechanisms available to private and public entities to mitigate the impact of disasters. After the panel, cohort members partook in a roundtable discussion covering takeaways from the prior cohort meetings.

Ms. Samantha Medlock, President, Climate Risk Advisors, LLC, and Mr. Geoffrey Buswick, Managing Director and Government Sector Leader, S&P Global Market Intelligence, discussed infrastructure banks, revolving loan programs, catastrophe bonds, environmental impact bonds, and parametric insurance as financial options to reduce risk for private and public entities. Mr. Buswick also discussed the role of the credit rating industry in relation to those financial options and the investment and insurance trends that affect the credit of issuers and borrowers.

Ms. Kristin Thomasgard, Readiness and Environmental Protection Integration Program Director, Department of Defense, discussed how partnerships between military installations, local governments, and other federal agencies can help make the community around a military installation more resilient. Ms. Thomasgard highlighted the America the Beautiful Program, the National Coastal Resilience Fund, the Sentinel Landscapes Partnership, and the Office of Local Defense Community Cooperation Installation Resilience Program. Ms. Thomasgard noted that a community with a military installation could use its familiarity with federal resources to its advantage when applying for federal moneys for the community.

Ms. Mallory Reilly, Supervisory Grant Management Specialist, FEMA, discussed funding opportunities available for states. Applicants sought \$5 billion through the BRIC program although only \$3 billion was made available. Ms. Reilly noted that the next round of STORM Act funding would be available soon. Ms. Reilly mentioned that FEMA would soon announce its community disaster resilience zones pursuant to the Community Disaster Resilience Zones Act.

Cohort members discussed key takeaways from prior cohort meetings. Members highlighted the importance of sharing federal funding opportunities to make sure that all eligible entities can take advantage. Members also noted the establishment of chief resilience offices or similar entities in states as a tool to centralize opportunities from the federal government and distribute relevant federal and state resiliency planning information to interested entities.

NCSL Task Force on Energy Supply. Members of the cohort were invited to the NCSL Task Force on Energy Supply meeting in San Diego in December 2022. The NCSL Task Force on Energy Supply was established in 2009 and consists of legislators and legislative staff members who examine critical energy issues that policymakers face as they shape energy policies to build a reliable, affordable, and resilient national energy system.

Ms. Caroline Thomas Jacobs, Director, California Office of Energy Infrastructure Safety (Energy Safety), discussed the origin and role of the office. Energy Safety was created through legislation in 2019 (Assembly Bill 1054) in response to wildfires in 2017 and 2018. Energy Safety regulates energy corporations, rather than publicly owned utilities. Assembly Bill 1054 required energy corporations to submit three-year plans to Energy Safety, who then oversees implementation of the plans. The legislation also created incentives for energy corporations to invest in safety improvements that meet certain standards.

Participants traveled to the San Diego Gas & Electric Company (SDGE) Emergency Operations Center (EOC) to learn about the EOC's purpose and capabilities. SDGE opened the EOC in preparation for any abnormalities that would result from potential computer errors as the year changed from 1999 to 2000. Now some of the largest threats to SDGE's infrastructure are high winds and wildfires. SDGE's location in the country makes getting help from the west impossible and from the other directions untimely, so the company saw the need to establish its own weather monitoring and fire fighting program to prevent and combat wildfires. SDGE has identified infrastructure in areas at risk of fires and hardened that infrastructure, enhanced inspections, increased vegetation management, and worked with the public to advance a culture of wildfire safety.

Ms. Erika Kowall, Director, Midwest State Affairs, American Clean Power Association, Ms. Leah Rubin Shen, Federal and Western States Director, Advanced Energy Economy, and Mr. Matthew Hale, Director, Legislative and Intergovernmental Affairs, Los Angeles Department of Water and Power (LADWP), presented information on how states and local governments can take advantage of new energy programs created by the IIJA and the Inflation Reduction Act (IRA). Ms. Kowall explained that the clean energy programs in the IRA intend to triple clean energy deployment by 2030 to produce enough clean power to fuel every home in the United States, double the clean energy workforce, save Americans on average about \$1,000 per year in energy costs, and reduce greenhouse gas emissions to 40 percent below 2005 levels. The IRA uses multiple economic strategies to entice growth in clean energy production including production and investment-based tax credits, some of which are transferable, bonuses for meeting certain federal standards, and providing funds for permitting resources for certain federal agencies.

Ms. Rubin Shen informed the task force about resources that Advanced Energy Economy has produced that explain what legislators and other decisionmakers need to know about the IIJA and the IRA. Ms. Rubin Shen highlighted a green bank revolving loan program, a rebate program for residential energy efficiency retrofits, a rebate program for

electrification for low- and middle-class households, available tax credits, and strategies for overlapping programs among local, state, and tribal jurisdictions.

Mr. Hale discussed IIJA and IRA funding opportunities available for public utilities, the challenges LADWP faces, and the strategies LADWP employs to overcome those challenges. LADWP has a target to produce only renewable energy by 2035 but also must meet the demand of over 4 million residents and an increasing demand on the grid's load capacity. The IIJA makes \$73 billion available for grid reliability and resiliency and for acquiring or retaining resources necessary to support clean energy technology. LADWP is planning to use available funds to create a hydrogen hub and invest in infrastructure to improve grid resiliency. Mr. Hale expressed the importance of public utilities partnering with the Department of Energy early in order to ease federal application processes. Mr. Hale suggested that state legislatures adopt state sustainability and equity policies in order to eliminate risk for public utilities, align with corporate partner programs, and allow public utilities to more easily take advantage of federal grant opportunities.

Mr. Mark Olson, Manager of Reliability Assessments, North American Electric Reliability Corporation (NERC), and Mr. Joseph De Flora, Director of State and Local Outreach, American Fuel & Petrochemical Manufacturers, discussed maintaining an affordable, reliable, and resilient energy mix. Mr. Olson previewed NERC's 2022 Long-Term Reliability Assessment report, a ten-year assessment of resource capacity and energy risks. The assessment places the Midcontinent Independent System Operator, of which most of Iowa falls under, at risk of failing to meet demands during normal peak conditions in the outlook period due to generation retirements outpacing new resource additions. Based on the assessment, NERC recommends that policymakers manage the pace of change in the energy mix by considering energy analysis and extreme weather risks and applying mechanisms to prevent the retirement of energy generators.

Mr. De Flora discussed the refining industry's place in the country's energy mix transition. Mr. De Flora stated that the United States needs 18.2 billion barrels of fuel each day and noted the refining industry's impact on the national economy. Mr. De Flora explained that the surge in fuel prices in 2022 was partially due to the increasing demand after the COVID-19 pandemic. While demand lowered during the pandemic, oil and gas production decreased due to limited storage capacity. Once demand increased, oil and gas production could revamp only to the extent that excess oil and gas could be stored. Mr. De Flora broke down the price paid at the pump for gasoline or diesel by taxes, distribution and marketing costs and profits, refining costs and profits, and crude oil costs.

After presentations concluded, members of the task force provided updates on the energy sector in their respective states. Actions discussed included expansion of wind projects; decommissioning of coal-fired power plants; development of goals to lower or eliminate the amount of energy produced from carbon-based sources; exploration of carbon capture projects; decommissioning, renewal, or development of nuclear power plants, including the development of small modular reactors; development of hydrogen fuel, including by using geothermal energy; and economic factors to incentivize carbon-free energy production and relieve utility consumers.

Additional Information. NCSL used information and input gathered at the meetings to compose a report for states to use to learn more about programs and strategies to advance resiliency. To view the full report, visit: documents.ncsl.org/wwwncsl/Environment/State-Policy-Disaster-Risk-Resilience.pdf.

For more information about the cohort, visit:

www.ncsl.org/environment-and-natural-resources/state-resilience-policy-and-practices-legislative-cohort.

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