

**RYAN A. BIZZARRO, CHAIRMAN**

414 MAIN CAPITOL BUILDING  
P.O. BOX 202003  
HARRISBURG, PENNSYLVANIA 17120-2003  
(717) 772-2297  
FAX: (717) 780-4767



**HOUSE DEMOCRATIC POLICY COMMITTEE**

WEBSITE: [WWW.PAHOUSE.COM/POLICYCOMMITTEE](http://WWW.PAHOUSE.COM/POLICYCOMMITTEE)

EMAIL: [POLICY@PAHOUSE.NET](mailto:POLICY@PAHOUSE.NET)

[Twitter](#) [Facebook](#) [Instagram](#) @PADEMPOLICY

**HOUSE OF REPRESENTATIVES**  
COMMONWEALTH *of* PENNSYLVANIA

*House Democratic Policy Committee Hearing*

Nonprofit Symposium  
Thursday, October 12, 2023 | 10:00 a.m.

Representative Abigail Salisbury

- |         |  |
|---------|--|
| 9:30am  | Registration   |
| 10:00am | How to Work with Elected Officials<br><i>Representative Abigail Salisbury</i>  |
| 11:00am | Legal Briefing on Major Changes to PA's Law Impacting Nonprofits<br><i>Morgen Cheshire, Founder the Cheshire Law Group</i> |
| 12:00pm | Lunch and networking   |
| 1:30pm  | Working in the States and Opportunities to Expand<br><i>Mandara Meyers, The States Project</i>                             |
| 2:30pm  | How to Apply for, and Win, Government Grants<br><i>Chris Fetterman, House Democratic Appropriations Committee</i>          |
| 3:30pm  | Closing comments and questions<br><i>Representative Abigail Salisbury</i>  |



# Nonprofit Symposium

## Navigating State Grants

---

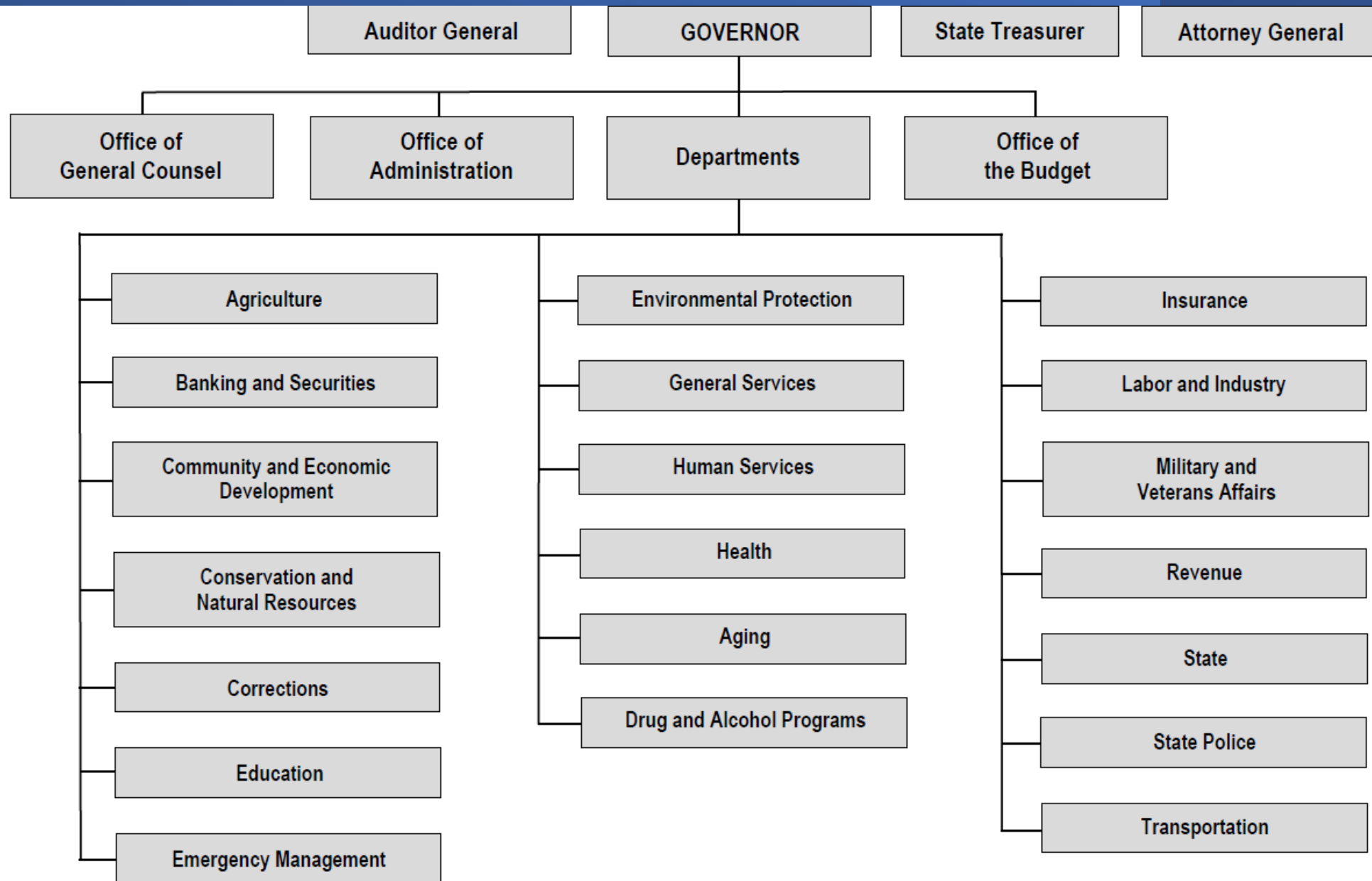
Sponsored by Rep. Abigail Salisbury  
34<sup>th</sup> District, Allegheny County

# Grants Presentation Agenda

---

- Overview of state agencies
- How to find state grant opportunities
- Determining eligibility for state grant programs
- Getting support for your application
- Avoiding common mistakes & finding help
- Popular state grant programs
- Questions





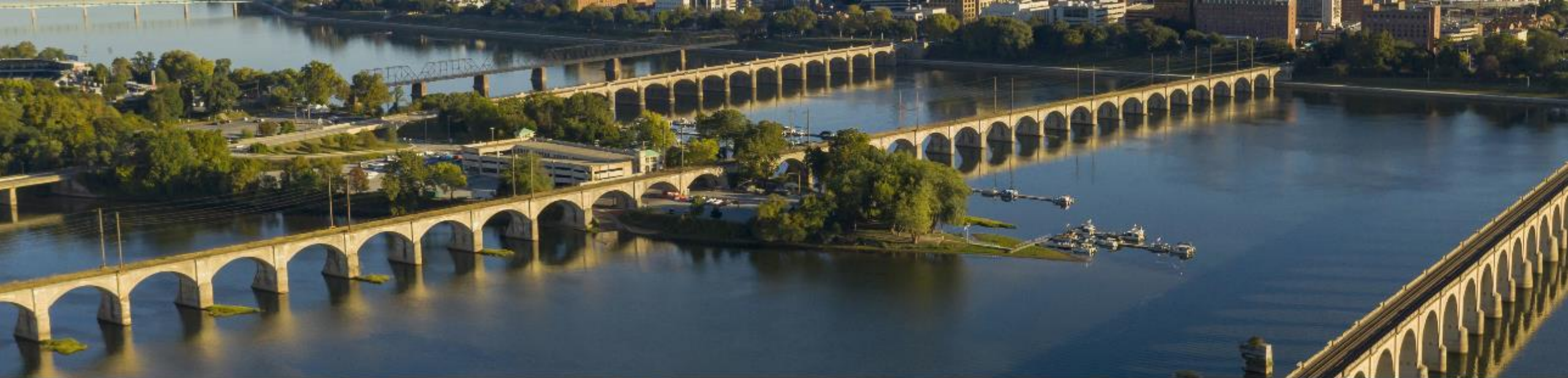
# Finding State Grants

---

- Think about what exactly you're looking for a grant for and think what agencies that topic might fall under.
- Research state agencies "grants" pages.
- Sign up for email alerts for when grants are announced.
- Stay in touch with your elected officials and communicate your funding needs







About PCCD



Strategic Plan



Calendar of Events



Grant Opportunities



Funding



Egrants

## POPULAR ON PCCD.PA.GOV

Last 24 Hours

Last 7 Days

Last 30 Days

Last 365 Days

Loading...



Subscribe for Email Notifications

**Sign-up to Subscribe to Grant Opportunity Notifications**

(This will not register you to apply for grants but will allow you to receive notices about grant opportunities as they become available. You will receive an email confirming your desire to subscribe. Please update any [SPAM Filters](#) to accept email from [ra-EGRANTSSupport@pa.gov](mailto:ra-EGRANTSSupport@pa.gov)).

Please enter the Email Address where you will receive these notifications:

Please enter your full email address (Ex: [agrantuser@server.net](mailto:agrantuser@server.net))

Please reenter the Email Address to confirm it is correct:

Please enter your full email address (Ex: [agrantuser@server.net](mailto:agrantuser@server.net))

*Disclaimer: This subscription is a convenience only service and does not guarantee notification of all desired grant opportunities.*

about PCCD Strategic Plan Calendar of Events Grant Opportunities Funding

PCCD > Funding

## Funding & Grants Process

PCCD initiates, validates, and makes financial investments in programs that demonstrate promise in improving outcomes related to the agency's mission and [strategic priorities](#). The administration of federal and state funding programs is one of PCCD's core responsibilities.

This webpage provides information about current open funding opportunities, how to seek and manage grant funds, and related resources. It also outlines important fiscal and administrative requirements for organizations receiving grant monies from PCCD.

[Expand All](#)

<b>Funding Opportunities</b>	▼
<b>How to Apply</b>	▼
<b>Managing Grants</b>	▼
<b>Reporting Fraud, Waste &amp; Abuse</b>	▼
<b>Civil Rights Compliance &amp; Complaints</b>	▼

### Funding Opportunities

[Open Funding Opportunities](#)

This webpage provides links to any currently open PCCD funding opportunities, either in Egrants or on SurveyMonkey.

[Funding Announcement Q&A](#)

This webpage provides information in response to questions that have been asked regarding PCCD funding announcements.

[Sign Up for Alerts](#)

PCCD announces all funding opportunities on its webpage. You can use this link to subscribe to receive email notifications when these opportunities are available.

[Funding Streams](#)

This webpage provides a summary of the state and federal funding streams PCCD administers that are awarded either competitively or through formula allocation.

[Grants Map](#)

This interactive dashboard lists all grants awarded by PCCD, from 2012-present.



# Eligibility & Application Assistance

- First, read the grant program guidelines
- If you have questions, there's usually a program contact email/number listed toward the end of the guidelines
- Clarify any questions with your state representative
- Review previous grant awards to see if any are similar to your project
- Take note of funding match requirements or reimbursement status

## Section I – Statement of Purpose

---

The PA Race Horse Development and Gaming Act (Act 2004-71), as amended, provides for the distribution of gaming revenues through the Commonwealth Financing Authority (CFA) to support projects in the public interest within the Commonwealth of Pennsylvania.

## Section II – Eligibility

---

### A. Eligible Applicants

- **Counties**
- **Municipalities** – Any city, borough, incorporated town, township or home rule municipality
- **Municipal Authorities** – Organized under the Act of July 29, 1953 (P.L. 1034, No. 270), known as the Public Auditorium Authorities Law, or 53 Pa.C.S. Chapter 56 (relating to Municipal Authorities).
- **Economic Development Agencies**
- **Redevelopment Authorities** – Organized under Act of May 24, 1945, P.L. 991, No. 385, known as the Urban Redevelopment Law
- **Land Banks** – Organized under 68 Pa.C.S. Chapter 21 (relating to Land Banks)
- **Councils of Government** – An entity organized by units of local government under an intergovernmental agreement, which provides cooperative planning, coordination and technical assistance to its member governments on issues of mutual concern that cross jurisdictional lines, and which does not act under the direction and control of any single member government.

### B. Eligible Projects

Eligible projects must be owned and maintained by an eligible applicant or a nonprofit organization.

- **Projects in the Public Interest**  
Projects that improve the quality of life in the community.

### C. Eligible Uses of Funds

- Acquisition
- Construction to include renovation and rehabilitation
- Demolition
- Infrastructure
  - Sidewalks for public use will be considered eligible regardless of eligibility outlined in Section II. B.
- Purchase of vehicles, machinery and/or equipment
- Planning, consulting and design costs related to planning projects.
- Engineering, design and inspection, to include permitting fees, for construction projects not to exceed 10% of the total grant award. Limitation does not apply to a planning-only project.

# Getting support for your application

---

- Contact your state representative and state senator for a support letter.
  - If you don't speak with their office, they won't know you submitted an application
- Get support letters from community entities (local elected officials, local non-profits, people in the community directly impacted)
- Think about grants in terms of project needs and not organizational needs
  - Look at getting a PROJECT funded not an ORGANIZATION funded
- Show a public benefit that goes beyond the direct benefit to your organization

# Avoiding common mistakes

---

## ➤ **Read the program guidelines thoroughly**

- Ensure eligibility of your organization
- Ensure eligibility of your project
- Ensure you understand the application procedures and necessary paperwork

## ➤ **Don't be afraid to ask for help**

- Contact your state representative
- Contact the agency that administers the grant
- Check guidelines for contact information

## ➤ **Think about your need in sections**

- Rather than one application to one program for \$500,000, could it be broken down into smaller requests to multiple programs?

# Popular Grant Opportunities

## Outdoor & Recreation Related Programs

- **Commonwealth Financing Authority - Greenways, Trails, and Recreation Program**
  - Open for applications February 1 to May 31 each year.
  - DCED administers the applications.
- **Department of Conservation and Natural Resource - Community Conservation Partnerships Program (C2P2)**
  - Open for applications January through April each year.
  - Must meet with DCNR regional advisor prior to application.
- **Statewide Local Share Account Grant Program**
  - Opened on Sept. 1, 2023.
  - DCED administers the applications.



# Popular Grant Opportunities

## Historic Preservation

### **PA Historical & Museum Commission: Keystone Historic Preservation Planning and Construction**

- Local governments and non-profits. Private property owners not eligible.
- For publicly accessible historic resources listed in or eligible for listing in the National Register of Historic Places.

### **PA Historical and Museum Commission/DCED: PA Historic Preservation Incentive Tax Credit**

- For income producing properties, like businesses. Residential properties are not eligible.

### **PA Historical & Museum Commission: Cultural and Historical Support Grant Program**

- General support for museums and official county historical societies.

### **PA Historical & Museum Commission: Historical & Archival Records Care**

- Historical societies, libraries, universities, local governments, and school districts.
- Preservation and public accessibility of historically valuable records, equipment, outreach.

# Popular Grant Opportunities

## Community Violence Prevention

### **PA Commission on Crime and Delinquency Violence and Intervention Prevention Programs**

- Gun violence prevention, mental health issues, coordination between law enforcement, schools, and families in the criminal justice system, sexual abuse treatment, trauma support.

### **PA Commission on Crime and Delinquency and PA Department of Drug and Alcohol Programs**

- For drug and alcohol programs for individuals and family support

### **PA Commission on Crime & Delinquency: JAG Single Solicitation Local Initiatives**

- Mental illness/substance abuse initiatives; re-entry programs; violence prevention and support services

### **PA Commission on Crime & Delinquency: Nonprofit Security Grant Fund Program**

- Safety & security upgrades to nonprofits that could be the victim of a hate crime

# Community Revitalization and Development

## Popular Grant Opportunities

- **PA Department of Community & Economic Development: Keystone Communities**
  - Revitalization projects, especially downtown revitalization projects
- **PA Housing Finance Agency – PHARE program**
  - For the creation, preservation, and maintenance of affordable housing
- **PA Department of Community & Economic Development: Neighborhood Assistance Program Tax Credit Program**
  - Businesses receive tax credit for donating to neighborhood organizations with projects to improve distressed areas
- **Keep PA Beautiful: Fresh Paint Days Beautification Program**
  - Smaller grants for beautification projects on public assets
- **Redevelopment Assistance Capital Program (RACP)**
  - The acquisition and construction of regional economic, cultural, civic, recreational, and historical improvement projects that have a regional or multi-jurisdictional impact and generate substantial increases or maintain current levels of employment, tax revenues, or other measures of economic activity.

# Redevelopment Assistance Capital Program (RACP, RCAP)

---

- Capital improvement program aimed at large scale economic development projects
- \$1 million minimum project cost
- 50% match requirement
- Reimbursement funding
- 2-step approval process (Itemization, apply in open funding round)
- More information: [www.budget.pa.gov/programs/RACP](http://www.budget.pa.gov/programs/RACP)



# Allegheny County Gaming Economic Development Tourism Fund (GEDTF)

---

- Administered by the Redevelopment Authority of Allegheny County (RAAC) in conjunction with the Commonwealth Financing Authority (CFA), but applications go to RAAC.
- Funds economic development, infrastructure development, job training, community investment projects & public interest projects in Allegheny County.
  - Municipalities, authorities, councils of government, & nonprofits may apply.
  - Projects must have a minimum \$150,000 total cost.
  - School district athletic fields, municipal building upgrades, blight projects, lighting, streetscape, fire department funding, nonprofit programs.
  - Won't fund salaries, rent, utilities, advertising and other operating expenses.



House Appropriations Committee  
Chris Fetterman, Special Advisor  
[www.HouseAppropriations.com](http://www.HouseAppropriations.com)

# MAJOR CHANGES TO PENNSYLVANIA'S NONPROFIT CORPORATION LAW

---

## THE 2022 AMENDMENTS

*Presented by Morgen Cheshire, Esq.*

- *Founder and Managing Attorney, Cheshire Law Group*
- *Founder and Managing Editor, PAnonprofitlaw.com*



## Major Changes to Pennsylvania's Nonprofit Corporation Law: The 2022 Amendments



NONPROFIT  
LAW.COM

Proudly brought to you by:  **CHESHIRE**  
LAW GROUP

### With special thanks to:

- Nadia Adawi, Esq., Judith McCarthy, Esq., and Brianna Riley from Cheshire Law Group;
- Martha Brown, Esq. from the Department of State; and
- William H. Clark, Jr., Esq. , Lisa R. Jacobs, Esq., and Timothy A. Hoy, Esq. for their work on Title 15 (and for their course materials from [PBI course no. 11565B](#)); and
- The Pennsylvania Charitable Nonprofit Caucus – and Representative Salisbury!

**For a deeper dive** on the 2022 amendments and their applicability to nonprofits, see the on-demand recording and course materials for [PBI course no. 115763](#)). See also [PAnonprofitlaw.com](#) for an annotated version of Title 15 (May 2022 version) and other helpful links and resources, including sample bylaws and other downloadable templates and tools.





# NEWLY LAUNCHED

---



- It's **FREE!** A **how-to guide** for effecting public policy change in pursuit of your nonprofit's mission.
- Roadmaps for being effective and staying in legal compliance!

## HOW-TO GUIDE ADVOCACY & LOBBYING

# AGENDA

---

- Introduction
- Reasons for the Changes
- Overview of the Changes
- What Didn't Change?
- Biggest Changes
- Other Changes – *some examples of why it's a good time to revisit bylaws*
- Reminders & Action Items

# INTRODUCTION

---

On November 3, 2022, Pennsylvania made major changes to its business corporation law statute governing many types of entities, including nonprofit corporations.

The impacted provisions are in Title 15 (and Title 54) of Pennsylvania's Consolidated Statutes.

Most of the amendments went into effect on January 3, 2023,\* others will be phased in.\*\*



\*60 days after November 3, 2022, is January 2, 2023, but see 1 Pa.C.S. § 1908 regarding effective dates that land on public holidays.

\*\* See for example the new annual report filing requirement and administrative dissolution provisions.

# WHAT THESE AMENDMENTS ARE NOT

---

- NOT an amendment to PA's charitable solicitation laws
- NOT an amendment to IRS or state/local tax laws
- NOT an amendment to other laws regulating or governing nonprofits in PA
- NOT governing the glossy annual report that organizations provide to their boards and funders
- **These amendments are to PA's NONPROFIT CORPORATION LAW and apply to entities that are incorporated in PA (or doing business in PA) as nonprofit corporations.**
- **KNOW YOUR ENTITY TYPE and LEGAL ORIGIN STORY!**

# WHY THE CHANGES?

---

- Deferred maintenance
- Clarifying edits
- Fixing mistakes
- Keeping up with industry standards
- Removing gender-specific pronouns
- Affording flexibility in emergency situations
- Providing additional safe harbors for directors and officers
- Changes to support the Pennsylvania Department of State's goals (e.g., clearing out of Corporation's Bureau's database of defunct entities, communicating using email)
- Changes in the Delaware General Corporation Law and the American Bar Association's Model Business Corporation Act
- Case law influence; clarification of directors' duties

# WHAT HAS CHANGED?

## ADMINISTRATIVE CHANGES

- Annual reporting revamped
- Administrative dissolution & reinstatement
- Registered office changes
- Correction of filings
- Tax clearance certificates
- Inappropriate filings

## GOVERNANCE MATTERS

- Forum selection
- Resignation of directors
- Election of directors if no directors
- Later effective date for written consents
- Quorum for class voting by members
- Date for determining members
- Ratification process
- Emergency situations
- Definition of disinterested directors
- Duty of loyalty in related-party transactions

## SAFE HARBOR & OTHER RULES PROTECTING DIRECTORS & OFFICERS

- Renunciation of opportunities
- Mandatory indemnification
- Recklessness standard clarified
- Personal liability of directors and officers
- Standard of care and the business judgment rule

## MISCELLANEOUS

- Derivative suits
- Special litigation committees
- Divisions
- Foreign entities
- Binding nature of bylaws
- Corporate records inspection

# WHAT HAS CHANGED?

## OUR FOCUS FOR TODAY

### ADMINISTRATIVE CHANGES

- ★ Annual reporting revamped
- ★ Administrative dissolution & reinstatement
  - Registered office changes
  - Correction of filings
  - Tax clearance certificates
  - Inappropriate filings

### GOVERNANCE MATTERS

- Forum selection
- Resignation of directors
- Election of directors if no directors
- Later effective date for written consents
- Quorum for class voting by members
- Date for determining members
- Ratification process
- Emergency situations
- Definition of disinterested directors
- Duty of loyalty in related-party transactions

### SAFE HARBOR & OTHER RULES PROTECTING DIRECTORS & OFFICERS

- Renunciation of opportunities
- Mandatory indemnification
- Recklessness standard clarified
- Personal liability of directors and officers
- Standard of care and the business judgment rule

### MISCELLANEOUS

- Derivative suits
- Special litigation committees
- Divisions
- Foreign entities
- Binding nature of bylaws
- Corporate records inspection



# WHAT DIDN'T CHANGE?

---

- Section 202 (c)(2)(ii), prohibiting names that contain “words that constitute blasphemy, profane cursing or swearing or that profane the Lord's name,” was not removed, despite being found to violate the Establishment Clause and the Free Speech Clause of the First Amendment to the U.S. Constitution.
- Section 5307, requiring the advertising of the filing of articles of incorporation (publication in two newspapers of general circulation in the English language in the county in which the registered office is located, one of which must be the legal newspaper, if any, designated by the rules of court for the publication of legal notice).
- Some “his” references - see if you can find them!

# THE BIGGEST CHANGES

---



# ANNUAL REPORTING COMPLETELY REVAMPED

- Annual reports required every year.
- No more decennial reports.

# EXISTING REPORTING REQUIREMENTS (BEFORE THE AMENDMENTS)

- Annual reports (old Form DSCB:15-5110) were only required if change in principal officers in prior year; due on or before April 30 (no filing fee for nonprofit corporations); could not be used to change corporation's address.
- Decennial reports (old Form DSCB: 54-503), only due in years ending in the number '1' if no filings made in 10-year period (\$70 filing fee); failure to file (if required) resulted in forfeiture to exclusive right to the organization's name.

# NEW REPORTING REQUIREMENTS

1. Required every year, regardless of whether officers changed
2. New due date (depends on entity type)
3. Can now be used to change registered office address
4. Still no fee for nonprofit corporations
5. Consequences for non-filing (administrative dissolution)
6. No more decennial filing requirement

# NEW ANNUAL REPORT

## WHAT TO EXPECT ON THE FORM

1. the organization's name
2. jurisdiction of formation
3. the address of its registered office
4. the name of at least one board member
5. the names and titles of the organization's principal officers
6. the address of the organization's principal office
7. its Pennsylvania Department of State entity number

**NOTE:** Annual reports are also called "Annual Statements" in Pennsylvania; the form will be available on the PA Department of State website.

# ANNUAL REPORT DUE DATES

## § 146. Annual report.

(c) **Filing deadlines.**--An annual report must be delivered to the department for filing each year, beginning with the calendar year after which an entity or association first becomes subject to this section, and:

- (1) **before July 1** in the case of a domestic or foreign corporation for profit or not-for-profit;
- (2) **before October 1** in the case of a domestic or foreign limited liability company; and
- (3) **on or before December 31** in the case of any other form of domestic or foreign association.

(h) **Transitional provision.**--This section shall take effect on January 3, **2024 2025**.

*Domestic nonprofit corporation = incorporated in Pennsylvania*  
*Foreign nonprofit corporation = incorporated outside of Pennsylvania*



# ADVANCE NOTICE ANNUAL REPORT

- The PA Department of State (“DOS”) has an obligation to notify organizations of the annual report requirement at least 2 months before the annual report is due.
- The failure of the DOS to provide this notice, or an organization’s failure to receive this notice, does not relieve an organization of the obligation to file its annual report.

**Annual reporting completely revamped**

# ANNUAL REPORT FILING FEE

- There is no filing fee for annual reports filed by nonprofit corporations and nonprofit-purpose LLCs and LPs; other entities pay \$7.

§ 153. Fee schedule.

(a) General rule.--The nonrefundable fees of the bureau, including fees for the public acts and transactions of the Secretary of the Commonwealth administered through the bureau, shall be as follows:

\* \* \*

**18) Annual report of domestic or foreign association:**

**(i) Annual report delivered to the bureau by a nonprofit corporation or a limited partnership or limited liability company with a not-for-profit purpose.....0**

# ANNUAL REPORT

## CHANGE ADDRESS FREE OF CHARGE

- The new annual report can be used to change a nonprofit corporation's registered address at no charge (under the old law, it cost \$5 and you had to use a separate form to change a registered address).
- Filing the annual report with the new address has the effect of amending the address in the articles of incorporation.

# FAILURE TO FILE ANNUAL REPORT CONSEQUENCES

- Failure to file the new annual report within six months of the due date can now result in **administrative dissolution** of the corporation.

# ADMINISTRATIVE DISSOLUTION PURPOSE

- The purpose of the administrative dissolution provision is to create a more accurate picture of entities actually doing business in the Commonwealth and to allow the Department of State to free up organization names.

## NEW RULE PHASED IN

- There is a 3-year phase in for the new administrative dissolution rule, which applies first to annual reports due by the July 1, 2027 deadline (due before July 1 for nonprofit corporations).
- Do **not** confuse this dissolution rule with the IRS's revocation rule (3 consecutive years of non-filing triggers revocation of tax-exempt status). There's a 3-year roll-out period, but Pennsylvania's rule is **not** a 3-year non-filing rule.

# ANNUAL REPORT GRACE PERIOD

- There is a 6-month grace period after the deadline, and then the organization has another 60 days to cure after the Department of State provides notice of the failure to file.
- The soonest we are likely to see administrative dissolutions of nonprofit corporations will be March 2028.



# ADMINISTRATIVE DISSOLUTION EFFECT

- If a nonprofit corporation is administratively dissolved, the nonprofit **may not carry on activities except to wind up and liquidate its assets or to apply for reinstatement.**
- Because tax clearances are not required for a nonprofit corporation to be administratively dissolved, some organizations may be counseled to take the administrative dissolution route as a simpler path to dissolution, though under Pennsylvania law, directors (assuming they have not resigned) have a continuing obligation to the organization after an administrative dissolution.
- **An entity that is administratively dissolved continues to be managed by or under the direction of its board members, who remain subject to the same standards of conduct as before administrative dissolution.**

# ADMINISTRATIVE DISSOLUTION REINSTATEMENT

- The process for reinstatement is simple.
- It allows for retroactive reinstatement back to the date of the administrative dissolution.
- There is no deadline for reinstatement.
- If another entity has claimed the administratively dissolved nonprofit's name during the period of dissolution, the nonprofit corporation seeking reinstatement will have to choose a new name.

# ADMINISTRATIVE DISSOLUTION REINSTATEMENT FEES

There's a reinstatement fee for all domestic associations (including nonprofit corporations). The Application for Reinstatement is \$35 or \$40, plus an additional fee for each missing annual report (\$15) in accordance with 15 Pa.C.S. § 153(a)(19).

<b>§ 153. Fee schedule.</b>	
<b>(a)(19) Reinstatement of domestic association:</b>	
<b>(i) Application for reinstatement delivered to the bureau electronically.....</b>	<b>35</b>
<b>(ii) Application for reinstatement not delivered to the bureau electronically.....</b>	<b>40</b>
<b>(iii) Additional fee required by section 383(a)(4)(ii) (relating to reinstatement) for each annual report not previously paid.....</b>	<b>15</b>

# NEW PROVISION

## EMAIL COMMUNICATIONS FROM THE DEPARTMENT OF STATE

§ 113. Delivery of document.

(d) **Delivery by electronic communication.**--The department may deliver documents in record form to an address for email or other electronic communications supplied to the department by a person until the person notifies the department in record form that the person no longer wishes to have documents delivered to that address.

**Tips for staying in compliance**

# **ACTION ITEMS FOR COMPLIANCE**

- Inventory all your entities (including affiliates).
- Check entity listings on Department of State website (<https://file.dos.pa.gov/>)
- Update registered office addresses /agents with the Department of State (\$5 each).
- Register to use online filing system with the Department of State.
- Be careful with your use of emails for purposes of communicating with the Department of State (have designated account; set up auto forward; make sure system is in place).
- Add ticklers to your calendars for the annual filing requirement(s).

# FUNDER CONSIDERATIONS

- Consider how to integrate into due diligence and fund distribution processes.
- Implications for financing arrangements.
- Implications for real estate transactions.
- Consider role in educating/getting the word out.

# OTHER CHANGES – IT'S TIME TO REVISIT BYLAWS

---





# JUST A FEW EXAMPLES

---

- Renunciation of opportunities
- Indemnification
- Business Judgment Rule
- Personal liability
- Forum selection
- Informational rights/access to documents

**Renunciation of opportunities**

# NEW SAFE HARBOR RENUNCIATION OF OPPORTUNITIES

- There's now an available safe harbor (if organizations choose to provide it) for a nonprofit's directors, officers, and members who may have competing interests with the nonprofit organizations they serve.
- A new provision protects those who are taking advantage of business opportunities and who do not offer the opportunities to the nonprofit corporation.
- The new statutory provision authorizes a nonprofit corporation to limit or eliminate, in advance, the duty of its directors, officers, or members to offer opportunities to the nonprofit.

# NEW SAFE HARBOR RENUNCIATION OF OPPORTUNITIES

**§ 5719. Renunciation of corporate opportunities.**

The articles of incorporation or bylaws, or an action of the board of directors, may renounce any interest or expectancy of a nonprofit corporation in, or in being offered an opportunity to participate in, a specified corporate opportunity or specified classes or categories of corporate opportunities that are presented to the corporation or to one or more of its directors, officers or members.

**Mandatory indemnification**

# AMENDED INDEMNIFICATION

- The new amendments make clear that Pennsylvania's mandatory indemnification rule is applicable only to **present and former** directors and officers, and no longer applies so broadly to include any "representative" as was previously the case (of course, organizations can provide broader indemnification).
- This limitation of scope of indemnification only applies prospectively, to acts occurring after the effective date of the amendments: January 3, 2023.

**Mandatory indemnification**

# AMENDED INDEMNIFICATION

§ 5743. Mandatory indemnification.

(a) General rule.--To the extent that a [representative] **present or former director or officer** of a nonprofit corporation has been successful on the merits or otherwise in defense of any action or proceeding referred to in section 5741 (relating to third-party actions) or 5742 (relating to derivative and corporate actions) or in defense of any claim, issue or matter therein, [he] **the director or officer** shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by [him] **the director or officer** in connection therewith.

(b) Prospective application.--**The limitation of the scope of subsection (a) to a present or former director or officer applies only to acts occurring after January 3, 2023.**

**Mandatory indemnification**

# AMENDED INDEMNIFICATION

§ 5750. **Duration and extent of coverage.**

The indemnification and advancement of expenses provided by or granted pursuant to this subchapter shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a representative of the corporation and shall inure to the benefit of the heirs and personal representative of that person. **A right to indemnification or to advancement of expenses arising under a provision of the articles or bylaws may not be eliminated or impaired by an amendment to or repeal of the provision after the occurrence of an act that is the subject of the threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of the act explicitly authorizes the elimination or impairment after an act has occurred.**

# AMENDED STANDARD OF CARE & BUSINESS JUDGMENT RULE FOR DIRECTORS & OFFICERS

- Amendments clarify the standard of care & business judgment provisions for fiduciaries.
- A conscious disregard of risk and consideration of circumstances actually “known to” a person are required to establish that a person acted with recklessness.
- The definition for the term “recklessness” was added – it is patterned after the definition in the Pennsylvania Crimes Code.
- Directors fulfill their fiduciary duties by adhering to the business judgment rule when it is applicable.

# CLARIFIED BUSINESS JUDGMENT RULE

Business judgment rule.--A director who makes a business judgment in good faith fulfills the duties under this section if:

- (1) the subject of the business judgment does not involve self-dealing by the director or an associate or affiliate of the director;
- (2) the director is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and
- (3) the director rationally believes that the business judgment is in the best interests of the corporation.



**Recklessness standard clarified**

# NEW DEFINITION RECKLESSNESS

§ 102. Definitions.

\* \* \*

**"Recklessness."** Conduct that involves a conscious disregard of a substantial and unjustifiable risk. **The risk must be of such** a nature and degree that, considering the nature and intent of the actor's conduct and the **circumstances known to the actor**, its conscious disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

\* \* \*

# NO MORE PRESUMPTION OF GOOD FAITH

(d) Presumption. – **[Absent breach of fiduciary duty, lack of good faith or self-dealing, any act as the board of directors, a committee of the board or an individual director shall be presumed to be in the best interests of the corporation.]** In assessing whether the standard set forth in section 5712 or 5728 (relating to interested directors or officers; quorum) has been satisfied, there shall not be any greater obligation to justify, or higher burden of proof with respect to, any act as the board of directors, any committee of the board or any individual director relating to or affecting an acquisition or potential or proposed acquisition of control of the corporation than is applied to any other act as a board of directors, any committee of the board or any individual director. Notwithstanding section 5712(d) and the preceding [provisions] provision of this subsection, any act as the board of directors, a committee of the board or an individual director relating to or affecting an acquisition or potential or proposed acquisition of control to which a majority of the disinterested directors shall have assented shall be presumed to satisfy the standard set forth in section 5712 or 5728, unless it is proven by clear and convincing evidence that the disinterested directors did not assent to such act in good faith after reasonable investigation.

# PERSONAL LIABILITY PROVISIONS

## PROSPECTIVE APPLICATION

- New section adds that an articles of incorporation or bylaws provision affording personal liability protection for a director or officer that is allowable under Title 15 is generally only effective prospectively from the date the provision's enactment.

**Personal liability of directors**

# PERSONAL LIABILITY PROVISIONS

## PROSPECTIVE APPLICATION

### § 5713. Personal liability of directors.

(a) General rule. – If a bylaw adopted by the members of a nonprofit corporation so provides, a director shall not be personally liable, as such, for monetary damages for any action taken unless:

(1) the director has breached or failed to perform the duties of [his office] a director under this subchapter; and

(2) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

(b) Exception. – Subsection (a) shall not apply to:

(1) the responsibility or liability of a director pursuant to any criminal statute; or

(2) the liability of a director for the payment of taxes pursuant to Federal, State or local law.

(c) Application. – An amendment or repeal of a provision adopted under subsection (a) does not affect its application with respect to an act by a director occurring before the amendment or repeal unless the provision in effect at the time of the act explicitly authorizes its amendment or repeal after an act has occurred.

# INTERNAL CLAIMS FORUM SELECTION

- A new section authorizes nonprofit corporations to add a provision to their bylaws or articles of incorporation specifying an exclusive forum for the adjudication of “internal corporate claims” (e.g., claims based on an alleged breach of duty, internal governance disputes, and derivative suits).

# INFORMATIONAL RIGHTS

- Under the amended statute, members and directors now explicitly have the right to receive on demand a copy of the bylaws (though the corporation can put reasonable restrictions and conditions on access and use).

# REMINDER ARTICLES ALWAYS TRUMP BYLAWS

- Amended section explains that any provision that may be included in the bylaws may be included in the articles instead.
- Added clarification that bylaws are not an end-run around the articles.
- Articles always trump bylaws when the two documents are in conflict.

# REMINDER ARTICLES ALWAYS TRUMP BYLAWS

**(c) Relationship of articles and bylaws.**--Where any provision of this subpart or any other provision of law refers to a rule as set forth in the bylaws of a corporation or in a bylaw adopted by the members, the reference shall be construed to include and be satisfied by any rule on the same subject as set forth in the articles of the corporation.

Where any provision of this subpart or any other provision of law refers to a rule as set forth in the articles of a corporation or prohibits the articles from setting forth a rule, the contemplated rule may not be included in a bylaw or a bylaw adopted by the members.



# GOOD GOVERNANCE ACTION ITEMS

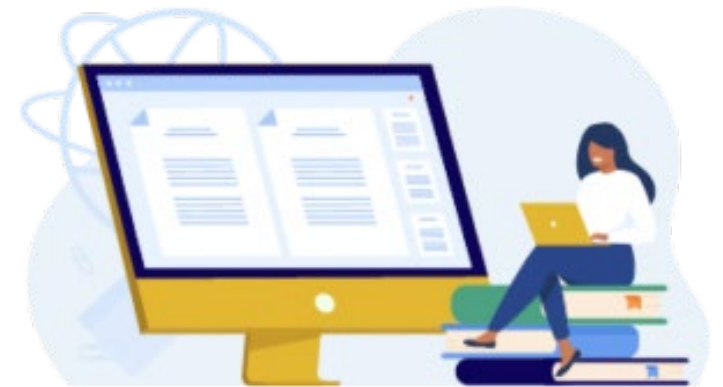
- Be sure to keep a record of bylaws amendments.
- Make sure bylaws are dated and in the minute book.
- Make sure that your organization is adhering to corporate formalities (recordkeeping and retention, procedural requirements).
- Revisit bylaws provision in light of revised language in the amended statute.
- Understand what is required by statute and what can be tailored by your organization's governing documents (articles & bylaws), reviewing in particular voting requirements and notice provisions (some organizations are still living with pre-2013 bylaws, when the last amendments were made).
- Tailor provisions as desired and make sure bylaws are consistent with articles.

# TITLE 15 ANNOTATED

---

For more about how Title 15 impacts nonprofits, see *Stern's Pennsylvania Nonprofit Corporation Law* (3rd Edition, May 2022, revised and newly annotated by Cheshire Law Group and published by PAnonprofitlaw.com), available at [www.PAnonprofitlaw.com](http://www.PAnonprofitlaw.com).

A forthcoming 2023 supplement to this 3<sup>rd</sup> edition will provide more details and a deeper discussion of the 2022 amendments.



# LEGAL SHORTCUTS

---

Visit [www.PAnonprofitlaw.com](http://www.PAnonprofitlaw.com) for downloadable templates, guide sheets, and other helpful resources.



NONPROFIT  
LAW.COM

# THANK YOU

Morgen Cheshire, Esq.  
267-331-4157 ext 104  
info@PAnonprofitlaw.com  
[www.PAnonprofitlaw.com](http://www.PAnonprofitlaw.com)



Proudly brought to you by:



**CHESHIRE**  
LAW GROUP

---

# PA nonprofit symposium: Intro to The States Project

October 12, 2023

---

## Mission

- **Our initiatives focus on improving Americans' lives by winning state legislative majorities and working with them to achieve goals for the common good.**
  - Our policy work provides nonpartisan tools and resources that connect a diverse community of state lawmakers committed to improving lives for the people they serve.
- **We do it because we believe that state legislatures are the strongest force for change in this country.**

---

## Why The States Project

1. There are great single-issue groups, but they are limited to the areas they focus on. There's not a framework that brings it all together.
2. Lawmakers aligned with corporate special interests have access to ideas they can run with, but there's not enough out there for lawmakers focused on good policy.
3. It can take hours searching online for information on what states have made progress and how they did it. There should be more support out there to help state lawmakers solve challenges.

---

## What We Do

Three core strategies drive our work with lawmakers:

1. Prepare lawmakers to govern by aligning them on their agenda that is popular, economical, and improves lives.
2. Provide lawmakers with data-backed tools — polling, model policies, research, and messaging — to govern effectively and deliver policy wins.
3. Train lawmakers to communicate about their work to their constituents.



---

## A New Initiative: The States Forum

- The States Forum provides grants, convenes, and fuels state-based think tanks and thinkers with a platform in their states to develop new, high-impact ideas and policies to realize a better quality of life for all Americans.
  - The States Forum advances idea generation and dissemination that can deliver more effective state policy.
  - We are seeking proposals (and offering grants) that pinpoint understudied problems which have disproportionate negative impacts on Americans' quality of life together with viable, high-impact policy solutions that could provide substantial benefit if enacted.

# America's Goals



## Good Jobs

- 1A** 100% of jobs pay a livable wage for all job seekers
- 1B** Paid family, vacation and sick leave for 100% of jobs
- 1C** Protect labor rights and increase worker representation



## Quality, Affordable Healthcare

- 2A** Universal, affordable health coverage with a cap on out-of-pocket expenses
- 2B** Life Expectancy of at least 84 years
- 2C** End hunger for 100% of households



## Investing in Children

- 3A** 100% completion of quality K-12 education
- 3B** Path to higher education, including technical training, without debt for 100% of children
- 3C** Early childhood education and services for 100% of children



## Empowering People over Special Interests

- 4A** Limit corporate special interest spending in politics
- 4B** At least 70% voter participation and fair legislative districts
- 4C** Personal control for everyone over their private online data



## Equal Opportunity for All

- 5A** Equal pay for equal work regardless of gender or race
- 5B** Public safety and equal treatment in the justice system for all
- 5C** End discrimination in jobs, housing, healthcare, and education



## Sustainable Infrastructure, Resilience, and Innovation

- 6A** 100% of roads, bridges, railways, airports, seaports, levees, and dams in good repair
- 6B** Plans to make every community resilient against natural disasters
- 6C** Enhance scientific research and technological capabilities



## Clean Air, Water, and Energy

- 7A** Accelerate increased investment in clean, safe energy
- 7B** Clean air and water for every community
- 7C** Big polluters pay 100% of damages from pollution

91%

of Americans support America's Goals

---

81%

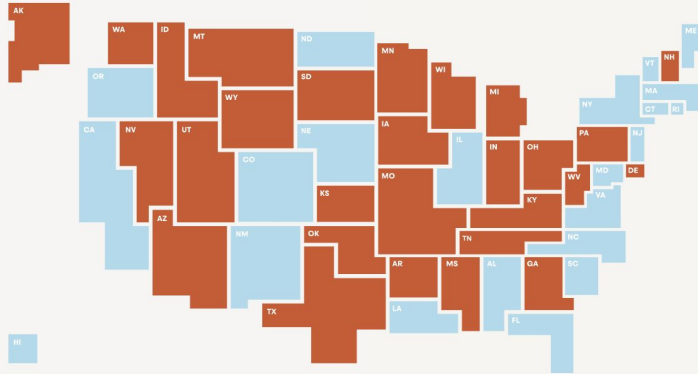
of Americans say they would be more likely to support a lawmaker who advances America's Goals

---

# AMERICA'S GOALS REPORT CARD

GOAL 5

## Equal Opportunity for All



### Target Rankings

Scores out of 100

1	Oregon	60/100	<div style="width: 60%;"></div>
2	Vermont	59/100	<div style="width: 59%;"></div>
3	Rhode Island	55/100	<div style="width: 55%;"></div>
4	Massachusetts	51/100	<div style="width: 51%;"></div>
5	Maine	49/100	<div style="width: 49%;"></div>
6	North Carolina	48/100	<div style="width: 48%;"></div>
7	Hawaii	48/100	<div style="width: 48%;"></div>
8	Colorado	47/100	<div style="width: 47%;"></div>
9	New York	46/100	<div style="width: 46%;"></div>
10	Connecticut	46/100	<div style="width: 46%;"></div>
11	North Dakota	44/100	<div style="width: 44%;"></div>
12	New Jersey	43/100	<div style="width: 43%;"></div>
13	Louisiana	43/100	<div style="width: 43%;"></div>
14	Illinois	43/100	<div style="width: 43%;"></div>

Interactive data showing progress on the state level toward America's Goals via the [America's Goals Report Card](#).

# MEASURING PROGRESS TOWARDS AMERICA'S GOALS

GOAL 3

## Investing in Children

Wisconsin

Investing in Children Ranked  
**48/100**  **#9**

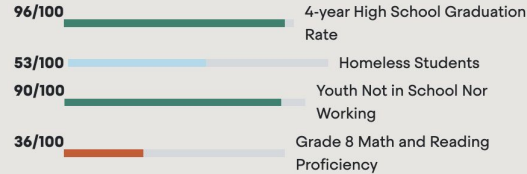
TARGET 1

**100% completion of quality K-12 education**

[See Target 1 Statistics +](#)

Wisconsin

Target 1 Ranked  
**69/100**  **#5**



TARGET 2

**Path to higher education, including technical training, without debt for 100% of children**

[See Target 2 Statistics +](#)

Wisconsin

Target 2 Ranked  
**54/100**  **#7**

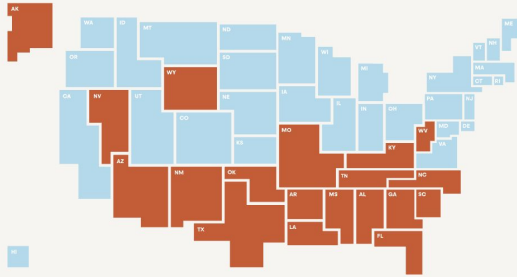


Tailored **target indicators** that are measurable at the state level help us understand each state's progress towards America's Goals.

# STATE RANKINGS

GOAL 2

## Quality, Affordable Healthcare



### Target Rankings

Scores out of 100

1	Hawaii	57/100	
2	Minnesota	56/100	
3	Iowa	55/100	
4	Massachusetts	53/100	
5	Vermont	53/100	
6	Washington	50/100	
7	Connecticut	49/100	
8	Rhode Island	49/100	
9	New York	49/100	
10	California	48/100	
11	North Dakota	47/100	
12	New Hampshire	47/100	
13	Wisconsin	47/100	
14	Virginia	45/100	

### TARGET 1

**Universal, affordable health coverage with a cap on out-of-pocket expenses**

[See Target 1 National Rankings +](#)

1	Massachusetts	76/100	
2	Vermont	74/100	
3	Hawaii	70/100	
4	Rhode Island	68/100	
5	Iowa	67/100	
6	Connecticut	67/100	
7	New York	65/100	
8	Michigan	65/100	
9	Minnesota	63/100	
10	New Hampshire	62/100	

### TARGET 1 BENCHMARKS

#### Uninsured Rate

Percent of population without health insurance coverage (%) 2020, US Census

#### Adults Not Seeing a Doctor Due to Cost

Adults who reported that they needed to see a doctor in the past 12 months, but could not because of cost (%) 2020, KFF

#### Uninsured Children

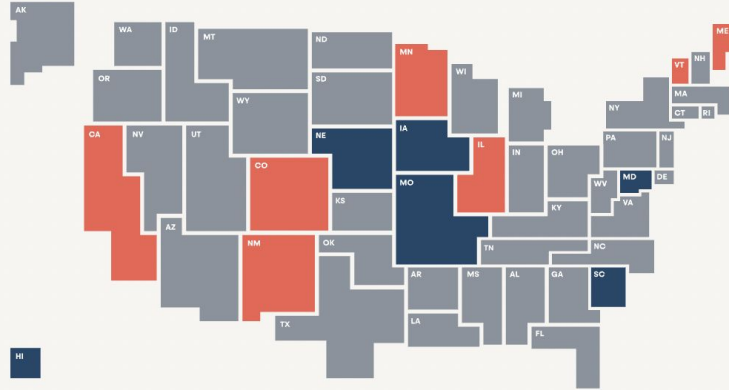
Percent of children under the age of 19 without health insurance (%) 2019, ACS

# POLICY LIBRARY

## Provide School Meals to Fight Kids' Hunger

Children who eat regular meals are healthier and less prone to chronic illness and other health issues, which helps them do better in school. Yet rising costs of food can make it hard for families to feed their kids regular nutritious meals –over 81% of public school teachers report that students come to school hungry at least once a week. This policy ensures all students can get two nutritious meals a day at school, keeping kids healthy and helping families make ends meet.

[Jump to Model Policy](#) ↓



Click to see legislation ↓

### Passed In

[California](#) [Colorado](#)  
[Illinois](#) [Maine](#)  
[Minnesota](#) [New Mexico](#)  
[Vermont](#)

### Introduced In

[Hawaii](#) [Iowa](#) [Maryland](#)  
[Missouri](#) [Nebraska](#)  
[South Carolina](#)

**Model policies** that could help make progress towards America's Goals in your state.



---

## State Line



The State Line

State lawmakers, get real-time support from our team of national experts on the issues affecting your constituents:

**1-833-STATES-1**

Send us an email at:  
[policy@statesproject.org](mailto:policy@statesproject.org)

**On-demand, live support** at our 24-hour State Line, 1-833-STATES-1.

---

## Additional Resources

- **Tools** for caucuses to build a shared agenda
- Facilitated **connections** to other states, caucuses, and lawmakers
- Webinars, briefings, and resources featuring policy experts and other lawmakers on **key policies** or providing rapid response information
- **Communications support** including messaging briefings, media and digital engagement training, and toolkits around key goals