

# STATE LEGISLATIVE ENERGY TRENDS

## ENERGY SECURITY & DATA ANALYSIS WORKSHOP

KRISTY HARTMAN, ENERGY PROGRAM DIRECTOR

# Outline

- NCSL Overview
- Role of State Legislatures
- Legislative Trends
  - Critical Energy Infrastructure Information
  - Cybersecurity
  - 2019 Legislative Examples



# NCSL Overview

## □ Bipartisan Organization:

- Serves the 7,383 legislators and 30,000+ legislative staff of the nation's 50 states, commonwealths and territories

## □ Activities

- Research and information on topics of interest to the states
- Technical assistance and training
- Opportunities for policymakers to exchange ideas
- Lobbying at the federal level for states' interests



# Role of State Legislatures

- ❑ Signal support
- ❑ Initiate dialogue
- ❑ Develop policy study committees
- ❑ Provide incentives, funding or financing
- ❑ Mandate or restrict actions



# Legislative Trends

## □ Energy Security

- Disaster Preparedness

- Emergency Response

- Resource Planning

- Energy Storage

- Terrorism

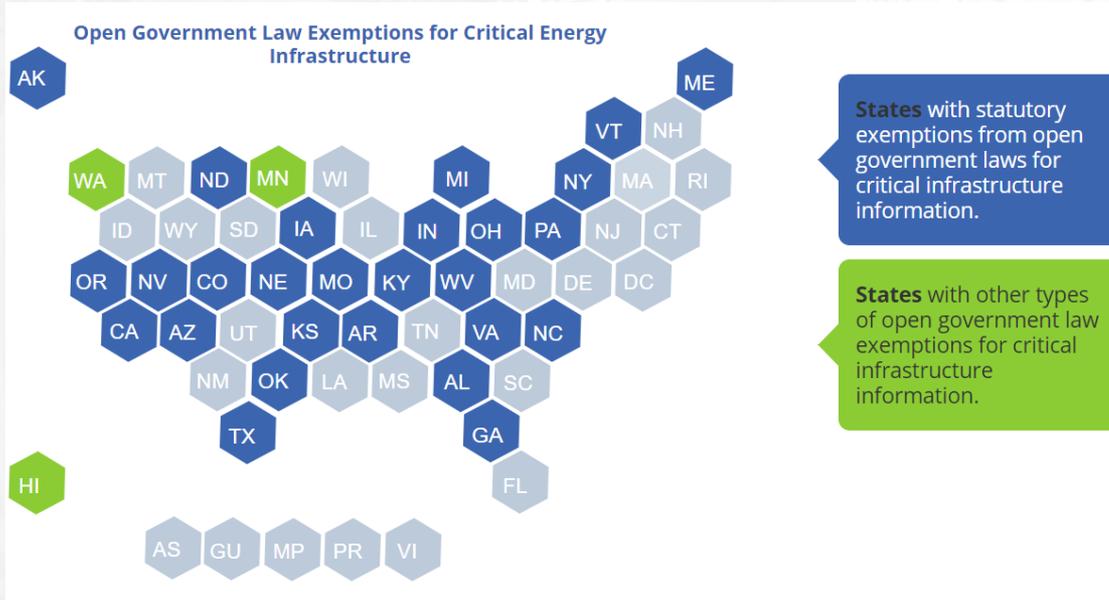
## □ Cybersecurity

- Grid Modernization

- Energy Resilience



# CEII Open Records Exemptions



**States** with statutory exemptions from open government laws for critical infrastructure information.

**States** with other types of open government law exemptions for critical infrastructure information.

- **28 states** with statutory exemptions
- **3 states** with language from court cases, opinion letters or general statutory language

According to FERC, CEII is defined as: specific engineering, vulnerability, or design information about proposed or existing critical infrastructure (physical or virtual) that relates details about the production, generation, transmission, or distribution of energy; could be useful to a person planning an attack; and gives strategic information beyond the location of critical infrastructure.



# Varying State Language

- Defining critical energy infrastructure
- Adding cybersecurity
- Exempting specific state agencies
- Court rulings



# Statutory Exemptions

- **Colorado, Iowa and Oregon** amended CEII language to align with FERC rule (2017)

## Colorado

The Colorado General Assembly enacted S.B. 40 (enacted, 2017), amending Colo. Rev. Stat. §24-72-204 as follows: (2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest: (VIII) (A) Specialized details of either security arrangements or investigations or the physical and cyber assets of critical infrastructure, including the specific engineering, vulnerability, detail design information, protective measures, emergency response plans, or system operational data of such assets that would be useful to a person in planning an attack on critical infrastructure but that does not simply provide the general location of such infrastructure. Nothing in this subparagraph (VIII) SUBSECTION (2)(a)(VIII) prohibits the custodian from transferring records containing specialized details of EITHER security arrangements or investigations or the physical and cyber assets of critical infrastructure to the division of homeland security and emergency management in the department of public safety, the governing body of any city, county, city and county, or other political subdivision of the state, or any federal, state, or local law enforcement agency; except that the custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of the entity unless such information is already publicly available.



## IOWA

Iowa added an exemption for CEII in the 2017 legislative session. Iowa Code §22.7 (70): The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information... Information and records related to cyber security information or critical infrastructure, the disclosure of which may expose or create vulnerability to critical infrastructure systems, held by the utilities board of the department of commerce or the department of homeland security and emergency management for purposes relating to the safeguarding of telecommunications, electric, water, sanitary sewage, storm water drainage, energy, hazardous liquid, natural gas, or other critical infrastructure systems. For purposes of this subsection, "cyber security information" includes but is not limited to information relating to cyber security defenses, threats, attacks, or general attempts to attack cyber system operations



# Statutory Exemptions

- **Indiana, Kentucky, Louisiana, North Carolina, Pennsylvania & Washington**—  
“terrorism” or “counterterrorism”
- **Missouri, Nebraska & North Carolina** —  
“infrastructure” or “energy infrastructure”
- **West Virginia** exempts "specific engineering plans and descriptions of existing public utility plants and equipment"



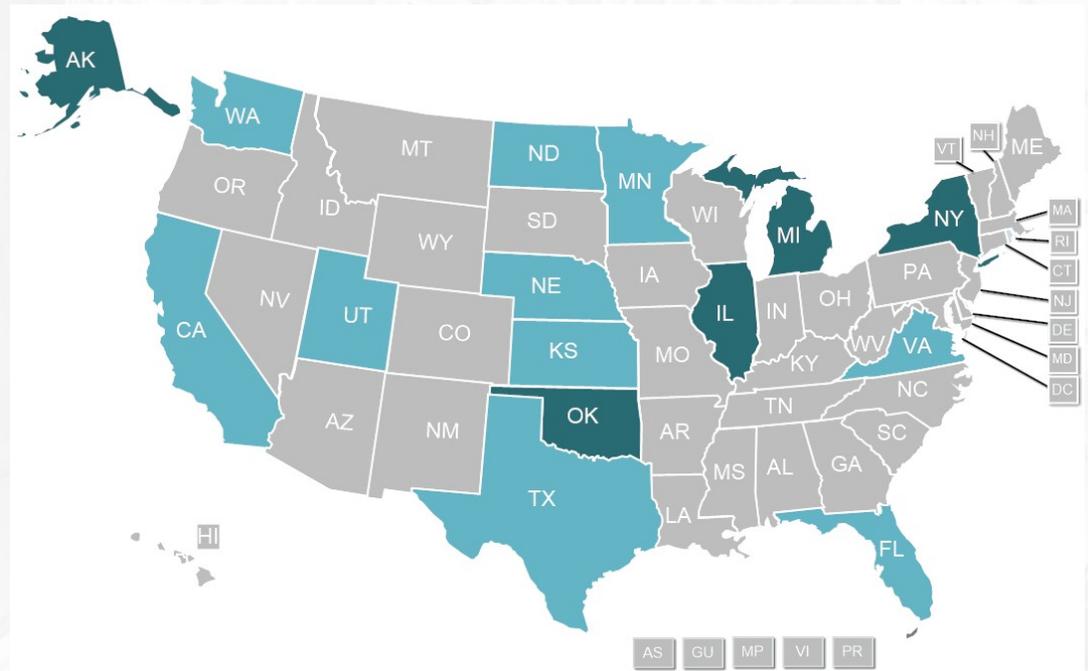
# Other Exemptions

- **Hawaii** 2007 opinion letter from Office of Information Practices
- **Florida** Open Government Sunset Review Act requires the Legislature to review an exemption 5 years after enactment
- **Minnesota** keeps energy data private through statute
- **Washington** Court of Appeals (2007) interpreted a statute to exempt CEI from its Public Records Act.



# Cybersecurity

- **14 states** considered 46 measures to date in 2019
  - ▣ Task forces or study committees
  - ▣ Planning & reporting requirements
  - ▣ Open record exemptions
  - ▣ Financing mechanisms
  - ▣ Other initiatives



# Cybersecurity Exemptions

- **Arkansas** S.B 632 enacts the AR Cyber Initiative (develop cyber capabilities and mitigate risks) and exemptions from FOIA.
- **North Dakota** S.B. 2209 & S.B. 2340 adds exemptions related to “disaster mitigation, preparation, response, vulnerability, recovery or for cybersecurity planning, mitigation, or threat”



# Other Recent Actions

- **California** A.B. 2813: CA Cybersecurity Integration Center
- **Texas** S.B. 475: Electric Grid Security Council & S.B. 986: Cybersecurity Monitor Program



# Legislative Action – Energy Emergencies

- **Hawaii** S.B. 1180 & H.B. 953 (pending): Grants authorities to the governor during a state of emergency. Confidential data exempted.
- **Texas** S.B. 2328 (failed): confidentiality related to emergency management



# Contact and Resources

Kristy Hartman  
Energy Program Director  
303-856-1509

[Kristy.Hartman@ncsl.org](mailto:Kristy.Hartman@ncsl.org)

[www.ncsl.org/research/energy](http://www.ncsl.org/research/energy)

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