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Supreme Court Game Changers

Hospital Charges Uncovered

Clerks & Secretaries Celebrate 70 Years

THE COLORADO RIVER

Running Dry

EXPANDING THE ROLE OF NURSES

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State Legislatures
National Conference of State Legislatures

September 2013
Nuclear Energy Produces Thousands of Jobs

Reliable nuclear power plants in 31 states supply one-fifth of America’s electricity. The nuclear energy industry plays an important role in job creation and economic growth, providing both near-term and career-long employment.

Worldwide, more than 200 nuclear energy projects are in the licensing and advanced planning stage, with 63 reactors under construction. This means more demand for U.S. nuclear energy expertise and components for the $740 billion global market over the next 10 years.

With demand for electricity also growing here in the United States, the nuclear energy industry will create tens of thousands of jobs for American workers while providing global customers with the safest technology in the marketplace.

How can we generate more low-carbon electricity that is affordable while creating more American jobs?

nei.org/jobs
STATE LEGISLATURES
NCSL’s national magazine of policy and politics

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**Higher education**
- News from around the nation—from wind farms in Iowa to horse tripping in Oregon
- Q & A with Hank Brown—former state and federal lawmaker and university president—on higher education
- Quotes and cartoons from around the states

**State Constitutions**
- Search NCSL’s resources on water rights.
- Find a summary of all drowsy driving laws.
- Link to an interactive map of state databases of health care charges.
- Access NCSL’s scope of practice legislative tracking database.

**The Tax Revolt 10 Years Later**

Some experts believe the Tax Revolt is over. But reports of its death may be premature. The legacy of the Tax Revolt is still affecting state and local governments in some important ways.

**Bank Wars**
Proposals to grant banks new powers remains controversial. Securities, insurance and real estate firms oppose banks entering their markets.

**When an Issue is the Issue, Does the Money Matter?**
Referenda and initiatives—the people’s avenue to lawmaking—have come out winners in the past 10 years. But today the battleground has shifted to disclosure requirements, and states are holding their own.

The Maryland Statehouse in Annapolis is the oldest capitol still in legislative use, dating back to 1772. It is the only statehouse that has also served as the nation’s capitol and has hosted some significant events in U.S. history. Most notably, George Washington appeared before Congress here in December 1783 to resign as commander-in-chief of the Continental Army. The event served as inspiration for the 1859 painting by Edwin White titled “Washington Resigning His Commission,” which hangs above the landing of the main staircase. Just weeks after Washington’s resignation, Congress met at the Maryland Statehouse on Jan. 14, 1784, to ratify the Treaty of Paris, finally putting an end to the American Revolution.

—“Fifty State Capitols” by Jim Stembridge and “A Celebration of State Capitols” by Richard R. Gibson.

**THEN & NOW**

**25 YEARS AGO**

Articles from the September 1988 issue of State Legislatures

**THE TAX REVOLT 10 YEARS LATER**

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A Higher (Ed) Priority

Compared to the rest of the world, the United States has a high proportion of college-educated citizens. Stacked up against other developed countries, however, the nation is losing ground. Young adults in nations such as Korea and Japan are pursuing higher academic degrees more aggressively than their U.S. counterparts.

The United States ranks 14th in the world in the percentage of 25- to-34-year-olds with college-level degrees (42 percent). U.S. leaders from all walks are sounding the alarm: Unless more young Americans embrace the college track, political and economic decline is likely. They drive home the point with numbers: 88 percent of 23- and 24-year-olds with college degrees in America were employed during the peak of the Great Recession, while only 65 percent of those with only a high school diploma had a job.

The benefits of higher education go beyond economics, according to the Lumina Foundation for Education, in its 2013 report, “A Stronger Nation Through Higher Education.” Increased college attainment “also helps us address social inequities and improve society,” writes Jamie P. Merisotis, president and CEO of the foundation, who believes that by 2025, 60 percent of Americans should hold college degrees.

Higher Aspirations

A Worldview

Percentage of population in 20 countries with higher education degrees, in two age groups, 2010.

By the Numbers

5.6 million
Americans with a high school education or less who lost jobs during the Great Recession

187,000
Growth in jobs for Americans with bachelor’s degrees during the Great Recession

230,000
Decline since January 2010 in jobs requiring high school education

65%
Percentage of U.S. jobs that will require some kind of post-secondary education by 2020

54.7%
Percentage of people in Washington-Arlington-Alexandria, D.C., with college degrees, the highest of all U.S. metropolitan areas

65%
Percentage of Koreans ages 25 to 34 with higher education degrees

42%
Percentage of Americans ages 25 to 34 with college degrees


State Stats

Percentage of population in 20 countries with higher education degrees, in two age groups, 2010.
MASSACHUSETTS SENATOR STANLEY ROSENBERG (D) SAYS HE HAS SUPPORT from an “overwhelming majority” of his caucus in his bid to become the next Senate president, succeeding current leader Therese Murray (D). “A succession plan is now in place for the Senate,” Rosenberg said. Murray’s term ends January 2015, but there is some speculation she may step down before then. Senator Stephen Brewer (D), chair of the Senate Ways and Means Committee, also competed for the post. Rosenberg was elected to the Senate in 1990 after serving in the House since 1986.

IN NORTH CAROLINA, MORAL MONDAY PROTESTERS HAVE TAKEN THEIR DEMONSTRATIONS FROM THE CAPITOL TO CITIES AROUND THE STATE. Thousands of people have demonstrated at the Capitol since April in opposition to what they say are setbacks in education, voting rights and economic equality by the Republican-controlled legislature. Some 930 people have been arrested in the Raleigh protests. Now protesters are taking their message to the state’s 13 congressional districts, starting in Asheville, where some 5,000 people showed up.

ILLINOIS HOUSE SPEAKER MICHAEL MADIGAN (D) AND SENATE PRESIDENT JOHN CULLERTON (D) are taking Governor Pat Quinn to court after he vetoed the money for the salaries of all 177 Illinois lawmakers because they failed to address the state’s $100 billion pension liability by Quinn’s deadline. The two leaders argued that Quinn’s action violates the separation of powers between the legislature and the executive branch. The legislative salary appropriation totaled $13.8 million, and Quinn said he would voluntarily suspend his own $177,412 annual salary as well. Lawmakers are likely to lose at least two months’ pay before a hearing on a preliminary injunction against the governor is held this month. The two leaders want legislative salaries reinstated with interest.

MICHIGAN LT. GOVERNOR BRIAN CALLEY (R) A FORMER TWO-TERM MEMBER OF THE MICHIGAN HOUSE before joining Governor Rick Snyder’s ticket, is not conservative enough for the state’s Tea Party establishment, which would like to replace him with someone they believe would bring a more balanced perspective to the administration. The Tea Party has objected to the governor’s support of Medicaid expansion, increases in road revenue and changes to Common Core standards. The governor’s office said he and Calley “have made a strong team.”

WISCONSIN HAS A LONG HISTORY OF PROTESTS, DATING BACK TO THE CIVIL RIGHTS MOVEMENT AND THE VIETNAM WAR. A new wave began in 2011 with some 100,000 protesters in and around the Capitol decrying Governor Scott Walker for ending collective bargaining for most public employees. Now, protests have become, well, melodious. Solidarity sing-alongs, aimed at Walker and majority Republicans, take place each weekday at noon on the Capitol lawn, with lyrics such as “Have you been to jail for justice? I want to shake your hand.” A federal judge recently ruled that protesters need a permit, and numerous arrests have been made in the weeks since the ruling. A Republican counter-group is singing a different tune, but with a permit. The crackdown is serious. Capitol police threatened Representative Sondy Pope (D) with arrest if she didn’t move along from her post by an upper floor banister where she’d stopped to watch the singers. “I have a duty to observe what is happening to my constituents who are expressing their discontent,” Pope said. “How can I be arrested for that?”

LOIS DEBERRY (D), THE LONGEST-SERVING MEMBER OF THE TENNESSEE HOUSE OF REPRESENTATIVES, died in August from pancreatic cancer. She was 68. DeBerry was a respected trailblazer who focused on the tough issues, “daring others to join her and, by her words, could inspire people to get involved,” said Senator Lowe Finney (D). DeBerry was first elected in 1972. She was the first African-American woman to serve as speaker pro tem, a position she held for 20 years. “Lois quickly became one of my favorite people on Capitol Hill because of her wit, charm and dedication to her constituents,” said Governor Bill Haslam. “Lois was a history maker, a wonderful woman, a great legislator and a true friend. I will miss her.”

MARYLAND SENATE MINORITY LEADER E.J. PIPKIN (R), A VETERAN LAWMAKER WHO BECAME THE GOP LEADER IN 2011, has resigned from the legislature to pursue a master’s degree in sports management at Southern Methodist University in Texas. “It’s an interesting risk, but it’s time,” Pipkin said of his career change. A former Wall Street bond trader, Pipkin led a caucus outnumbered by Democrats 35-12. His decision to resign, he said, was to give another Republican the advantage of serving before running for re-election. Governor Martin O’Malley will appoint the successor from recommendations from GOP county committees.
In the Weeds

Stores selling adult recreational-use marijuana are expected to open as early as January in Colorado, following passage of first-in-the-nation legislation outlining how the drug will be regulated and taxed. The Colorado General Assembly approved a total of four cannabis-related bills, two on the last day of the session in May.

Legislation establishing the framework for commercial sales and taxation, drafted by a bipartisan committee, was required in Amendment 64, the citizens’ initiative that 55 percent of the voters passed last fall. It allows adults 21 and over to buy and possess up to an ounce of pot and grow as many as six marijuana plants at home.

Since the amendment’s passage, more than 50 Colorado cities and counties have banned recreational pot sales, so stores are expected to open only in Denver and about 20 other communities. While at least 20 states have legalized medical marijuana, Colorado and Washington are the first to legalize recreational marijuana. Washington’s Initiative 502 removes criminal sanctions on an ounce or less of marijuana for personal use and also legalizes possession of cannabis-infused foods and drinks, although home growing remains illegal. Unlike Colorado’s initiative, Washington’s gives most of the administrative responsibility for sales to the State Liquor Control Board, which has until the end of this year to figure out a system of state-licensed growers, processors and retail stores. The initiative requires marijuana to be taxed 25 percent at each of those stages.

Unknown is how the federal government, which still classifies marijuana as an illegal substance, will deal with marijuana users in Colorado and Washington. Also unknown is how much money Colorado and Washington will see in new tax revenue and/or savings in law enforcement costs. In Washington, one government estimate put revenues at $1.9 billion over five years.

Colorado’s Amendment 64 states that the first $40 million raised from the 15 percent excise tax will go to school construction, but experts disagree on whether that amount is realistic. A study by the Colorado Center on Law and Policy estimated the new legal product would bring the state $60 million in revenue and savings each year for the first three years. But a study by the Colorado Futures Center at Colorado State University warned against overly optimistic revenue projections.

What is clear is that attitudes toward legalized marijuana have shifted. In 1969, only 12 percent of Americans thought pot should be legalized. This past year, 52 percent told the Pew Research Center they favored legalization.

—Mary Winter

Colorado’s Recreational Pot Laws

With state-licensed stores selling marijuana as early as Jan. 1, Colorado’s new regulations:
- Require store owners to be Colorado residents.
- Allow only medical marijuana dispensary owners to sell recreational pot for the first nine months.
- Limit sales to state residents to an ounce of marijuana and non-residents to a quarter-ounce at a time.
- Require packages to be child-resistant and labeled for potency.
- Prohibit marijuana smoking in coffee shops, bars, marijuana stores and other places subject to the state Clean Air Act.
- Require voters to approve a 15 percent excise tax and an initial 10 percent sales tax on marijuana in November.
- Prohibit driving with five or more nanograms of tetrahydrocannabinol (THC), the main psychoactive chemical in marijuana, in the bloodstream.
SOS for Sharks

It may be the most sought-after soup in the world, but at what cost? Shark fin soup is such a prized delicacy that as many as 100 million sharks are killed every year, a recent study in the Marine Policy Journal reported. That has spurred several states and territories to pass laws to strengthen national anti-finning efforts.

Shark fin soup, which commands up to $100 a bowl, has signified wealth and status at Chinese weddings and other official occasions for centuries. The shark fins, which are cartilage, are said to add texture rather than flavor to the soup, although some aficionados believe they also boost energy and sex drive.

“Finning” involves cutting off the fins (back, tail and pectoral) from a live shark then throwing the animal back into the ocean to die. The practice increasingly is seen as inhumane, harmful to ocean ecology and likely to lead to the extinction of many shark species if left unchecked.

The federal Shark Finning Prohibition Act of 2000 makes it illegal to remove sharks’ fins and discard the carcasses at sea. Ten years later, the Shark Conservation Act put some teeth in the earlier law and eliminated a few loopholes.

In 2010, Hawaii was the first state to pass legislation that banned the possession, sale, trade or distribution of shark fins, except for use in licensed research. California, Illinois, Oregon, Washington, American Samoa, Guam, the Northern Mariana Islands, the European Union and 27 other countries have similar bans. Fines in the state laws range from $1,000 for a first offense to $50,000 for subsequent offenses, and some states include imprisonment.

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Lawmakers in Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania and Texas introduced legislation this year on shark fins. As of July 31, Delaware, Maryland and New York had passed bills.

Enforcement of these bans is difficult, although advances in DNA research is helping. Scientists can now use DNA from shark fins to determine where they came from.

But not everyone’s on board with banning the practice. Two organizations of Asian Americans sued last year in federal court to block California’s law from taking effect, claiming it discriminates against Chinese-Americans. They lost, but plan to appeal.

Anti-finning efforts may be changing young people’s view of the soup, which ultimately will have the most impact on dampening the practice and preserving the world’s sharks.

—Doug Shinkle

Suicide Prevention Changes Focus

Most state suicide-prevention programs have focused on teens, but lawmakers are turning their attention to middle-aged Americans who increasingly are taking their own lives at an alarming rate. In the past decade, 80 percent of states have seen suicides in this age group increase an average of 28 percent. Rates among younger people have remained relatively unchanged, at less than 25 percent the rate of older Americans.

Roughly 21,000 people between the ages of 35 and 64 took their lives in 2009; 10 years earlier, that number was 14,000. The greatest increases were among men in their 50s and women in their early 60s. Women’s suicide rate increased by almost 60 percent and men’s by 50 percent, according to a recent report from the Centers for Disease Control and Prevention (CDC).

The increases contribute to a grim trend in our country—suicides have begun to outnumber highway deaths, 38,364 to 33,687 in 2010. Why? The recent economic downturn and the rise in prescription opioid overdoses, among other things, are possible causes, according to the CDC.

Tennessee led a youth suicide-prevention effort in 2007 by passing the Jason Flatt Act, named after a 16-year-old Nashville boy. The act makes youth suicide awareness and prevention training a requirement for middle and high school teachers and staff. Nine states have adopted similar measures.

A few states now are requiring similar training for mental health experts outside school settings. Last year, Washington passed legislation requiring counselors, chemical dependency professionals, and marriage and family therapists to complete training in suicide assessment and treatment. This year, it added social workers to the list. Kentucky and New Mexico have also enacted laws that address suicide prevention in the general population.

—Hollie Hendrikson

Suicide Prevention Laws, 2013

◆ Kentucky requires social workers, marriage and family therapists, alcohol and drug counselors, psychologists and other mental health workers to receive training in suicide assessment, treatment and management.
◆ In New Mexico, the Native American Suicide Prevention Advisory Council will help develop policies for a state clearinghouse on the issue.
◆ In Washington, entry-level social workers must now get suicide assessment and treatment training.

Source: Centers for Disease Control and Prevention

States with Significant Increases in Suicide
(Among 35- to 64-year-olds, 1999-2010)

<table>
<thead>
<tr>
<th>State</th>
<th>Increase</th>
</tr>
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<tbody>
<tr>
<td>CT</td>
<td>60% - 80%</td>
</tr>
<tr>
<td>RI</td>
<td>39% - 59%</td>
</tr>
<tr>
<td>DE</td>
<td>15% - 38%</td>
</tr>
<tr>
<td>MD</td>
<td>No significant increase</td>
</tr>
</tbody>
</table>
Arkansas delivered a wakeup call to drowsy drivers with a new law that imposes a fine of up $25,000 and a year in jail if they cause a fatal accident. A similar measure has been on the books in New Jersey since 2003.

The two states’ get-tough approach is one of several that legislatures are taking to combat drowsy driving, which killed 832 people in 2009. The number is down from 1,194 in 2005, but that’s probably because traffic fatalities in general are decreasing, due to safer cars and highways. The percentage of all traffic fatalities involving drowsy driving has remained fairly constant at 2.3 percent to 2.7 percent, according to the National Highway Traffic Safety Administration.

Under Arkansas’s new law, drivers are guilty of “fatigued driving,” classified as negligible homicide, if they haven’t slept for 24 consecutive hours and cause a fatal accident. Massachusetts is considering similar legislation, while New York is looking at a bill to require obese people to be screened for sleep apnea when applying for or renewing commercial driver’s licenses. Sleep apnea can cause a person’s breathing to be interrupted during sleep, often resulting in drowsiness during the day. Commercial drivers with the disorder are at a particularly high risk for drowsy driving due to long hours on the road, and individuals with untreated sleep apnea are two to seven times more likely to be involved in a crash, according to the Federal Motor Carrier Safety Administration.

Other states are attacking the problem through public education campaigns. Texas has designated a “Drowsy Driving Prevention Week” to call attention to the problem and educate drivers on ways to avoid it. California, Florida and Pennsylvania also have designated weeks, and a similar bill is pending in Massachusetts.

Utah commissioned a study in 2007 to determine where most drowsy driving occurred, then built road signs and rest stops accordingly. Deaths from drowsy driving in the state dropped from 37 in 2007 to 14 in 2012, although it’s unknown how many deaths were avoided, if any, because of the campaign. Similarly, Massachusetts has a bill pending to create a commission to study the impact of drowsy driving on state highways and recommend legislation concerning the scientific and legal standards for drowsy driving.

—James Hanseen

For a complete summary of drowsy driving legislation, go to www.ncsl.org/magazine.

Drowsy Driving
By the Numbers

0.10
The blood alcohol level equivalent in cognitive impairment to a person who has been without sleep for 24 hours

18-29
Ages of drivers at the highest risk for drowsy driving; 71 percent are likely to drive drowsy

56% vs. 45%
The percentage of drowsy drivers who are men vs. those who are women

23%
The percentage of adults who know someone who has been involved in a drowsy driving accident

4 a.m. to 6 a.m., midnight to 2 a.m.,
2 p.m. to 4 p.m.
When most drowsy driving accidents occur

24% vs. 17%
The percentage of city dwellers who drive drowsy vs. suburban residents

Sources: National Sleep Foundation, Centers for Disease Control and Prevention.
NEVER-ENDING SUMMER

Some states are drawing a line at how early school begins in the fall. Most recently, Alabama banned school boards from ending summer break before Aug. 19, and Mississippi now prohibits schools from opening before the third Monday in August. The push to extend summer vacation often comes from the tourism industry, which loses millions of dollars every day families aren’t boating, fishing, swimming and otherwise engaging in summer fun. Kids generally agree with their arguments. But those opposed to strict regulations argue schools should have the flexibility to decide for themselves. High-stake testing often drives earlier start dates, to give kids more time to learn the material. At least 11 other states—Arkansas, Iowa, Michigan, Minnesota, Missouri, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Virginia—and the U.S. Virgin Islands have limits on when school may open.

REINED IN

A bill in Oregon would outlaw horse-tripping—using a rope lasso to snare a horse’s legs—for sport and entertainment. Supporters say the event, already banned at the nation’s largest rodeos, often injures horses. But those who enjoy the practice say it demonstrates a cowboy’s skills in breaking a horse, and that the point is not to topple the animal, although that can happen. They accused lawmakers of undermining a rural tradition. One of the bill’s co-sponsors, Senator Mark Hass (D), disputed that. “I don’t think it has anything to do with suburban vs. rural. It’s because it’s cruel. It’s brutally cruel,” he told The Oregonian. Under the bill, offenders could face up to six months in jail, a $2,500 fine, or both.

BETTER SAFE

The 152-year-old Ohio Statehouse is scheduled to receive nearly $2 million in security upgrades, as recommended by a study for the General Assembly. But not everyone is happy; the Capitol is known for its openness and easy access, and many Ohioans fear it will lose that character. For years, downtown Columbus workers have patronized the Capitol cafe and gift shop, and 85,000 schoolchildren visited last year. The Greek Revival-style building, one of only a few capitols with more than six public entrances, will lose at least two of those entrances in the renovation. The remaining four entrances will be equipped with security cameras, TVs and phones, and a state trooper with a metal-detection wand will be posted at each.

FAST, FASTER, FASTEST

Six states recently have increased speed limits on some highways, responding to constituents’ never-ending desire to go faster. At least another 11 states have considered doing so. Texas now allows drivers on highways specifically designed for speed and safety to reach 85 mph. Utah allows 80 mph. Maine and Ohio now max out at 75 mph, and Kansas and Illinois have upped their limits to 70 mph. In 1995, Congress repealed the national 55 mph limit set during the gas shortage of the 1970s, and turned over speed-setting authority to the states. Today, 36 states have limits of 70 mph or higher. Higher speeds, however, can increase accidents. In 2011, speed was a contributing factor in 30 percent of all fatal crashes, and nearly 10,000 lives were lost in speed-related crashes, according to the National Highway Traffic Safety Administration.

IOWA POWERS UP

Iowa, home to corn, hogs and legendary baseball fields, has a less-known claim to fame: wind power. In 2012, wind accounted for nearly a quarter of the state’s energy output. With bipartisan support, MidAmerica Energy plans to erect another 650 turbines by 2015. Iowa Senate Majority Leader Michael Gronstal (D) credited former Iowa Governor and current U.S. Secretary of Agriculture Tom Vilsack for pushing wind power back in 2003. “That is what led to Iowa’s renaissance in wind,” Gronstal told the Des Moines Register. Senate Minority Leader Bill Dix (R) hailed the $1.9 billion project as a job creator. “This is home-grown energy coming from right here in Iowa. It is renewable. It is clean, and that is all a good thing for Iowans.”
BREWS IN THE NEWS

Home brewers in Alabama and Mississippi can hop to it with a clear conscience now that lawmakers have made the hobby legal in the last two states with previous bans. “It’s a glorious day, because for the first time since Prohibition, all 50 states will allow hobbyist home brewing,” Brant Warren of Right to Brew told the Associated Press. Not every lawmaker shared Warren’s glee. “I think we’ve got enough people walking around drunk on Monday mornings,” said Alabama Representative Berry Forte (D).

The new law allows Alabama brewmeisters to make up to 15 gallons of beer at home every three months. They can share their creations at tastings and competitions, but they can’t sell it. Alabama’s bill also gives a green light to homemade wine, but moonshine remains illegal.

HANG UP AND DRIVE

West Virginians who use a hand-held cell phone while driving now can be stopped and ticketed for that reason alone. In the past, using a cell phone while driving was a secondary offense, meaning police could not ticket a driver using a cell phone unless he or she was committing another infraction at the same time, such as speeding. Fines are $100 for the first offense, $200 for the second and $300 for the third. West Virginia joins California, Connecticut, Delaware, Hawaii, Maryland, New Jersey, New York, Nevada, Oregon, Washington, the District of Columbia and the U.S. Virgin Islands in making use of hand-held phones by drivers a primary offense. More than 220 million Americans subscribe to wireless services, and some estimates say as many as 80 percent use their phones while driving.

PAYING FOR SCHOOL

Public school revenues amounted to $604.3 billion in FY 2011, down slightly from $608.4 billion the year before. State governments paid for the biggest share—44.1 percent—followed by local governments at 43.4 percent and the federal government at 12.5 percent, according to a U.S. Department of Education annual report. On the expenditure side, the average amount states spent per pupil decreased by 1.5 percent, to an average of $10,658, although that amount ranged from $6,326 in Utah to $18,834 in New York. A little more than 61 percent of expenditures went toward instruction. What other institution gets $604 billion? Well, the Pentagon’s budget this year was close—$605 billion.

GOIN’ UP?

Until recently, you could be fined $70 for hitchhiking in Wyoming. But under a bill sponsored by Senator Leland Christensen (R), thumbing a ride is now legal in the Cowboy State. Christensen, a former sheriff’s deputy, argues hitchhiking is cheap and practical, especially in his district, which includes Teton Pass, where cyclists and backcountry skiers often thumb rides up. It’s legal in some form in most states, he adds, and generally safe. “It’s one of those things, like so many of our activities, you use good common sense about it,” he told the Casper Star-Tribune. Christensen says his constituents also noted that fines were applied inconsistently. In 2012, the Wyoming Highway issued roughly 21 hitchhiking tickets, the Star-Tribune reports.
William T. Pound, executive director of NCSL, sat down with three officers of NCSL to discuss their views on the importance and effectiveness of NCSL now and into the future. Oregon Senator Bruce Starr (R) is NCSL’s president. New Hampshire Speaker Terie Norelli (D) is NCSL’s immediate past president. Michael Adams, director of strategic planning in Virginia, is a former staff chair of NCSL.

William Pound: What do you find most special, most attractive about NCSL?

Terie Norelli: NCSL is the organization that deals with only state legislatures—not with governors, not with local municipalities or other branches of government. It is just for state legislatures. And I also think it’s really special that NCSL is the voice of state legislatures in Washington, D.C.

Bruce Starr: It is the bipartisan organization. It is clearly defined by its balance. That’s what really makes it special. And you mentioned the voice of the states. It is critically important. There is no other organization that has as much staff and as much focus upon the states’ perspective when dealing with members of Congress or the executive branch.

Michael Adams: NCSL is the only organization that includes legislative staff in its mission. It is vitally important that legislative staff have a place to connect to each other and to understand that their statehouse isn’t the only one tackling a certain set of circumstances, a certain set of issues, a certain environment that can exist and catch you by surprise. So staff’s investment in the success of this organization should not be underestimated.

“Dive straight in and take full advantage of all of the opportunities you can at NCSL.”
—Oregon Senator Bruce Starr, NCSL President

Pound: What are some of our most successful programs or greatest successes in the last year or two?

Adams: The staff at NCSL play such a critically important role supporting legislators across the country. As the states have faced budget constraints, NCSL staff fill a void in our ability in our own capitols to have all the research that is necessary in grappling with the challenges we are facing as states. They are a resource that just doesn’t exist anywhere else and that piece is incredibly valuable, particularly when you look at the fiscal condition of the states in the past few years.

Norelli: And NCSL has done that without raising state dues in four years. So at a time when state legislatures are cutting back funds, we have continued to provide a high level of resources to state legislators, to legislative staff. In essence, this organization is an extension of state legislative staff so that if I go to my state legislative researchers to ask them what’s happening in other states, they have a place to turn to where that information exists.

Adams: I think what is maybe less known outside the organization is all of the professional opportunities that NCSL creates for legislative staff to become better at what they do. The Legislative Staff Management Institute, for example, is a week-long program that’s totally devoted to creating staff leaders who can usher state legislatures into the future.

Norelli: As conferences change and travel restrictions become more common, NCSL has adapted to that. We are doing a lot more webinars both for legislative staff and for legislators, and a lot more focused meetings like the fiscal leaders meetings or the education leaders meetings and the Staff Management Institute, in addition to our regular big conferences like the annual Summit.

Pound: You are right. We have made quite a bit of change. That doesn’t mean we don’t need more. What do you think the greatest challenges will be over the next couple of years to legislatures and NCSL?

Starr: Fiscal issues will continue to be an issue states have to grapple with. In Oregon, we have a public employee retirement system that is not completely funded. When you make promises to public employees and you are trying to make promises to school kids and to seniors and to your constituents about public safety, at some point you have to balance all those promises, and it requires very difficult choices for policymakers. The Conference, through its research, can help legislators work together from various states, communicate what’s working and what’s not. Those are ways NCSL can play a very important role for policymakers across the country.

Norelli: NCSL is still a place where legislators from different states, different parties and different perspectives can come together and share ideas. Talk about what has worked. Talk about what hasn’t worked. Share some best practices. I would add that tension between the federal government and the states continues to be an issue. NCSL is the place that gives voice...
to state legislatures when it comes to state and federal issues. That is really an important voice these days. Then there are particular issues, like health care reform, where NCSL is a great resource in making sure that states know what their obligations are and what is going on—making sure that states have the information they need to make their own decisions about how to move forward. NCSL gives them the information, gives them the background. It is another resource for them.

**Adams:** For whatever reason, there seems to be an appetite for division in America. And I think in terms of challenges that the organization faces, it’s being aware of that and making sure that we stay true to our roots and find that cooperative middle ground that is required to solve problems and not let that appetite for division grow.

**Pound:** How and why did you first get involved in NCSL?

**Norelli:** I got involved with NCSL because for the first time in nearly a century, the majority changed in our legislative body. We didn’t have mentors from leadership, and I turned to NCSL as a new speaker for training for our committee chairs and vice chairs, for help with staffing issues within the legislature, and was very happy with the services provided. That made me look further and end up going to an annual Legislative Summit. And once you are there and find out how much information there is, how much networking is available, what kind of resources NCSL can provide, it is pretty easy to stay involved.

**Starr:** I got involved in NCSL because Ramona Kennedy, the chief clerk of the House, told me to, and you didn’t tell Ramona “no.” She got me appointed to the election reform task force that was formed after the 2000 elections and that’s what got me first engaged in NCSL. I haven’t looked back since. I’ve been an officer in committees and special projects and on the executive committee. The organization has provided me with great leadership training opportunities that otherwise wouldn’t have been available to me.

**Pound:** What advice would you give to new legislators or new staff about NCSL and being involved?

**Starr:** My advice is to dig into a particular committee and get engaged and involved and show up and participate. And whenever there is an NCSL opportunity, pursue it. Whenever anybody from NCSL called and asked me to do anything, if I was at all able to do it, I would say “yes.” Dive straight in and take full advantage of all of the opportunities you can.

**Norelli:** My word to new legislators and legislative staff is NCSL is your organization. We are here to serve you and be your resource, so take advantage of it. Take advantage of coming to meetings, doing webinars, asking for information. NCSL is made up of every legislator in the country. Of every legislative staff member in the country. You are NCSL, so get involved.

**Adams:** Exactly. You are already a member of NCSL. There is no form you have to fill out. There is no process of initiation. You belong. And in an organization that you already belong to, I think it is important to ask what your contribution might be and how you might offer some unique expertise that others could consume. That’s the strength of the organization, people coming together contributing, and through contributing learning from each other.

“NCSL is a place where legislators from different states, different parties and different perspectives can come together and share ideas.”

—NEW HAMPSHIRE SPEAKER TERIE NORELLI, NCSL IMMEDIATE PAST PRESIDENT

“NCSL creates professional development opportunities for legislative staff to become better at what they do.”

—FORMER NCSL STAFF CHAIR MICHAEL ADAMS OF VIRGINIA
The mighty Colorado River, named for the red rocks of the spectacular canyon walls it so famously carved during the past few million years, is in peril. An increasing population and persistent droughts, combined with a faulty formula for allocating its water, are decreasing flows on this magnificent American river, jeopardizing not only the river itself, but one of the country’s fastest growing regions.

As the river meanders its way from the Colorado Rockies to the Gulf of California, it supplies water to more than 30 million people in Colorado, Wyoming, Utah, New Mexico, Arizona, Nevada and California, 15 Native American tribes, seven national wildlife refuges, five national parks and four national recreation areas.

The more than 240,000 square miles of the river’s basin are a mecca for tourists and naturalists from around the world. Its colorful canyons and dramatic landscapes offer unparalleled rafting, fishing, hunting, hiking and wildlife viewing that generate an estimated $26 billion each year for the recreation industries.

Tumbling along its 1,450-mile trek, it generates enough electricity to power more than 4 million homes and irrigates 15 percent of the nation’s crops on 4 million acres of farmland, helping feed the entire nation. Southern California’s Imperial Valley, irrigated mostly from the Colorado, grows an estimated 80 percent of the nation’s winter vegetables. In fact, more water is exported from the Colorado River basin than any other river in the world.

But can the Colorado continue to meet the growing demand? A recent study by the Department of the Interior’s Bureau of Recla-
Information looked at several factors that could affect river levels and water use over the next 50 years and concluded there will be a significant gap between water supply and demand. The bureau predicted that if the climate continues to warm in the region—leading to more droughts, increased evaporation and decreased snowpack—river flows could plunge by 9 percent or more. Add to that approximately 49 million to 76 million more people, and the demand on the river by 2060 could outstrip supply by 3.2 million acre-feet (MAF). (One acre-foot is the amount of water needed to cover one acre of land to a depth of one foot. One acre-foot is roughly the amount consumed by two households a year.)

Who Runs the River?

With this much at stake, who’s in charge of the river? Before the Colorado River compact was signed in 1922, it was unclear if the same set of rules states used to regulate the water within their borders applied to interstate waters that flowed among states.

Since the 1800s, Western states have allocated the scarce
water within their borders through the “prior appropriation” doctrine that awards the first person to put water to beneficial use a more senior right than subsequent users, as long as the beneficial use continues. Under this system, in times of drought, the most junior users may be left dry.

As the West and Southwest developed in the early 1900s, California’s increasing use of the Colorado River raised concerns among upstream states that if California established senior rights, they might have to temper their use when things got dry. So officials in the seven states negotiated the Colorado River Compact, and Congress signed it in 1922. It:

- Split the river in half, with Colorado, New Mexico, Utah and Wyoming comprising the upper basin and Arizona, California and Nevada the lower.
- Allocated rights to 15 MAF of water equally between each basin annually. The total allocated reached 16.5 MAF after a 1944 treaty granted Mexico 1.5 MAF a year.
- Allowed for variability in the river’s flow by spreading the required annual allotments over a 10-year period.

**Flawed Formula at Fault**

The formula worked well in the beginning, but there was one significant problem the negotiators didn’t know. Their original
calculation of the average annual flow of the river—16.4 MAF—was based on a particularly wet 20-year period. In recent years, the flow has averaged only 14.7 MAF, far short of the total 16.5 MAF required in the compact to divide among each basin and Mexico. This outdated water allocation system is inadequate to respond to current pressures.

Put simply, “the Colorado River is oversubscribed,” says Nevada Senator Tick Segerblom (D) from Las Vegas, chair of the Senate Judiciary Committee. “The compact is based on a false understanding of how much water there is.”

Fast-growing cities and droughts have taxed the once-reliable river. In 1922, when the Colorado River Compact was signed, Los Angeles had 1.2 million people. Today, it has more than 9.9 million. In 1990, 23.5 million people relied on the Colorado for some or all of their water. Twenty-three years later, that number is up to more than 30 million. In addition, the area has been hit with a 13-year drought that persists today.

The Hoover (1935) and Glen Canyon (1966) dams were built along the river to ensure sufficient supply for the two basins. They have the capacity to store four times the average annual flow of the river. Without them, the states would have experienced shortages by now.

Currently, however, the dams’ reservoirs—Lake Mead between Arizona and Nevada and Lake Powell on the Utah-Arizona border—are projected to dip to 45 percent of their combined capacity this month, according to the Bureau of Reclamation. Even so, they provide a defense against overuse of the river’s water. “Bathtub rings in Lake Powell and Lake Mead testify that half-empty glasses are at least half full,” says Colorado Supreme Court Justice Gregory Hobbs, an expert on the complex tangle of water policy and laws in the West.

The Bureau of Reclamation studied a variety of solutions to this scarcity of water in the river and its reservoirs, from increasing supplies to reducing consumption to modifying current practices. Remedies being discussed range from feasible, to creative, to seemingly far-fetched. Some examples, along with their estimated costs per acre-feet a year (AFY) and potential water savings or production by 2060, include:

- Municipal conservation, at a cost of $500 to $900 could reduce water use by about 1 MAF a year.
- Agricultural conservation efforts, estimated to cost between $150 and $750, could conserve 1 MAF a year.
- Banking water for later use saves an estimated 800,000 AFY.
- Reuse of municipal wastewater, at a cost of $1,500 to $1,800

Law of the River

The Colorado River Compact was the first in a series of agreements collectively referred to as the “Law of the River” that governs water use still today. It is the foundation of current water policies, but the original compact did not assign specific amounts of water to each state. Those came later through the Boulder Canyon Project Act of 1928—which assigned 2.8 MAF to Arizona, 4.4 MAF to California, and 0.3 MAF to Nevada—and the Upper Colorado River Basin Compact of 1948—which assigned 51.75 percent of upper basin water to Colorado, 11.25 percent to New Mexico, 23 percent to Utah, and 14 percent to Wyoming. The percentages were applied to the actual water available in the upper basin in any given year. With the lower basin states guaranteed specific amounts, where does that put the upper basin states during dry times?

Rather than go to court over who should shoulder any shortfalls—as Western states so often have done—the seven states and the Department of the Interior reached an agreement in 2007 on interim guidelines to operate the river. The agreement:

- Sets a minimum water level in Lake Mead that, if breached, would reduce water to Arizona and Nevada (which has not yet occurred).
- Coordinates the operations of Lake Powell and Lake Mead to move water between the two basins more efficiently.
- Allows states to store conserved water in Lake Mead for future use instead of the previous requirement to “use it or lose it.”

Senator Tick Segerblom Nevada

Senator Tick Segerblom Nevada
could yield over 900,000 AFY.
- Desalination of ocean water off the California coast would cost about $3,950 to $4,200 and could produce 1.8 MAF a year.
- Weather modification such as cloud seeding would cost $30 to $40 and could produce 1.7 MAF a year.
- Importing arctic icebergs to Southern California could cost between $2,700 and $3,400 to increase supplies by 600,000 AFY.
- Piping water to Colorado from the Missouri or Mississippi rivers could cost $1,700 to $2,300 and yield 600,000 AFY.

The Bureau of Reclamation cautioned that some of the suggested remedies, such as modifying the weather, importing icebergs or transporting water from as far away as the Missouri and Mississippi watersheds, might not be reliable or technically feasible enough to be put into action.

What Can State Legislatures Do?
Sarah Bates, of the University of Montana’s Center of Natural Resources and Environmental Studies, reminds states that even though there is an interstate compact, they maintain the right to manage water within their boundaries. “Think like a region, but act at whatever level of decision making is appropriate,” she says.

As water supplies in Arizona evaporate, Arizona Senator Steve Pierce (R), a rancher and chair of the Senate Natural Resources and Rural Affairs Committee, sees a strong role for states to take in managing the river. “Increased competition from both within and outside Arizona has the potential for significantly higher costs for our citizens and possible negative economic, social and ecological impacts,” he says. He notes that the Legislature and the Arizona Department of Water Resources “are participating in a process to identify multiple solutions, including demand management, reuse of reclaimed water, water banking, watershed management and augmentation from supplies outside the basin.”

Water banking is one way states can manage their water supply. In Arizona, lawmakers established an underground water bank in 1996 to store the state’s unused entitlement of Colorado River water for future use. The law also allows interstate banking and, in 2004, the Las Vegas water authority began paying Arizona to store its unused allotment in its water “bank.” When it needs more water, the city cashes in the storage credits it receives from Arizona for an equivalent amount of water directly from Lake Mead.

The Colorado General Assembly passed two bills this year that promote water conservation. They both are designed to counteract the disincentive to conserve inherent in the long-standing “use it or lose it” assumption in the prior appropriation doctrine, which says if you reduce your consumption and don’t use your allotted amount of water, your future allotments may be reduced as well.

“We wanted to give people with existing water rights additional flexibility,” says Colorado Senator Gail Schwartz (D), chair of the Senate Agriculture, Natural Resources and Energy Committee.

The first bill protects the long-term water rights of owners who temporarily use less water as a result of participating in an approved water conservation program, a water bank, or a land falling program that removes a section of farmland from irrigation for a year.

The second bill allows a water rights holder to store water for future beneficial use without losing the entitlement. It recognizes that such storage “is not speculative hoarding but, rather, is part of prudent water management.”

Senator Ellen Roberts (R), from the rural southwestern part of the state, sees the bill as a “practical approach” to dealing with shortages that are likely to get worse without incentives to conserve and store water. “We’re not trying to overturn the basis of Colorado water law,” she says. “We just need the ability to deal
with drought and wildfires.” Roberts knows that downstream states might be concerned about the legislation, but offers assurances that “we’re not depriving anyone of water that we don’t have a legitimate need for from year to year.”

A Trickle of Hope

Larry MacDonnell, a former water law professor at the universities of Wyoming and Colorado who has worked with legislators on water policy throughout the West, acknowledges the important role of states in Colorado River decisions. He views conservation, reallocation and water banking as the best options to keep net river use even. He is concerned, however, with state water plans that would increase consumption up to approved compact levels when the amount in the river is clearly declining.

“The challenge is that, with diminishing supplies, junior water rights holders may be cut off if the water’s not there,” he says. “Who wants to build a future on an unreliable water supply?”

Even with the daunting supply-and-demand scenarios of the future, MacDonnell sees opportunities for states to bring the Colorado back to health. He points out that the more stakeholders get involved in making decisions about the river’s future, it produces more creative thinking, more creative ideas.

“We’ve changed our thinking dramatically with a shift in the landscape that I’m really pleased to see.”

Not Just Out West

Other states also struggle over how to allocate limited water resources.

Apalachicola-Chattahoochee-Flint Water Dispute

Georgia, Alabama and Florida have been in court for more than 20 years fighting over water from the Apalachicola-Chattahoochee-Flint river basin. The three rivers drain nearly 20,000 square miles of land, starting north of Atlanta and emptying into the Gulf of Mexico off the Florida panhandle. Seventy-four percent of the basin is in Georgia, 15 percent in Alabama and 11 percent in Florida. The system provides water for drinking and navigation, generates power, irrigates crops, protects endangered species, provides commercial fishing and offers recreational opportunities.

Litigation began in 1990 when Alabama tried to stop the Army Corps of Engineers from increasing Atlanta’s drinking water supply from Lake Lanier to meet its explosive population growth to the potential detriment of other water uses downstream. Florida joined the two states in negotiations throughout the 1990s and eventually agreed on a compact in 1997 whose primary purpose was to develop a plan to allocate the basin among the states. Negotiations broke down in 2003, however, and the compact dissolved.

A 2009 federal court decision sided with Alabama and Florida in determining that municipal water supply was not part of the original purpose behind Lake Lanier, but a 2011 circuit court of appeals ruling overturned that decision and said the Corps could consider Atlanta’s request for more water. In June 2012, the U.S. Supreme Court turned down a request to get involved.

Red River Water Dispute

The Red River rises on the Texas panhandle and flows 1,300 miles through Texas, Oklahoma, Arkansas and Louisiana before joining the Mississippi River. The four states reached agreement on a compact to allocate the river in 1978, which Congress ratified two years later. It called for an equitable apportionment of the river, with each state getting access to 25 percent.

The Tarrant Regional Water District, which supplies water to 11 counties in north-central Texas, including the rapidly growing cities of Fort Worth and Arlington, sought to divert a portion of its share from a tributary of the Red River in Oklahoma in 2007. Its rationale was easy to understand—water quality in the Oklahoma tributary was better than that in the river on the Texas side of the border, and thus less expensive to treat. The permit was denied and Tarrant sued, arguing that the compact preempted more restrictive state laws, and that the restrictions were a violation of interstate commerce.

Federal district and appellate courts sided with Oklahoma, and Tarrant took the case to the U.S. Supreme Court. In June of this year, the Supreme Court unanimously concurred with Oklahoma, ruling that the compact does not create cross-border rights, and that Oklahoma’s laws do not infringe on interstate commerce.

“Bathtub rings in Lake Powell and Lake Mead testify that half-empty glasses are at least half full.”

—COLORADO SUPREME COURT JUSTICE GREGORY HOBBS
Game Changers

Some high-profile Supreme Court cases this term chart a new course for gay rights and voting practices.

BY DAVID G. SAVAGE

The Supreme Court ruled on several cases this term that have a direct impact on states. It ushered in a new era of equal rights for gays and lesbians, as it struck down part of the federal law that denied benefits and tax breaks to legally married same-sex couples. At the same time, another era of civil rights law ended, when the court struck down part of the historic Voting Rights Act that put much of the South under special federal oversight.

These two rulings had few fans in common. Those who hailed one as long overdue condemned the other as an appalling mistake. But these opinions and several others nonetheless share a common theme under Chief Justice John Roberts—that state legislatures have primary authority to make the laws for much of what goes on within their borders, at least most of the time.

Gay Rights Win

The Supreme Court took on gay rights in United States v. Windsor, which focused on Section 3 of the 1996 federal Defense of Marriage Act (DOMA). The federal law defines “marriage” as a legal union between one man and one woman, and Section 3 says the federal government would not recognize same-sex marriages if legalized elsewhere, which has prevented couples from filing a joint federal tax return, or, if they were federal employees, from covering their spouses on their health care plans. Section 2 states that no state need recognize these marriages either, a provision that still stands.

Congress passed the law before any state allowed gay marriages, but it has become a point of contention as more couples marry in the 13 states that now allow same-sex marriage.

In a 5-4 decision, Section 3 was declared unconstitutional for two reasons. First, it intrudes on states’ turf. “The federal government, throughout our history, has deferred to state-law policy decisions with respect to domestic relations,” Justice Anthony Kennedy wrote. “By history and tradition, the definition and regulation of marriages … has been treated as being within the authority and realm of the separate states.”

The second reason Kennedy gave was that excluding these couples from federal benefits denies them their constitutional rights to liberty and equality. “DOMA’s principal effect is to identify a subset of state-sanctioned marriages and make them unequal,” he wrote. Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan agreed.

The opinion can be interpreted in a couple of ways. By stressing the states’ role in regulating marriage, Kennedy may be suggesting states are free to decide for themselves whether to permit same-sex marriages. On other hand, by characterizing the issue as one of equal rights, the opinion lays the groundwork for the argument that barring same-sex marriages denies gays and lesbians their equal rights.

In his dissent, Justice Antonin Scalia said he could see what is coming. “No one should be fooled. It’s just a matter of listening and waiting for the other shoe to drop. By formally declaring anyone opposed to same-sex marriage an enemy of human decency, the majority arms well every challenger to a state law restricting marriage to its traditional definition.” The dispute is likely to play out in the lower courts now, as gay plaintiffs sue to challenge their state’s Defense of Marriage laws.

The Supreme Court also ended one long legal battle by throwing out the defenders of California’s gay marriage ban, Proposition 8, thereby clearing the way for same-sex marriages there. This back-and-forth dispute began in 2008 when the California Supreme Court ruled the state’s ban on same-sex marriage violated the state’s constitution. A few months later, the voters approved a ballot measure to amend the state constitution and limit marriage to a man and a woman. Then, in 2010, two gay couples who wished to marry sued in federal court and won. The judge ruled they had a constitutional right to marry as a matter of liberty and equality.

When California officials chose not to contest the ruling and defend the ban, private supporters stepped up to its defense. For this reason Roberts dismissed Hollingsworth v. Perry on the grounds that individual proponents of the ban had no legal “standing” to defend its constitutionality and speak for the state when state officials had chosen not to.

Scalia, Ginsburg, Breyer and Kagan joined with Roberts to dismiss the appeal. The outcome suggests several justices—on the left and the right—want to avoid for now a broad constitutional ruling on gay marriage.

Voting Rights Outdated

In the case against the Voting Rights Act, Shelby County (Ala.) v. Holder, the Court struck down the coverage formula contained in Section 4 of the act that determined which jurisdictions need federal “permission” for any and all changes to their elections laws. In another 5-4 decision, Roberts called the criteria no longer appropriate today, and “a drastic departure from basic principles of federalism … [and] an equally dramatic departure from the principle that all states enjoy equal sovereignty.”

In his opinion, Roberts noted that in the states covered by the 1965 law, African-Americans now register and vote at the same or higher rates than whites. “The question is whether the act’s extraordinary measures, including its disparate treatment of the states, continue to satisfy constitutional requirements.” The chief justice said the answer was “no,” and Justices Scalia, Kennedy, Clarence Thomas and Samuel Alito agreed.

This frees Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia, along with parts of California, Florida, Michigan, New York, North Carolina and South Dakota, from getting “pre-clearance” from Washington, D.C. These jurisdictions had been singled out because they had either screened new voters with literacy tests or collected poll taxes in the 1960s, or their 1972 voter turnout rates were less than 50 percent.

Roberts stressed the court’s decision did not touch Section 2 of the Voting Rights Act, which makes it illegal to enforce any “standard, practice or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” The Justice Department and individuals may continue to suit to enforce this provision. It is “permanent, applies nationwide and is not at issue in this case,” the chief justice said.
Following the ruling, Alabama, Mississippi and Texas, formerly under preclearance rules, indicated they would implement their previously enacted photo voter ID laws. And North Carolina lawmakers passed a voter ID bill that had been on hold until the ruling.

U.S. Attorney General Eric Holder, responding to the ruling, said the federal government would “keep taking appropriately aggressive action against any jurisdiction that attempts to hinder free and fair access to the franchise.” In late July the justice department indicated it may use Section 3 of the Voting Rights Act in asking a federal court to require that Texas preclear its future voting changes with federal officials. Section 3 allows a court to “bail in” states or jurisdictions under preclearance procedures based on recent, intentional voting discrimination practices.

In the Arizona voting registration case, Arizona v. Inter Tribal Council of Arizona, the court, in a 7-2 decision, struck down the state law that required would-be voters to show proof of citizenship to register. Scalia said the state requirement was pre-empted by the federal Motor Voter Act, which requires states to “accept and use” a simple federal form for registering. His opinion in the case could prove significant because it says Congress has “broad” authority to set uniform federal regulations for elections. Alabama, Georgia and Kansas have similar proof-of-citizenship statutes.

DNA, Affirmative Action, Takings, too

In a case affecting more than half the states, the court upheld laws that authorize the police to take DNA samples from people arrested for, but not yet convicted of, serious crimes. The 5-4 decision said mouth swabs for DNA are equivalent to fingerprints and mug shots and should be allowed to be a standard part of the booking process.

Crime victim advocates have pressed for widespread DNA testing of arrestees, arguing it can stop serial predators and help solve cold crimes, as exemplified by the case before the court. When Alonzo King was charged with an attempted assault in 2009, a standard DNA test revealed a match with DNA from a rape six years earlier in Maryland, which he was convicted of and sentenced to life in prison. When a Maryland appeals court ruled the DNA swab was an unreasonable search, and that he should go free, the Supreme Court took up the case. It reversed the lower court decision, upheld the state law and affirmed King’s conviction. Currently, 29 states have laws requiring the collection of DNA from individuals arrested or charged with certain crimes.

In Fisher v. University of Texas at Austin, the Court did not answer the ultimate question of whether the university’s affirmative action policies violated the Constitution. Instead, the justices agreed, 7-1, that the case should be revisited by the Fifth Circuit Court of Appeals because it had failed to use the correct legal standard—strict scrutiny—in its previous decision.

The case revolved around Abigail Fisher, who sued the school after being denied admission. Fisher, who is white, alleged the university’s use of race in admission decisions violated the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

To pass strict scrutiny, the university must prove that achieving more diversity is a compelling governmental interest, and, if so, that its affirmative action policy is tailored narrowly enough to meet its diversity goal. The Fifth Circuit Court will have a do-over on this case.

And finally, the Supreme Court also took on the issue of government takings in Koontz v. St. Johns River Water Management District. This case involved a man who sought permits to develop a portion of wetlands that he owned in Florida. St. Johns River Water Management District told him he could proceed if he would reduce the impact by limiting the area of development or, alternatively, pay for improvements on district-owned property several miles away. He refused both options, was denied a permit, and sued, claiming his property was taken without just compensation.

The Supreme Court ruled in favor of Mr. Koontz with two primary findings: First, there must be a “nexus” and “rough proportionality” between the government’s conditions for issuing a land-use permit and the effects of the proposed development—denying a permit because the landowner refused to accept conditions that did not meet those standards amounted to a taking in the same way that issuing the permit with those conditions did.

And second, “nexus” and “rough proportionality” also apply when the conditions require the land owner to pay money to mitigate the impacts of development, and not just when the land owner is required to give up rights to real property to accomplish the same purposes.

What’s ahead next term? The Supreme Court already has granted enough cases to fill the argument calendar into January; so far, few look to be blockbusters for the states.
Chief clerks and secretaries may be few in number, but they’re mighty in stature. They were the first type of legislative staff and are the backbone of a legislative chamber. They serve as parliamentarians, chief administrative officers and record-keepers. They oversee the legislative process and ensure its rules, traditions and practices are followed.

This year marks the 70th anniversary of the American Society of Legislative Clerks and Secretaries (ASLCS), the professional organization for these legislative staff members. As their jobs have grown in complexity and expanded in responsibilities, it’s clear the organization has not only provided great professional development opportunities, but personal support as well.

Karen Wadsworth, clerk of the New Hampshire House of Representatives since 1994, says the organization is like family with coast-to-coast connections. “When most people see that your job title is clerk, they think it’s someone ringing up an order at 7-Eleven. It’s nice to be part of a group that understands exactly what I do and that has the knowledge to answer my parliamentary questions,” she says.

Scott Kaiser, assistant secretary of the Illinois Senate, adds that it can boost one’s confidence to know, from talking with other clerks and secretaries, that the frustrations, challenges and struggles he faces as part of his job in Illinois, “are no different elsewhere.”

The American Society of Legislative Clerks and Secretaries is an “incredible network of clerks and secretaries from across the country that you can call in a moment’s notice to get professional advice,” says Patsy Spaw, secretary of the Texas Senate and immediate past staff chair of NCSL. “I’ve had the opportunity to be mentored by, and rub shoulders with, the best of the best who care about your professional development.”

But, beyond the professional development and support, ask any member what the society means to them and the answer is always the same: friendship. “I’ve met wonderful friends that I’ve been able to share life experiences with and, if given the opportunity, I’d do a lot for them in a heartbeat,” says Patrick O’Donnell, clerk of the Nebraska Legislature and former NCSL staff chair. “We are all in a similar position, and we all have passion for our work and respect for the legislative institution.”

The organization was founded in 1943, but clerks and secretaries date as far back as 1619, when the first-known U.S. clerk, John
Twine, oversaw the House of Burgess in the Colony of Virginia.

Not surprising, the duties of the job have expanded greatly since then. Today’s clerks and secretaries are also responsible for oversight of public and media relations, chamber technology, purchasing, printing, and fiscal and human resource operations of the legislature. Spaw, for example, oversees 15 departments, both administrative and legislative. She manages 300 staff during the legislative session and 250 during the interim. During sessions, they call roll, tally votes to ensure quorums, read bills into the record and maintain decorum during debates.

But a lot of their work is behind the scene. “Reading of the bills, taking the roll call ... that’s a small part, but the most visible part, of our job,” says Kaiser. Seventy percent of a clerk’s work is administrative and takes place off the floor, he says.

A key part of that administrative work is preparing the chamber’s journal, the official record of legislative action, a task that remains from when Twine was required to “attend at the table and take notes of the orders and proceedings,” writes parliamentary scholar Luther Cushing in “Cushing’s Manual of Parliamentary Practice: Rules of Proceeding and Debate in Deliberative Assemblies.”

“At the end of the session, it is the business of the clerk to see that the journal of the session is properly prepared, and fairly transcribed from the minute books, the printed votes, and the original papers that have been laid before the house,” he writes.

**Many Paths to the Top**

For most clerks, secretaries and their staff, their interest in policymaking walks them through the doors of the capitol, but their love of the institution and of the legislative process is what keeps them there. Although the job requires many skills, there is no formal degree program or training to become one.

Kaiser got the job of assistant secretary after serving as a policy adviser to the Illinois General Assembly and to Governor Jim Edgar. He has always been intrigued by the legislative process, holds a deep respect for the institution, enjoys the traditions of
Are You Smarter Than a Parliamentarian?

Take this quiz on legislative rules and procedures before you answer.

What could be more fun than to study a little parliamentary procedure? It won’t be time wasted. Rules and procedure are at the heart of the legislative process. “Mason’s Manual of Legislative Procedure” is used in about three-fourths of state legislative chambers and is the source for these answers. A state constitution and a chamber’s rules may trump these answers, but having a general knowledge of all the rules gives a lawmaker the advantage. Let’s practice!

—Brenda Erickson

1. Rules of legislative procedure:
   ○ A. Cannot be altered
   ○ B. Can be derived from custom, usage and precedents
   ○ C. Aren’t generally followed

2. How many motions are available for use by a legislative body?
   ○ A. 40 to 60, depending on the size of the body
   ○ B. 101 (based on the dalmatian rule)
   ○ C. An unlimited number

3. A substitute bill is:
   ○ A. A new, original introduction
   ○ B. A form of an amendment
   ○ C. A temporary replacement

4. A legislative body may discipline members:
   ○ A. Never—that power lies solely with the executive branch
   ○ B. As it deems it appropriate
   ○ C. Only when there’s trouble in paradise

5. Vetoed legislation is:
   ○ A. First considered by the measure’s chamber of origin
   ○ B. Held at the discretion of the secretary of state
   ○ C. Dead upon arrival in either chamber

6. The enacting clause:
   ○ A. Is located above the signature line for the governor
   ○ B. Is added to legislation once approved by both chambers
   ○ C. Is required for a new law to be valid

7. During debate:
   ○ A. Members who yell the loudest get to speak first
   ○ B. Members may express approval by clapping and cheering
   ○ C. Members should contain remarks to the issue before the body

8. The motion to adjourn:
   ○ A. Can be made only when there is a quorum
   ○ B. Is always in order
   ○ C. Cannot be reconsidered

9. A joint session:
   ○ A. Requires the senate and house to merge into one body
   ○ B. Can be convened only by the governor
   ○ C. Cannot meet longer than one week

10. The motion to reconsider:
    ○ A. Can only be offered after a minute of silent reflection
    ○ B. Can be amended
    ○ C. Cannot be amended

11. A motion to recess:
    ○ A. Terminates a meeting upon approval
    ○ B. Is subject to debate
    ○ C. Is out of order when a quorum is absent

12. A parliamentary inquiry is:
    ○ A. A request for information
    ○ B. The same as a motion
    ○ C. An investigation into a member’s conduct on the floor

13. The decision of a deliberative body is made:
    ○ A. By taking a vote at a meeting
    ○ B. After each member has expressed an opinion
    ○ C. When the presiding officer votes

14. A subcommittee:
    ○ A. Reports directly to the senate, house or assembly
    ○ B. Is governed by the same rules as its parent committee
    ○ C. May be appointed by a committee of the whole

15. Members of a legislature:
    ○ A. Are considered equals
    ○ B. May use the name of the governor to influence votes
    ○ C. Are a devilish lot

(Answers on page 26)
A “Dream Team”

**Paul Mason: Author of “Mason’s Manual of Legislative Procedure”**

Paul Mason, as chief assistant secretary and parliamentarian of the California Senate, quietly made his mark on the world of state legislatures when he wrote his first “Manual of Legislative Procedure” in 1935.

Mason’s hobby was the legislative process—he wrote his master’s thesis on the topic, published a book on the California Constitution, and developed a guide for presiding officers in the form of questions. That guide is believed to be the precursor to today’s Mason’s Manual of Legislative Procedure—the No. 1 resource for state legislative rules and procedures.

Mason updated his manual six times. Before his death in 1985, he assigned its copyright to NCSL and requested the manual continue to be updated and reprinted, which is done roughly every 10 years by the 16-member Mason’s Manual Commission.

It is used by more than 70 percent of the nation’s legislative chambers.

**Joseph Beek: Founder of the American Society of Legislative Clerks and Secretaries**

Joseph Beek wanted to increase communication among the nation’s legislative clerks and secretaries. So in 1943, as secretary of the California Senate, he organized the American Society of Legislative Clerks and Secretaries (ASLCS) and served as its president for 25 years. He believed that not only would his profession benefit, but that legislatures around the country would improve as well.

By forming an organized group, Beek believed his colleagues would be reminded of their role in strengthening the institution and supported in their efforts, says Brian Ebbert, assistant chief clerk of the California Assembly.

As ASLCS prepares for its 70th birthday celebration in Sacramento this fall, it’s clear Beek’s vision has been realized. Ask any society member what he or she has gained from being a part of the society and the list will be long—friends, professional development, wisdom and invaluable connections.

Ebbert, a Beek and Mason scholar, calls the two men “the dream team.” Yet neither sought the limelight.

“They just wanted to improve the legislative process and strengthen the institution,” he says. And they did.

If asked, she will give any senator her confidential advice on rules. But she does not participate in policy or political strategy sessions with members.

Remaining nonpartisan can be challenging during tense times. Spaw recounts the time in 2003 when Democratic senators fled to New Mexico to break quorum and avoid a vote on redistricting legislation. She was required to sign their arrest warrants and deny them Senate services during their absence.

“I was doing my job, what I had to do, but prayed that the Democrat senators did not think my actions were a judgment on them. We have responsibilities, and we have to fulfill them,” says Spaw.

For O’Donnell, a particularly dramatic time occurred during

the Illinois Senate and takes pride in “knowing the rules and how to use them.” Kaiser kept his eye on the assistant secretary position and was elected to it in 2004.

Karen Wadsworth’s path to the office of clerk of the New Hampshire House of Representatives began in the chamber itself, where she served for 10 years as a legislator. Known for her grasp of the rules in her work with House committees, Wadsworth was recruited for the clerk position when her predecessor died suddenly. She was hesitant to give up the policy debates she enjoyed as a legislator, but she was intrigued by the role of clerk and agreed to give it a try. She made history when elected in 1994 as the first female, and now longest-serving, clerk in the New Hampshire House. She has always been nominated by both parties, as well.

In 1969, when electronic typewriters and carbon paper were the norm, Patsy Spaw started in the Texas Senate Secretary’s office as a typist during the state’s biennial sessions. She discovered each bill had a story behind it, and her interest in the legislative process bloomed. In 1977 she was elected as the engrossing and enrolling clerk of the Texas Senate, and served in this position for 23 years. During this time Spaw grew both personally and professionally, developing the department and learning to manage a staff of 60, including 10 lawyers.

“I had an eagerness to improve, a willingness to learn, I loved what I did, but wanted to do it better.” Furthermore her personal development, she earned both her undergraduate degree and law degree. And in 2001 her hard work paided off when she was elected secretary of the Texas Senate.

**Impartiality Required**

In most states, clerks and secretaries are required to be nonpartisan and unbiased in their decisions. On days when controversial bills are debated, Spaw, as a nonpartisan officer, takes extra care to review the chamber’s rules and historical actions.
one legislative session in the 1980s when the Legislature impeached the sitting attorney general. He was required to follow the rules, as outlined in Nebraska’s Constitution, which assigns the job of serving papers to the clerk. He recalls the weighty responsibility of serving papers to both the attorney general and the state Supreme Court. “The Legislature was in an investigatory mode the entire session. It spent time, energy and money to prepare for the impeachment process and build the record that would be used in court. I remember my hand trembling when I took the roll for the impeachment vote.”

In some states, clerks and secretaries are partisan officers, selected by the majority party. In the Illinois Senate, for example, the secretary is nominated by the majority caucus and the assistant secretary is nominated by the minority caucus, but both are elected as officers of the chamber by the entire body.

As the assistant secretary of the Illinois Senate, Kaiser shares his responsibilities with the secretary of the Senate, right down to splitting the task of calling the roll. Even with this partisan structure, an arrangement that goes back more than 60 years, Kaiser emphasizes the bipartisan nature of his position and credits his predecessors for creating an environment that values impartiality, even when leadership flips from one party to the other. “We serve all 59 members of the Illinois Senate. We stay above the fray.”

Long-Term Memory
Clerks and secretaries prize their roles as protectors of the legislative institution. When Wadsworth became New Hampshire’s clerk, she says her main goal was to preserve the House’s traditions and long-term memory of how things have been done and why. “If there’s no institutional memory, the legislature’s not a special place,” she says.

Wadsworth and others often say they help lawmakers understand why “things are the way they are.” O’Donnell continually educates his members about the legislative process, the power of the legislature and the importance of preserving institutional prerogatives.

“Members complain about the amount of time spent on the floor and in committee hearings,” says O’Donnell. “I tell them that taking time to argue about something is good—it’s building consensus toward a goal. Forty-nine people with different life experiences and talents listening to each other is a fundamental part of the process.”

The position’s challenges include long hours, partisan divisiveness and public apathy about the legislative process. O’Donnell faces another challenge: Sensitizing members to the legislative process in a term-limited state. “I am the constant, the memory and the repository of certain traditions. I can advise, but I can’t mentor.”

Still, most clerks and secretaries and their staffs consider it a privilege to serve. “I love my job, especially having access to a variety of people and hearing fascinating stories,” says Wadsworth. She cherishes her role as a mother figure to many of the new members. She recalls one opening day of session when her seamstress skills were called into service to help a newly elected legislator fit into his newly acquired suit and appear prepared and ready for all the challenges that lay ahead.

For Kaiser, the best part of the job is the view from the rostrum. “Where I sit, I see everybody all at once. It allows me to see something develop on the floor before it happens,” he says. While other staff are busy during session, he relishes the deliberative and steady nature of his position, a job that has stood the test of time.
For decades, tobacco companies paid Hollywood millions to push smoking in movies. Why are your state’s taxpayers doing it now?

LAST YEAR, THE U.S. SURGEON GENERAL concluded that smoking in films causes kids to smoke. The Surgeon General also reported that tobacco companies have a history of paying Hollywood to put smoking in movies.

Today, so do taxpayers. Through film production incentives, states hand out hundreds of millions of dollars to producers of movies with smoking.

Research shows that exposure to on-screen smoking accounts for 800,000 current teen smokers. A quarter-million of these kids will ultimately die from tobacco-induced diseases like cancer.

The problem is so urgent that, in May 2012, the attorneys general of 38 states wrote to Hollywood’s top executives to demand that they stop what the AGs called a “colossal, preventable tragedy.”

The challenge for states? Indiscriminate film subsidies undermine efforts to keep tens of thousands of kids from starting to smoke — and burden states with billions in health costs.

No state can afford such a glaring policy conflict. Fortunately, the fix is straightforward. The U.S. Centers for Disease Control and Prevention (CDC) recommends that states simply make future media productions with tobacco ineligible for public subsidies.

There’s no First Amendment issue. After all, states already refuse to subsidize all sorts of other media production, from political ads to porn.

 Awareness is growing. Washington State’s Attorney General has petitioned to block state tax credits for movies with tobacco produced there. Mainstream health groups are united to change California’s film subsidy rules, too.

Whether or not you believe film subsidies make sense as economic development policy, collateral damage to kids’ health makes them unsustainable and unsupportable.

It’s time to mend your state’s subsidies. Or end them.

SMOKING IN MOVIES KILLS IN REAL LIFE. Smoke Free Movie policies—the R-rating, certification of no payoffs, anti-tobacco spots, and an end to brand display—are endorsed by the World Health Organization, American Medical Association, American Academy of Pediatrics, American Heart Association, Legacy, American Lung Association, Americans for Nonsmokers’ Rights, American Public Health Association, Breathe California, Campaign for Tobacco-Free Kids, Los Angeles County Dept. of Health Services, New York State Dept. of Health, New York State PTA, and many others. Visit SFM online or contact: Smoke Free Movies, UCSF School of Medicine, San Francisco, CA 94143-1390.
Uncovering Hospital Charges

Hospitals are reporting their rates for various procedures in an effort to satisfy those who want more transparency in health care costs.

Few consumers would buy a car, enroll in college or hire a remodeling contractor without doing some cost-comparison shopping. But when it comes to hospital procedures, prices largely have remained a mystery. Facilities each set their own charges and may negotiate with insurance plans and large employers for discounted rates, but they generally don’t advertise prices.

With health care costs continuing to rise, however, finding ways to save is on the minds of not only individual consumers, but all payers of health care, including employers and governments. One way may be through greater price transparency of hospital procedures, which allows consumers to make smarter, cost-conscious decisions about their health care.

In May, the Centers for Medicare & Medicaid Services released prices charged for 130 of the most commonly performed medical procedures (from visits to a health clinic to open heart surgery) at more than 3,000 hospitals—in all, more than 170,000 different billed charges. The data included both the list prices (as initially charged to private health insurance companies and the uninsured) and the discounted rate (paid by the federal government for Medicare patients).

The data revealed that hospital prices can vary dramatically, even within the same community. For example, in New York City, one hospital’s average charge for a complicated case of asthma and bronchitis was $34,310, with an average total payment of $8,597. At another New York City hospital, the average charge

<table>
<thead>
<tr>
<th>Hospital Charges</th>
<th>Actual Payment</th>
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<tbody>
<tr>
<td>Maryland</td>
<td>$21,230</td>
</tr>
<tr>
<td>Delaware</td>
<td>$32,629</td>
</tr>
<tr>
<td>Hawaii</td>
<td>$39,463</td>
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<tr>
<td>Georgia</td>
<td>$46,856</td>
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<tr>
<td>Pennsylvania</td>
<td>$51,014</td>
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<td>Arkansas</td>
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<td>New Jersey</td>
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<tr>
<td>Nevada</td>
<td>$71,782</td>
</tr>
<tr>
<td>California</td>
<td>$88,238</td>
</tr>
</tbody>
</table>

Note: This includes all joints other than hips.

Source: Centers for Medicare & Medicaid Services, May 8, 2013
was only $12,391, with an average total payment of $6,692.

In Birmingham, Ala., the differences were even more dramatic. For that same complicated case of asthma and bronchitis, one hospital charged an average of $21,128 while another charged $8,932. The average total paid for Medicare-covered treatments in these Birmingham hospitals was $7,112 and $4,801, respectively.

The full report, by the Centers for Medicare & Medicaid Services, also found significant variations from state to state. The average cost of a joint replacement, the most common treatment occurring at the state level, and share information that helps consumers make better choices about their health care.

State Databases, Websites and More

The government’s release of the hospital charges nationwide made headlines, yet state lawmakers have been working for years to improve the disclosure process of various health care costs. Currently, 34 states require hospitals to report certain costs. Currently, 34 states require hospitals to report certain costs. Currently, 34 states require hospitals to report certain costs. Currently, 34 states require hospitals to report certain costs.

Database Development

At least 15 states have established or are developing “all-payer claims” databases of various health care costs based on health insurance claims.

Why Are Maryland’s Prices So Low?

Maryland established an all-payer hospital rate setting program in 1971 that still operates today. The program’s goals, which continue today, are:

- To constrain hospital costs.
- To provide financial stability for hospitals.
- To offer efficient and effective care.
- To finance the growing amount of uncompensated care hospitals face.

Rates are set for each diagnosis—for example, all hospital care for a pancreas transplant—as opposed to each separate service provided, such as sutures, an ultrasound, anesthesia, etc. This is to encourage hospitals to focus on controlling the overall cost of each episode of care rather than the myriad services required for one procedure.

Maryland required a waiver from federal health officials, as would any state seeking to use this approach today. When the system began, Maryland’s adjusted costs for hospital admissions were about 26 percent higher than the national average. The state’s hospitals between 1977 and 2009, however, had the lowest cumulative increase per admission of any state in the nation. For fiscal year 2009, the average cost per admission at Maryland hospitals increased 2 percent compared with a 4.5 percent increase for the rest of the nation.

charges and reimbursement rates, and lawmakers in more than 30 states have introduced legislation to increase the availability of rates charged at hospitals.

Since 2000, 10 states have established statewide databases of statistical information from health insurance claims, with Maryland, Massachusetts, New Hampshire and Utah leading the way.

“Utah’s new cost and quality comparison tools for public employees compare insurer contracted charges, not just the non-discounted billed charges,” says Utah Representative James Dunnigan (R). “This provides both consumers and providers the tools to change how they select and provide care.”

“New Hampshire’s online health care pricing resource was created for the benefit of consumers and employers,” says House Speaker Terie Norelli (D). “We continue to recognize the reality that we will not be able to stunt the escalating cost of health care until the public has a full understanding of the cost of the care they receive and is able to see how costs vary from one provider to another. The New Hampshire House is continuing to work on this issue in order to add greater depth and understanding for consumers.”

Detailed price disclosure can be a dramatic and informative tool, but it alone cannot ensure lower costs or improve efficiency. When a patient is rushed into urgent care, the last thing on his mind is to shop for the best price or value. Initiatives and pilot programs are under way to test other payment reform approaches such as bundled payments, tiered payments, and accountable care organizations.

All participants in the health system stand to benefit from innovations that improve health and save costs, including the commercial sector, the about-to-launch health marketplaces or exchanges, as well as Medicaid and state employee organizations.

For more information on state databases, go to www.ncsl.org/magazine.
Rx for Doctor Shortage?

Expanding nurses’ range of duties is one way to address our nation’s shortage of doctors.

BY KARA HINKLEY

America faces a critical shortage of doctors—as many as 91,000 by 2020, according to some estimates. Aging baby boomers, coupled with an influx of 30 million Americans into the health care system under the Affordable Care Act, are expected to create an unprecedented demand for medical services.

Legislators are exploring a number of ways to meet the need, including filling the doctor shortage with nurses who have advanced degrees in family medicine. Since January 2011, state legislatures have considered nearly 2,000 bills that address nurses’ and other health professionals’ range of duties, or scope of practice. Most of the roughly 200 bills debated so far this year would lift restrictions on advanced practice nurses and physician assistants and allow them to do what primary care doctors do—examine patients, order tests, diagnose and treat illnesses, and prescribe and administer drugs.

The level of autonomy of advanced practice nurses (who are often called nurse practitioners) varies by state. In 17 states and the District of Columbia, they are allowed to work independently of doctors. Another 10 states require them to be supervised by doctors, although the amount of supervision varies.

Kara Hinkley worked in the health policy area while at NCSL.
In 22 states, nurse practitioners must have collaborative, written agreements with physicians outlining each other’s specific roles, rights and responsibilities, usually as defined by the state. But many argue these agreements serve little purpose and only impede the nurses in establishing their own practices. Legislators in a few states have considered measures eliminating this requirement and allowing nurse practitioners to confer with a physician when they must perform procedures beyond their training. But none has passed.

New York Assemblyman Richard Gottfried (D) believes the collaborative agreement is outdated. He sponsored the Nurse Practitioners Modernization Act this year “to strengthen and expand the nurse practitioner profession.”

Elsewhere, Kentucky is looking at keeping the collaborative agreement but allowing nurse practitioners to prescribe most drugs. West Virginia also is considering allowing nurse practitioners to write prescriptions, and Texas is debating whether to allow both nurse practitioners and physician assistants to prescribe medicine.

Some primary care physicians argue patient care will suffer if nurse practitioners don’t collaborate routinely with doctors. The American Academy of Family Physicians, representing more than 105,000 doctors, favors a physician-led, team-based approach to care. In a report last fall, the group argued that substituting nurse practitioners for doctors should not be the answer to a shortage of primary care physicians. “Nurse practitioners are not doctors—nurse practitioners do not have the substance of doctor training or the length of clinical experience required to be doctors,” the report stated.

The American Academy of Nurse Practitioners, with 155,000 members, responded that more than 100 studies have shown patients fare as well, if not better, under the care of nurse practitioners as physicians. “Making full use of the nurse practitioner workforce is a critical piece of a multi-pronged solution to address the urgent need for health care access in our nation,” the group argued.

Lawmakers will be studying all sides and considering what’s best for their states, as they seek consensus with emergency room urgency.

Nurse Certifications

**Licensed practical/vocational nurse (LPN/VN):** Has completed a state-approved practical or vocational nursing program, usually one year; has passed a national exam; and is licensed by a state board of nursing to provide patient care. Normally supervised by a registered nurse, advanced practice registered nurse or physician.

**Registered nurse (RN):** Has received a bachelor’s or associate degree in nursing (four- and two-year programs, respectively) from a state-approved school, has passed a national exam, and is licensed by a state board of nursing to provide patient care.

**Physician Assistant (PA):** Works under the direction of physicians and surgeons. Formally trained to examine patients, diagnose injuries and illnesses, provide treatment and prescribe medications. Most have a master’s degree.

**Advanced Practice Registered Nurse (APRN):** Registered nurse with a master’s or doctorate degree and clinical experience, usually specializing in one of four categories: midwifery, clinical care, primary care (nurse practitioner) or anesthesia. They can diagnose and treat illnesses and prescribe medications, depending on state regulations. In some states, they are supervised by, or work in collaboration with, a physician. In other states, they can practice independently but within prescribed parameters. Still other states allow them to work completely independently.

Modernization Act this year “to strengthen and expand the nurse practitioner profession.”

To search NCSL’s Scope of Practice Legislative Tracking Database, go to www.ncsl.org/magazine.
As a former Colorado senator, U.S. representative, U.S. senator and university president, Hank Brown’s knowledge of and experience in higher education is notable. The ex-Navy aviator’s leadership skills emerged early, as student body president of the University of Colorado, where he later served as president. Before that he was president and CEO of a large philanthropic fund and president of the University of Northern Colorado. He holds a bachelor’s degree in accounting, a juris doctorate degree from the University of Colorado Law School, and a master of law degree from George Washington University. Currently, he is senior legal counsel at a Denver law firm.

**STATE LEGISLATURES:** With your experiences and broad perspective on national issues, how do you think things are going?

**HANK BROWN:** Our country is going through a cycle that every great and prosperous country has faced: reaching maturity. We face the dangers of prosperity. It’s a dichotomy perhaps. The real question is whether we can pull our boot straps up and come back and compete as we once did. I think we can. I think Americans can recapture our vigor and our energy and our commitment. That’s the challenge for the next decade.

**SL:** What role should higher education play in our democracy?

**BROWN:** From Thomas Jefferson forward, Americans have realized that education is key to maintaining a democratic, representative government. It’s essential for our way of life and the way we want to organize society.

**SL:** Should it be a goal that everyone receives a college education?

**BROWN:** Americans believe that everybody ought to have an opportunity. A chance. That’s why, from community colleges to research universities, there is funding assistance from states and the federal government. That is the opportunity. It doesn’t mean everybody goes, but it does mean everybody has a chance to go.

**SL:** What is needed for the United States to regain its competitive edge in our global society?

**BROWN:** We have a lot of challenges as a country, and it is very clear Americans don’t want to be in second place. We want to be in first place, and a lot of that relates to our productivity and competitiveness as a nation. Higher education is part of that. Part of it deals with making sure we have high standards. Part of it involves rewarding hard work. Part of it means we’ve got to be more efficient because of the shortage of funding. Part of it involves a reorganization of our federal government, which has an incentive to make things more expensive and less productive. And that, state legislators need to address.

**SL:** Higher education is often the first thing cut in state budgets. Is that the right approach?

**BROWN:** Both as a state and federal lawmaker, I believed higher education was one of the best investments states could make. But I found out that not everyone shares that belief. Legislators
face a tough job, and higher education has been the loser, not because it isn’t worthy, but because legislators are caught in a vice. They are stuck with mandates from the federal government they don’t control and limitations in their constitutions that require balancing the budget. Increasingly, the federal government makes the decisions, and the states pay the bills. That’s not working. We have to change it.

SL: How do we rein in constantly increasing tuition?
BROWN: As long as you have a disincentive from the federal government to lower costs, you are going to have increasing tuition. Because federal financial assistance is based on financial need, the higher the tuition, the more financial aid is awarded. It drives institutions to raise tuition. But this ends up hurting the middle-income student, the one caught in the middle and really squeezed out of this system. They are the ones who don’t qualify for financial aid, but have to pay higher tuition.

SL: So what is the answer?
BROWN: On the federal level, one way to make sure we are not providing an incentive for higher tuition would be to relate financial assistance to the students’ majors—so the income of the career they choose covers the money they must borrow to get the degree. We also need to reconsider federal aid for high-cost institutions. I think we should also put some reasonable limits on how much an institution can increase tuition and still qualify for financial subsidies. And on the state level, I think it is critical to insist that institutions be run without excessive overhead, with reasonable efficiency in terms of the faculty and the staff.

SL: How do state lawmakers exert legislative authority without micromanaging institutions?
BROWN: State legislators can set guidelines on what portion of the budget is spent on instruction, which can be enormously helpful in controlling wasteful overhead. State legislators can set some standards on teaching loads for faculty, dramatically improving productivity without micromanaging.

SL: What is your perspective on the federal government's recent push for more transparency, accountability and cost control?
BROWN: I’m a fan. It will be a help to everyone, but most important, it will be a help to the institutions. Outside guidance and transparency give administrators at universities and colleges the tools they need to bring about real change. Without that outside pressure, the inside pressures make it very difficult.

SL: What accountability measures do you think state lawmakers should focus on?
BROWN: Not graduation rates, because that’s an invitation to lower quality. The simple fact is you can give anybody a diploma. Focus instead on productivity of the faculty, on efficiency of the administration and on what the students learn. We measure what students learn in many areas already. As long as we hide our head in the sand and refuse to measure outcomes in that way, we are not going to have the kind of progress we need.

SL: Where do you see higher education going in the next 20 years, and where do you want it to go?
BROWN: It is clear we will face further cuts at the state level and down the road. I think within the next decade we are going to see major cuts in federal assistance because there isn’t money to continue to do what we’ve done. My hope is that we will take this as an opportunity, painful as it is, to dramatically improve our productivity, our efficiency and our relevancy. Higher education is still a vital part of a representative democracy. We face great challenges, but I think the American people—and particularly the wonderful talent that exists in higher education—can do it.

Editor’s note: This interview is part of a series of conversations with opinion leaders. It has been edited for length and clarity. The opinions are the interviewee’s and not necessarily NCSL’s. You can read previous interviews at www.ncsl.org/magazine.
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Retail Industry Leaders Association
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Service Employees International Union
Sodexo
TIAA-CREF
UPS
“This bill actually encourages people to shoot their way out of situations, and that’s not how we live in a civilized society.”
—Florida Senate Minority Leader Chris Smith (D), calling for a special legislative session to overhaul Florida’s 2005 Stand Your Ground law following George Zimmerman’s acquittal in the shooting death of Trayvon Martin.

“A car is not a telephone booth on wheels.”
—Maryland Senator James Robey (D), sponsor of a bill making it a primary offense, rather than a secondary offense, to drive while talking on a hand-held cell phone, as reported in the Baltimore Sun.

“We should be held accountable like any other citizen. We are elected to represent the people, and there’s no reason for us to be treated differently.”
—Colorado Representative Chris Holbert (R), announcing plans to introduce a bill to abolish Colorado’s special legislative license plates after CBS4 News reported the plates prevent photo radar tickets from being issued to lawmakers.

“We need a forcing mechanism, and right now, there really is not one.”
—Washington Senate Majority Leader Rodney Tom (D), defending his idea to fine lawmakers $250 every day they don’t pass a state budget within the regular session. State workers faced furloughs this year because of the late budget, as reported in the Seattle Times.

“There is no doubt about the fact that some schools will struggle. We voted for the bill and now we need to put our money where our mouths were.”
—Kentucky Senator Tom Buford (R), urging colleagues to fund programs for at-risk students after the Legislature raised the mandatory school attendance age from 16 to 18 starting in the fall of 2017, as reported in the Louisville Courier-Journal.

“It’s called transparency. Bottom line: If you’re willing to write an amendment, you should be willing to put your name on it.”
—Oregon Senator Alan Olsen (R), vowing to re-introduce a bill in 2014, for the fourth time, requiring lawmakers, rather than committees, to put their names on proposed amendments, as reported in the Oregonian.

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