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Vicky Bailey
Energy Leader & Entrepreneur

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STATELEGISLATURES
NCSL’s national magazine of policy and politics

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WEBINARS

NCSL’s webinars are relevant and engaging. Sign up online; all begin at 1 p.m. Eastern Time.

- Invasive Species, May 15
- NCSL Bill Information Service (for legislators and staff), May 19
- Securing Natural Gas Pipelines, May 21
- Pool Safety Codes, May 22
- Funding Surface Transportation, May 29
- EPA Regulations, June 5
- Immigrants in the Workforce, June 5

Go to www.ncsl.org/meetings-training/2015-webinars-calendar for more information and to register.
More Author-Lawmakers, Both Current and Former

In the April issue we highlighted lawmakers who had written books. We listed all the ones we knew about—both current and former legislators and asked readers to let us know who we had missed. Here are a couple of additions. We’ll keep a running list, so keep us informed.


Connecticut Senator Donald E. Williams, Jr, “Prudence Crandall’s Legacy: The Fight for Equality in the 1830s, Dred Scott, and Brown v. Board of Education”

We Want to Know

We are committed to making this magazine an enjoyable read and a useful tool while you serve or work in the legislature.

1. Does the magazine cover issues you care about?
2. What topics would you like to see covered more thoroughly?
3. What’s your favorite section?
4. How can we improve?

Send your comments and suggestions to magazine@ncsl.org.
“Government should not be in the business of subsidizing a union.”

—Nevada Assemblyman Randy Kirner (R) on his bill to change collective bargaining rules for public employee unions, in the Las Vegas Review-Journal.

Two of South Dakota’s top leaders resigned within days of each other, creating vacancies that the governor will fill by appointment. Senate Majority Leader Tim Rave (R) accepted a position as vice president for public policy with Sanford Health. Assistant Majority Leader Dan Lederman (R) quit to spend more time with his family. Rave served four terms in the House, where he was elected speaker, and moved to the Senate in 2011. He has been majority leader since 2013, the only South Dakota lawmaker to serve in both positions. Lederman served in the Legislature for seven years. Governor Dennis Daugaard (R) is asking for public input on the appointments.

Nevada Senator Debbie Smith (D), NCSL president, returned to the Legislature April 8, two months after having surgery to remove a malignant brain tumor. Amidst loud applause and cheers, she said she was excited to be back, where she’ll work part-time until her full strength returns. “I want to thank my family, friends, colleagues and supporters from across Nevada and the country who have been a source of strength throughout this process,” she said in a statement.

“I don’t know why we need powdered alcohol. We have plenty of alcohol as it is.”

—Texas Representative Charlie Geren (R) on his bill to ban powdered alcohol, in the Star-Telegram.
"It’s as inevitable as high tide every morning."
—North Carolina Representative Kelly M. Alexander Jr. (D), on believing the timing may be right after years of introducing legislation to legalize medical marijuana, in The Charlotte Observer.

"Look how many times government has put technology in place and screwed it up."
—Florida Representative Kathleen Passidomo (R), on why she set a 2018 target date in her bill to create an online voter registration system, in the Tampa Bay Times.

Tennessee House Speaker Beth Harwell (R) for the second time has been named co-chair of the Right Women, Right Now initiative of the Republican State Leadership Committee. “The work we did in 2013 and 2014 to elect more women to state-level office and fill our bench with strong Republican leaders is something I am very proud of, and I look forward to working with my new fellow co-chairs to recruit and elect even more women leaders this cycle,” Harwell said. Iowa Lt. Governor Kim Reynolds and Arizona Secretary of State Michele Reagan are the other co-chairs.

Massachusetts Senate President Stanley Rosenberg (D) is getting married to his domestic partner, and one of his former legislative foes and a previous opponent of gay marriages will be performing the same-sex ceremony. A decade ago, while serving in the House, the current Lt. Governor Karyn Polito (R) was one of the leading opponents of gay marriage. But Polito has since changed her position. “Like many, including President Obama, my position has evolved and I support the rights of men and women to marry whomever they love and will continue to support the progress achieved over the last decade,” she said.

Speaker of the House Joe Straus (R) was honored as the 2015 Texan of the Year by the Texas Legislative Conference, a nonpartisan organization of business and political leaders. Straus “set a respectful and inclusive tone in the House that also transcends into other bodies in the Capitol,” said Conference Chair Carlton Schwab. Straus joins a prominent group of honorees, including former First Lady Barbara Bush, former Congresswoman Barbara Jordan, former Governor John Connally and former NBA Hall-of-Famer David Robinson.
Religious Freedom Restoration Laws

Religious freedom restoration laws caught the country’s attention this spring after Indiana legislators passed a controversial bill some claimed was aimed at allowing discrimination against gays and lesbians.

Laws protecting religious freedom are not new, however, and Indiana was not exactly a pioneer in passing one. Twenty-one states have enacted their own versions of the federal Religious Freedom Restoration Act, as of April 15, 2015.

These laws developed in response to several U.S. Supreme Court rulings over the last 50 years. In 1963, the Supreme Court ruled that “governments should not substantially burden religious exercise” without proving a “compelling state interest.”

Times change, and less than 30 years later, Supreme Court Justice Antonin Scalia warned that allowing religious exceptions to laws could result in “exemptions of almost every conceivable kind.” In that case, the Supreme Court ruled against two Native American drug abuse counselors who were penalized for using peyote during a religious ceremony.

The ruling angered many and swelled bipartisan support for the federal law, which Congress passed easily in 1993 with the intention of it applying to all levels of government.

But once again, a Supreme Court ruling spurred more states into action when the justices ruled that the federal law was an unconstitutional intrusion into state authority in 1997 and would be invalid if applied to state law.

All these laws contain language similar to the federal one regarding the basic test for weighing government interest against religious burden; but state laws also contain differences in the number of notices required before a lawsuit may be brought, the definition of what a “person” is and whether a burden must be substantial.

Lawmakers have introduced religious freedom restoration legislation in 11 other states this year as well, making it a likely topic of interest for some time to come.

—Jon Griffin
Asleep at the Wheel

Drowsy drivers were involved in less than 3 percent of fatal motor vehicle crashes between 2005 and 2009, according to official government statistics. But a new AAA report paints a very different picture. According to the automobile association, between 2009 and 2013, drowsy driving was a factor in 21 percent of fatal crashes and 13 percent of crashes involving hospitalizations.

It’s very difficult to tell when a driver is sleepy, drowsy or fatigued. While alcohol- or drug-impaired driving leaves physical evidence, drowsy driving does not. Drivers involved in crashes may be hesitant to admit they were fatigued, unaware of how tired they were or even unaware that they dozed off at all.

The official government statistics come from the National Highway Traffic Safety Administration, which relies solely on police officers’ reports following accident investigations. To track drowsy driving, AAA examines the police reports as well, but also uses trained investigators to interview drivers and passengers, and analyzes data from a large sample of crashes.

Drowsy driving is certainly a safety hazard: Drowsy drivers have slow reaction times, poor judgment, impaired vision, lowered attentiveness and a lack of alertness.

But drowsy driving is also a difficult issue to legislate, and only a few state legislatures have done so. In 2013, Arkansas made the offense of “fatigued driving” a negligent homicide (a class A misdemeanor) if the driver has not slept in 24 hours and causes a deadly crash. A New Jersey law classifies drivers who have not slept in 24 hours as “reckless” when they cause a crash resulting in death, placing them in the same class as intoxicated drivers.

Other states have tried to raise awareness of the dangers of drowsy driving. Utah installed road signs warning of the dangers of drowsy driving and providing information on where to pull over to rest. And Florida, Pennsylvania and Texas have designated a week or a month to raise awareness of the dangers and promote prevention activities.

This year, Maine lawmakers are considering legislation that would create the offense of fatigued driving, and New York lawmakers are looking at a bill to create the offense of driving while drowsy and vehicular homicide caused by driving while one’s ability is impaired by fatigue.

I mid-March, NHTSA Administrator Mark Rosekind indicated the need for better data to understand the problem of drowsy driving. He said NHTSA will work closely with states to learn what legal and enforcement strategies are most effective, beginning by looking at the impact in the handful of states that have passed laws specifically targeting drowsy or fatigued driving.

—Amanda Essex

PUBLIC PLAN FOR PRIVATE WORKERS

Illinois enacted a groundbreaking law in January that, depending on who’s talking, either paves the way to a secure retirement for millions of private sector workers or overburdens small businesses and clashes with federal law.

The Illinois Secure Choice Savings Program Act creates the nation’s first state-sponsored, automatic enrollment, Roth IRA (Individual Retirement Account) program for private sector employees who have no employer-sponsored retirement savings account program available to them. Officials estimate there are around 2.5 million of these workers in Illinois. Only a half of private sector workers currently participate in any form of employer-sponsored retirement plan.

Participation will be mandatory for established employers that do not offer retirement plans and have 25 or more employees. It will be optional for smaller and newer employers. Employees will automatically contribute 3 percent of their paychecks, unless they elect a higher amount or opt out altogether, but no employer match or contribution is required.

Supporters want to capitalize on employee inertia and economies of scale. According to the bill’s chief sponsor, Senator Daniel Biss (D), the legislation “creates a tool that allows people to use a payroll deduction to save for retirement, even if their employer doesn’t currently have a plan. It automatically enrolls people so you have a higher rate of participation [and] it puts people into big pools so they are not paying high fees.”

Opponents are wary of what they see as a one-size-fits-all solution. “In many cases a Roth may not be the best-suited retirement vehicle when looking at the tax advantages of other plans,” says Senate Assistant Minority Leader Dave Syverson (R). “Unfortunately, most employees are not knowledgeable” about how retirement plans work, how funds differ and what the tax advantages are of the different plans, he says.

Critics voice concerns about whether the law places unfair new burdens on employers and if it increases the incentive for employers to drop existing plans. And there are also unresolved questions about whether ERISA—the federal law that sets strict rules for the sponsors of private sector employee benefit plans—threatens the viability of the Illinois legislation.

Since 2012, at least 20 states have introduced legislation to authorize state plans for nongovernmental workers or examine their feasibility. In 2012, California passed its own Secure Choice bill, which requires a market analysis to be completed before it is implemented. Massachusetts is finalizing its state-run plan for nonprofit employees, and the U.S. Treasury Department is rolling out a federal “myRA” program aimed at wage-earners without workplace retirement plans.

—Anna Petrini
Mind if I Vape?

As sales of electronic cigarettes have grown, so have questions about the health risks they may pose, including the possible effects of the secondhand vapors they emit. New Jersey, North Dakota, Utah and several local governments across the country have banned the use of e-cigarettes in indoor public areas, and some states have banned them in state buildings, such as schools and universities. Lawmakers in several other states are considering similar bans on indoor vaping, often by including them in their clean indoor air acts.

Research on these “nicotine delivering systems” is relatively scant. E-cigarettes—also called vaporizers, vapes or digital cigarettes—don’t contain tobacco or tar and don’t produce smoke like traditional cigarettes do. Instead, they come with cartridges containing flavored liquids, and a small battery that heats the liquid, converting it into vapor.

Studies have shown some of these vapors contain nicotine and the carcinogen formaldehyde. Americans for Nonsmokers’ Rights believes e-cigarette emissions are dangerous and quotes Dr. Stanton Glantz, director of the Center for Tobacco Control Research and Education at the University of California on its website: “If you are around somebody who is using e-cigarettes, you are breathing an aerosol of exhaled nicotine, ultra-fine particles, volatile organic compounds and other toxins.” The American Lung Association, the American Cancer Society and other health groups support bans on indoor vaping.

Others say the science is too new to know if secondhand vapors carry serious health risks. They argue e-cigarettes are probably safer than traditional smokes, mainly because they don’t contain tar and don’t emit the same chemicals produced by regular cigarettes. They maintain e-cigarettes can help prevent some people from smoking traditional cigarettes in the first place, or can help long-time tobacco smokers kick the habit.

A bill is making its way through the California Assembly to ban the use of e-cigarettes in public places and to tighten enforcement against any sales to minors. Debate there reflects similar discussions happening elsewhere. “Whether you get people hooked on e-cigarettes or regular cigarettes, it’s nicotine addiction and it kills.” Senator Mark Leno (D), who introduced the legislation in California. “We’re going to see hundreds of thousands of family members and friends die from e-cigarette use just like we did from traditional tobacco use.”

Opponents, like the American Vaping Association, counter that “smokers deserve truthful information about smoke-free alternatives, not hype and conjecture designed to scare them away...” from e-cigarettes.

At least 41 states ban the sales of e-cigarettes to anyone under age 18 or 19.

—Mary Winter and Karmen Hanson

Math for Wee Ones

While improving early literacy skills in prekindergarten through third grade students has received the lion’s share of attention from the nation’s policymakers, a growing effort for strengthening math skills in young learners is underway.

Researchers have pointed to the positive long-term achievement of students who demonstrate good math skills at an early age. These effects can carry over to higher academic achievement at age 15 and even correlate with higher socioeconomic status (a combination of occupation, housing and income) at age 42.

With this kind of potential, developing mathematical skills in our youngest learners is being touted as one possible solution to the growing achievement gap between students who live in poverty and those who don’t.

In addition, regardless of family income, average American math scores on standardized tests decline as students progress from elementary to middle schools. In the most recent “Trends in International Mathematics and Science Study” (TIMSS, 2011), U.S. fourth graders ranked 15th internationally, while eighth graders dropped to 24th.

Expanding early math curriculum into prekindergarten classrooms and developing specific math content knowledge for educators, along with a STEM (Science, Technology, Engineering and Math) focused education are effective ways, many believe, to help students do well while in school and be prepared for the increasingly complex and technical jobs awaiting them when they get out.

The importance of developing early mathematical skills in the nation’s youngest learners becomes even more urgent as workforce development and international competitiveness vie for policymakers’ attention.

Advocates support expanding universal prekindergarten and strengthening teacher education programs. But debate over the high costs of some of these reforms is never far from the discussions. —Matt Weyer
Disabled-Parking Abusers

There’s no excuse for it—parking in a disabled parking space when you’re not disabled—but it’s happening all over the country.

Able-bodied drivers are getting hold of phony handicapped parking placards and stickers, or “borrowing” a loved one’s placard, so they can park in prime, close-in spots, often for free.

Not only are they making life harder for people with disabilities, they’re also bilking cities out of millions of dollars in lost meter revenue. Schemes run the gamut. Fraudsters forge doctors’ names on applications for the permits; copy or print their own permits or placards; steal placards out of cars and use or sell them; alter the expiration date; help themselves to an elderly relative’s placard; or appropriate that of a deceased relative.

States, which generally are in charge of issuing disabled parking permits, are cracking down with tighter controls and stiff fines. Also, some cities that used to make handicapped parking free now charge, in part to remove some of the incentive for abusers.

States are taking the following approaches:

• **Photo IDs.** At least three states—Massachusetts, New Mexico and South Carolina—require placards to include a photo of the owner. Similar legislation failed in Tennessee and Pennsylvania.

• **Doctors’ statements.** Recent laws in Illinois, Michigan, New Jersey and Washington require applicants for disabled parking stickers to obtain a detailed physician’s statement verifying the disability. In Illinois, a person can get a sticker for free parking if a doctor verifies the person is physically unable to use a parking meter. Michigan requires a physician’s statement concerning the nature and estimated length of the disability. Massachusetts requires certification that the passenger is legally blind or is unable to walk for more than 200 feet without assistance. In New Jersey, a person can qualify for a tag if he or she has lost a limb, cannot walk without assistance or is permanently disabled.

• **Placard expiration dates.** At least two states, New Jersey and Washington, require disability placards to display prominently printed expiration dates. New Jersey’s law now requires them to be renewed every three years.

• **Penalties.** Connecticut levies a $500 fine for using a deceased person’s placard. (The statute also requires the motor vehicle department to periodically check death registration records and cancel any placards issued to people who have died.) Massachusetts upped fines to $500 for a first violation and $1,000 for subsequent violations and a 30-day license suspension. Michigan imposes a $500 fine for lying to a doctor to get a permit and a $250 fine for forging one. In New Jersey, illegally obtaining a disability tag carries a fine of up to $10,000 and 18 months imprisonment.

Some state motor vehicle departments are trying to help police crack down on scofflaws by providing them databases of disabled permit holders. And Washington hopes to make offenders develop a little empathy. Falsifying a disabled parking permit there is a misdemeanor; a second offense mandates 40 hours of community service “that may sensitize the violator to the needs and obstacles faced by persons with disabilities,” the law states.

—Amanda Essex

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**TRENDS**

**Math Education**

BY THE NUMBERS

American students are falling behind their international peers in mathematics on several measures, with significant gaps growing in the years after students move from elementary to middle school. Why? Answers range from a lack of early education to poverty.

42%

Portion of American fourth graders who scored proficient or better in math

35%

Portion of American eighth graders who scored proficient or better in math

49%

Portion of middle- and high-income eighth graders proficient in math

20%

Portion of low-income eighth graders proficient in math

51%

Portion of students at or above 200% of the poverty line enrolled in kindergarten

26%

Portion of students living below poverty line enrolled in kindergarten

Source: National Center for Education Statistics, for 2013
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Speakers at the NCSL Legislative Summit

Jon Meacham

Piper Kerman
Her book “Orange is the New Black” offers a rare look into women in prison.

Sari de la Motte
Communicate like a rock star. You’ll unleash your charisma and polish your leadership.

Ken Jennings
The biggest winner ever on Jeopardy, he knows you can’t put a price on knowledge.

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FIGHTING CRIMES AGAINST THE ELDERLY

America’s elderly lose more than $2.9 billion annually to financial exploitation, according to a study published by MetLife Mature Market Institute. Crimes include taking money or property; stealing an identity to make unauthorized charges on credit cards; forging a signature; getting an older person to sign a deed, will or power of attorney through deception, coercion or undue influence; using property or possessions without permission; and overcharging for a service. Also illegal are telemarketing scams by perpetrators who deceive, scare or exaggerate claims to get elderly people to spend or send money.

The swindlers target vulnerable seniors, including recent widows or widowers they find easily through newspaper death announcements, says the National Committee for the Prevention of Elder Abuse. They offer to work for the senior citizen as a personal care attendant or helper, professing their sincere love and loyalty.

Financial crimes against the elderly and other vulnerable adults are widely believed to be under-reported, making statistics very limited and unreliable. At least 26 states and Puerto Rico are considering legislation this year.

Last year’s enactments include the following:
• Delaware created a way for financial institutions to freeze transactions when they suspect an elderly person is being exploited and to report it to authorities.
• Illinois broadened the definition of financial exploitation and clarified when guardians of elderly victims can bring civil actions.
• Maryland required certain money transmitters to train employees on how to recognize and respond to financial abuse and exploitation.
• Massachusetts funded an elder abuse hotline.
• Missouri stiffened existing laws against financial abuse of the elderly and the failure to report it.
• New Hampshire established the crime of financial exploitation of an elderly, disabled or impaired adult and imposed a mandatory prison sentence for a second offense.
• Pennsylvania ordered a feasibility study on expanding the existing network of elder abuse task forces.
• South Carolina created a program for volunteers to serve as guardians ad litem for vulnerable adults in abuse, neglect and exploitation proceedings.
• Tennessee increased penalties for the abuse and exploitation of vulnerable adults.
• West Virginia ruled that being a guardian, conservator, trustee, attorney or holding power of attorney is, by itself, not a defense against a charge of financial exploitation of the elderly. In addition, West Virginia prohibited nursing homes from hiring anyone convicted of certain crimes, including those involving financial exploitation of a minor or elderly person.

—Heather Morton

Action Against Elder Abuse
Sixteen states passed laws or resolutions to protect senior citizens from financial abuse in 2014.
1 HELP 24/7
New Mexico’s unique nurse hotline should be a model for other states, according to the Centers for Disease Control and Prevention. Open all day, every day, the call center is free to all residents, whether insured or not. Since 2006, it has kept tens of thousands of New Mexicans out of emergency rooms, saving the state an estimated $68 million or more. Using one well-published telephone number, any state resident can call and talk to a registered nurse within three minutes. It’s paid for through a public-private partnership of insurance carriers, managed care organizations, hospitals, physicians, community health centers and the state.

2 PRICKLY SUBJECT
Many Arizona cities prohibit homebuilders from destroying saguaro cacti and other plants when they develop desert land and require they be transplanted instead. Sagueros (suh-wah-ros) are found exclusively in the Sonoran Desert and are very slow growing. They can live for 200 years, reach 60 feet in height and weigh more than two tons, even though most of their roots are only four to six inches deep. The city ordinances are aimed at preserving native desert vegetation, but Representative Darin Mitchell (R) believes they go too far and infringe on personal property rights. He recently introduced legislation to prohibit such ordinances and prevent cities from requiring specific types of plants in landscaping. The Home Builders Association of Central Arizona supports doing away with transplanting mandates. The group agrees with Mitchell, a former homebuilder, that transplanting saguaros is a waste of money because the cacti often don’t survive the move.

3 CAPITAL CLEANUP
Michigan Capitol stewards are taking spring cleaning to a whole new level. In March, the Michigan State Capitol Commission launched a $6.4 million exterior restoration of the National Landmark. The dome will be covered in scaffolding so its sheet metal flashing can be repaired and the dome entirely repainted. The 1879 Capitol’s ornate decorative elements will be repaired, the sandstone walls will be cleaned, and masons will tuck point some areas. Casings on more than 200 windows will be cleaned and repainted. Those in charge of the extensive renovation optimistically say the work will take just eight months.

4 STRICTLY BUSINESS
A Texas bill would make state elected leaders pay their own way when they campaign for another office. Under legislation by Representative Lyle Larson (R), elected officials would be required to reimburse the state for out-of-state travel costs that aren’t related to official state business. Larson filed the measure after learning Texas paid about $1 million a year to transport, feed and house former Governor Rick Perry’s security detail from the time Perry began running for the GOP presidential nomination in 2011 until he left office earlier this year. Larson told the Texas Tribune he’s not picking on Perry, noting that Perry’s predecessors, George W. Bush and Ann Richards, also traveled frequently on the state’s dime, even though the trips weren’t always official state business.

5 UPON REFLECTION
Deadly car crashes have gradually decreased over the years, but the same is not true for accidents involving bicyclists. Oregon Representative John Davis (R) thinks one way to keep bicyclists safer is to require them to wear high-visibility clothing (a reflective coat or reflective vest) when riding in traffic during sunrise and sunset. Some say the bill has wheels; others say it’s a flat tire. If it passes, bicyclists will face paying a $250 fine whenever they’re caught not wearing reflective gear in traffic.
HISTORY UNEARTHED
America's oldest time capsule, buried by Paul Revere and Samuel Adams on the site of the Massachusetts State House 20 years after the Revolutionary War, is headed back to its home at the Capitol after three months on display at Boston's Museum of Fine Arts. State House workers looking for water leaks found the tarnished brass box, about the size of a cigar box, encased in the building's cornerstone. It held well-preserved newspapers, coins and a medal with a likeness of George Washington. On July 4, 1795, Revere and then-governor Adams, placed the capsule at the site in a groundbreaking ceremony for the now-220-year-old State House. Fifteen white horses—one for each state of the union—pulled the cornerstone through the streets of Boston, and a 15-gun salute helped commemorate the occasion.

VICTIMS' FUND
Louisiana's governor teamed up with Representative Helena Morena (D) to ensure sexual assault victims aren’t billed for medical exams related to the crime. Their legislation would funnel unclaimed winnings from horse racing and expired slot machine tickets—about $2.3 million annually—into a rape victims' fund. In September, the Times-Picayune published stories of three women who received bills of $1,700 to $4,200 after going to the hospital to give evidence of sexual assault. The state covers such bills if victims report the crime within 72 hours. After the story, Governor Bobby Jindal lifted the time limit, stating no victims should be billed, regardless of whether they reported the crime to police.

TRIBES CONSIDER POT
Three Indian tribes in Maine join the growing list of tribes nationwide exploring the possibilities of legalizing marijuana. This interest comes since the U.S. Justice Department announced in December it may legalize and regulate medicinal or recreational marijuana if growers and users follow federal guidelines, such as barring use by minors. One tribe, the Houlton Band of the Maliseet, is researching commercial production to create jobs and increase incomes. Maine’s Passamaquoddy and Micmac nations also are interested in cannabis. “We are looking from a health perspective as well as an economic perspective into the potential,” Representative Henry John Bear, who represents the Maliseets in the Legislature, told the Portland Press Herald.

A TREAT TO VOTE
Bake sales at polling places? A parent-teacher organization in Cranston, R.I., has been selling baked goods on Election Day there for years to raise money for various programs. But last year the group got word from the state board of elections that bake sales could be considered interfering with the election process, which is a felony. So this session, Senator Frank Lombardi (D), who’s from Cranston, whipped up a bill allowing bake sales at the polls "as long as the conduct does not interfere with the orderly conduct of the scheduled election." The bill passed the Senate, 31-1; whether it survives the House taste test is uncertain.

HIGHWAY SAFETY TOP 15
A highway safety group has graded states and territories on their progress in adopting 15 laws it believes are critical to maintaining highway safety. Representatives of Highway and Auto Safety urge legislators to pass laws that protect motor vehicle occupants as much as possible, penalize distracted drivers and regulate teenage drivers. The group’s 12th annual ranking named the following as tops in safety laws: Delaware, the District of Columbia, Illinois, Oregon, Hawaii, Indiana, Maine, Rhode Island, Washington and California. Others point out that many of these states lack what they consider essential to safety: motorcycle helmet laws for all riders, ignition interlock laws and open container laws, among others.
Nevada scored a big win last fall when, after a five-state bidding war, Tesla Motors picked it as the site for its new $5 billion battery manufacturing “giga-factory.”

The Legislature unanimously approved a $1.3 billion tax incentive package to lure the 12-year-old Silicon Valley, electric carmaker in exchange for the promise of creating 20,000 new jobs and generating $100 billion in state economic activity, according to the Governor’s Office of Economic Development. Some people called the deal the biggest thing since the Hoover Dam.

Time will tell if Nevada’s gamble pays off.

Improving the business climate and spurring economic growth are top priorities for most state legislators. And although many economic development strategies—such as income tax cuts and workforce training—can get mired in partisan rhetoric, megadeals offering substantial tax incentives to single, lucrative corporations, enjoy unusual bipartisan support. And the bait is increasing.

Of the 20 largest incentive deals ever, all valued at $800 million or more, 19 occurred since 2000 and 11 since 2010.

**Economists’ Gloom**

Today, every state offers at least some sort of tax incentive for businesses. Yet, despite lawmakers’ enthusiasm for corporation-specific incentives, many economists, experts and other observers, from the left to the right, doubt they are an efficient use of public money.

Nevada’s partnership with Tesla came under fire from the conservative Nevada Policy Research Institute and the liberal Progressive Leadership Alliance of Nevada. Both questioned whether the new legislation would ever benefit Nevada’s taxpayers.

In its recent report on 2015 State Business Climates, the more conservative Tax Foundation cautioned: “Economic development and job creation tax credits complicate the tax system, narrow the tax base, drive up tax rates for companies that do not qualify, distort the free market, and often fail to achieve economic growth.”

The more liberal Center on Budget Policy and Priorities concurred, and called economic development tax subsidies “relatively ineffectual, potentially counterproductive, and not cost-effective incentives for job creation and investment.”

Those who oppose these large tax incentives generally consider them to be a zero-sum game for the nation, as there is no net economic gain when one state forgoes revenue to coax a business away from another state. In fact, a report published by the Journal of American Planning Association estimated that incentive programs cost state and local governments about $40...
billion to $50 billion a year.

So what gives? Why is there this disconnect between fiscal theory and practice when it comes to this kind of incentive?

Absence of Evidence

For proponents of these corporation-specific incentives, the debate over whether incentives are theoretically sound fiscal policy is beside the point. They believe they are absolutely necessary. If a state does not offer incentives, out-of-state businesses looking to relocate will find one that does; or worse, the major employers that are already in-state will leave for greener pastures. It’s a classic “race to the bottom,” critics say, and states don’t have much of a choice in the matter.

A report prepared for the South Carolina Chamber of Commerce on the tax incentives received by Boeing, states it this way: “While some nonpractitioners argue on theoretical bases that it would be better for all and more economically efficient if South Carolina and other states did not provide incentives, the real world dictates otherwise. If South Carolina were to do away with all economic development incentives, the state would be at a great disadvantage with its competitors in the Southeastern United States.”

Whether incentives are actually do-or-die policy is difficult to prove; there isn’t much evidence either way. “There is very little work looking at the overall revenue impact of economic development incentive systems, and the work that does exist uses widely different methodologies,” according to the Journal of American Planning Association. The rise in megadeals is troubling primarily because states don’t have a firm grasp of how effective these nine-to-10-figure public subsidies are at creating jobs.

“No state regularly and rigorously tests whether those investments are working,” states a 2012 report by The Pew Charitable Trusts. Nor does any state require lawmakers to “consider this information when deciding whether to use them, how much to spend, and who should get them,” the report says.

Case in point: In a recent study commissioned by Louisiana on the effectiveness of its tax system, analysts claimed the state had been “flying blind” by granting tax exemptions to corporations without tracking their effects on state revenue or economic growth.

Several notable tax deals illustrate what states have (or haven’t) done to ensure incentives produce a bang big enough to justify the megabucks that went into them.

Arizona, California, New Mexico and Texas competed with Nevada for the Tesla plant. Nevada’s deal authorizes 100 percent sales tax abatements for 20 years, 100 percent abatements of property and employer excise (payroll) taxes for 10 years, and nearly $200 million in credits for hiring and capital investments. If the project fails to make a sufficient investment in the state or reach employment targets, the Nevada legislation allows for a clawback of tax credits or a repayment of abated taxes.

Lessons Learned, From Boeing, Intel, Nike and BMW

Boeing is the undisputed champion in the mega-incentives game. In 2003, Washington granted it a $3.3 billion incentive package, the largest ever at the time. Ten years later, after Boeing threatened to leave for a second time, Washington gave the aerospace giant another $8.7 billion in tax breaks to ensure it would stay grounded and build its 777X manufacturing plant in the state.

Washington, however, did not hedge its bets, and did not include clawback provisions requiring Boeing to bring more jobs
to the state. Since signing the historic incentive package, Boeing has laid off 1,700 workers. While this serves as a cautionary tale, it doesn’t necessarily offer a rebuke of tax incentives in general, since Boeing currently employs more than 80,000 state residents.

The computer chip giant Intel saved some $2 billion in taxes through a deal it struck with New Mexico in 2004. The state issued $16 billion in tax-exempt industrial revenue bonds to Intel to invest in its plant in Rio Rancho on the condition that 60 percent of new hires be state residents. Then in 2013, Intel successfully lobbied the state for a more favorable corporate income tax formula (through a single sales factor apportionment). How much Intel saved on its tax bill is not known, however, since corporate tax information is confidential in New Mexico.

The New Mexico deal did not hold Intel accountable for the number of jobs created: There were no job or wage targets and no clawbacks to ensure the state could recoup losses if Intel didn’t deliver. Six months after receiving the special tax allowance, Intel cut 400 jobs at its Rio Rancho plant. Blaming the state’s lack of “a sufficiently well-trained workforce,” Intel also failed to hire at least 60 percent from within the state on several occasions.

In 2012, after Nike threatened to move elsewhere, the Oregon Legislative Assembly convened for an unusual special session following a single day of public testimony. The purpose was to pass an agreement ensuring that Nike would be taxed using the single sales factor apportionment method for the next 30 years. In return for the $2 billion tax break, Nike was to invest $150 million in a capital project that would produce 500 jobs.

Former Oregon Senator Bruce Starr (R) contends the deal actually “didn’t cost the state a dime. All the Legislature did for Nike was provide certainty as it related to their current tax situation.” As long as Oregon does not change its use of a single sales factor apportionment, the deal won’t give Nike anything it doesn’t already have, Starr says, and ensures a large in-state investment from a corporation that employs 8,000 Oregonians.

On the other side of the country, South Carolina pounced when the German automobile company BMW announced it was searching for a low-cost site to build its three-series models back in 1992. The state spent $36.6 million to buy private properties along an appealing 1,000 acre stretch of I-85 that it then leased to BMW for $1 a year. The state also agreed to train BMW’s entire workforce through the state’s technical schools.

The total package cost the state about $150 million, but no one questions that the company has transformed South Carolina’s economy. An automotive plant can have a dramatic effect on any state’s job opportunities and income levels, and BMW has proved that in South Carolina. Bloomberg Businessweek called it vital to the rise of the new automotive “Boom Belt” in the Southern states.

The state has given BMW a total of seven incentives, including another mega-deal worth $103.5 million in 2002. Currently, the automaker directly employs
7,654 workers in the state and spends $677 million on wages and salaries, according to a 2014 economic impact study by the University of South Carolina’s Moore School of Business. The BMW jobs tend to be high wage, skilled positions. BMW’s extensive regional supplier network and large direct payroll helps spread income and employment opportunities throughout the state’s wider economy, and it looks like that influence will continue. BMW recently invested another $1 billion in its plant to build two of its new X-series vehicles.

Counting the Costs

There is no question that tax incentives can ultimately create jobs and revitalize a local economy, but are they worth the cost? In a study of 240 subsidies, each $75 million or more, The Good Jobs First group found that the average job created by one of these megadeals had a price-tag of $456,000.

“At that cost, no state or locality is going to break even on a deal, so we think states are overpaying,” says Greg Leroy, the organization’s executive director.

Joe Henchman of the Tax Foundation argues that because the vast majority of business decisions that create jobs “are based on things like the education system, proximity to markets, workforce levels and state tax systems, a state would be better off making sure it’s competitive in one or all of those things than just offering good deals.”

Acquiring large-scale investments from lucrative companies may scream “prosperity for all,” but even the most successful large corporate catches produce only a small percentage of the jobs most states need.

The benefits of a broad-based approach to economic development are apparent. Economist Jeremy Horpedahl of Buena Vista University in Iowa estimated that if Nebraska diverted the $2 billion it spends annually on incentives to lowering tax rates overall instead, the average family would save $3,200.

Critics of megadeals for trophy companies argue they are inequitable; that is, they violate the principles that tax burdens should be distributed proportionally based on the ability to pay (vertical equity), and that those with similar incomes and assets should pay about the same amount of taxes (horizontal equity). By providing tax exemptions or assurances to single corporations, opponents say, tax burdens shift onto the backs of the rest of the tax-paying community, putting the benefited corporation’s competitors at a disadvantage.

Economist David Brunori notes that, whether real or perceived, “Differences in the taxation of equals shakes confidence in the tax system.”

A deal that narrows the tax base in this way is bound to receive criticism from taxpayers, especially if the deal lacks a sufficient amount of public input and debate. Nevada Senator Debbie Smith (D), NCSoL president, believes engaging the public during the incentive deal-making process is essential, and should encourage lawmakers to “ask a lot of questions, give a lot of thought, and make sure there is a lot of accountability and reporting.”

An Incentive to Evaluate

Recently, the Governmental Accounting Standards Board proposed rules that would, for the first time, require state and local governments to divulge information about tax abatement agreements and report incentives as lost income in annual financial reports. This could be an important step in distinguishing the incentives that have been effective from those that haven’t been.

In the end, with more evidence at their disposal, lawmakers can make decisions on the best way to spur economic activity based on what the evidence proves. And although Pew’s research shows most states generally fail to evaluate incentive programs, some are moving in that direction.

Since 2012, legislators in 10 states and Washington, D.C., have passed laws to improve the evaluation of incentive programs. The New Jersey Legislature, in early April, passed a bill that is on the governor’s desk to require more comprehensive, regularly scheduled evaluations and to limit incentives to 10 years.

Other state bills require analysis on the degree to which incentives reward activity that would have happened anyway, the extent they benefited some businesses at the expense of others, how much of the benefit was kept in-state, and the impacts of the tax increases or spending cuts that funded the incentive. Legislators have introduced similar bills this session in Nebraska, North Dakota and Oklahoma.

“Since tax policy inevitably will be used to reach other policy objectives, lawmakers have a responsibility to ensure that the policy produces the intended effect and does so at a reasonable cost,” says NCSoL’s tax expert Mandy Rafool. Evaluating tax incentives thoroughly and setting stricter requirements for recipients, not only makes good economic sense, it also adds transparency to a process that inevitably receives a lot of public scrutiny.
At a middle school in California, kids are learning that food comes from farms, lunch from the soil. Students are growing everything from basil to chard to tomatoes in the school’s “pizza garden,” and cooking them in class and eating them for lunch.

Santa Barbara’s Ventura school district has been developing and testing a curriculum that integrates the school garden, farm- and farmer-to-school programs, nutrition education, and hands-on cooking for more than a decade. Over time, the district has crafted a collaboration of farmers, teachers, principals, parents and kids. It’s a win-win for everyone.

Young farmers gain experience through a scholarship and mentoring program. And they benefit from the partnership with schools that guarantees a market for their vegetables through the farm-to-school salad bar and farmer-to-student cooking classes.

Students benefit from healthier meals and gain real-life, hands-on knowledge from practicing math, science and cooking skills using what grows on the farm or in the school garden. All this, educators believe, will lead to better lifelong eating habits.

Because more than 80 percent of the student body is eligible for free or reduced-price lunch, the school receives a federal waiver allowing it to feed every child lunch at no charge. This collaboration among the federal school meals program, the farmers’ initiative and nutrition education ensures that hungry kids eat healthy meals that provide the fuel they need to learn, says California Assemblymember Das Williams (D), who represents the Ventura and Santa Barbara areas.

Ventura’s collaboration is just one of dozens across the country fighting children’s hunger and poor nutrition in new ways.

A Persistent Problem

Many Americans still find it difficult to put enough food on the table. Some 49 million people, or 14.3 percent of all households, were “food insecure” sometime in 2013. This means, according to the Economic Research Service of the U.S. Department of Agriculture, that the family had, at times, “limited or uncertain access to adequate food, caused by either economic or social con-
ditions.” In other words, the family didn’t always have enough food to feed everyone. Among households with children, one in five (7.8 million households) were food insecure, although in about half these families, only the adults went hungry because they would feed their children first when food was scarce.

How can so many Americans be hungry in a country where obesity is an epidemic? There are several reasons why hunger exists, but no widespread consensus on the cure. Americans who experience food insecurity include those who have lost a job or their homes or who may not own a car but live more than half a mile from a supermarket and bus stop. Fast food restaurants or corner stores may be close by, but the healthy choices they offer are limited. The hungry may be the family that can’t quite make the paycheck stretch far enough or who live with nowhere to plant a garden.

Food insecurity disproportionately affects children, the elderly, minorities and low-income households, according to a 2014 report from RTI International prepared for the bipartisan National Commission on Hunger. African American, American Indian, and Hispanic households experience food insecurity at higher rates than white, non-Hispanic households. Children with noncitizen parents are twice as likely to be food insecure. The report also found that food insecurity is episodic, with a household being food insecure for about seven months of the year in 2012.

Hungry children often have poor health, lower test scores and grades, and developmental problems.

**Searching for Solutions**

State legislators have been actively involved in finding solutions to child hunger both in and out of schools.

Connecticut lawmakers invested startup grants to help schools launch a Breakfast in the Classroom program, and Colorado created a free “Breakfast After the Bell” program. Arkansas, Connecticut and Pennsylvania have created bipartisan hunger caucuses in their legislatures to study the issues.

Georgia’s farm-to-school program provides meals and training for food service staff and teachers. The Georgia General Assembly has encouraged farm-to-table and farm-to-school programs, allowing schools to purchase local products and promoting farm-to-school day at

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**High But Steady**

The steadily increasing number of households feeling insecure or very insecure about where their next healthy meal will come from has leveled off since 2008, but is still higher than average for the last 20 years.

![Graph showing food insecurity levels from 1995 to 2013.](image)

Prevalence rates for 1996 and 1997 were adjusted or the estimated effects of differences in data collection screening protocols used in those years.


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**Security—Food That Is**

The nuanced differences between the terms “secure,” “low security” and “very low security” may be best understood by the actions and feelings of those experiencing the conditions.

![Bar chart showing various indicators of food insecurity.](image)

Georgia Senator Renee Unterman (R) got involved when the economic recession hit her constituents hard, making food banks and food stamps a necessity for many families. “Hunger is not a political issue,” she says. “If you’re hurting, you’re hurting. How do you send a child who’s hungry and can’t concentrate to school ready to learn?”

The Pennsylvania General Assembly took a comprehensive approach to tackling hunger back in 2004, by seeding the Fresh Food Financing Initiative with a $30 million grant over three budget cycles. The Reinvestment Fund leveraged that money with $145 million more to provide loans and grants to establish grocery stores in food deserts, to finance acquisition, equipment and construction costs, and to recruit and train employees.

Working with businesses, the project’s staff educated officials and the public about hunger and mapped where the needs were the greatest. The project attracted 206 applications from across Pennsylvania and financed 88 projects, providing fresh food to urban and rural neighborhoods that previously had none. The initiative made fresh food available to more than 400,000 Pennsylvania residents and helped close “the grocery gap.” Pennsylvania’s model was replicated at the national level in the farm bill approved by Congress in 2014.

Representative Dwight Evans (D), who led the effort in Pennsylvania, says, “Hunger is one subject that’s not a Democratic or Republican issue.” He got involved when he discovered that so many people were going without good, nutritional food. “I knew we had to do something to help.”

A Little History
Spearheaded by more than a dozen states in the early 20th century, Congress eventually passed the National School Lunch Program in 1946. Its aim has always been to improve both the quantity and quality of food available to children. Students who eat school meals have demonstrated better test scores, attendance and punctuality, and less anxiety, depression and hyperactivity. Today, free breakfast and lunch are available to all children in families earning less than 130 percent of the poverty level, with reduced-price lunch available to children from families in the 130 percent to 185 percent poverty range. For a family of four, this means maximum annual incomes at $24,250, according to the 2015 federal poverty guidelines (except in Alaska and Hawaii, which allow $30,320 and $27,890, respectively).

The school lunch program now serves more than 31 million children daily in 100,000 public and nonprofit private schools.
The Costs of Federal Food Programs for Children (FY 2013)

- **$79.8 billion**
  - Supplemental Nutrition Assistance Programs
- **$12.2 billion**
  - National School Lunch
- **$6.5 billion**
  - Women, Infants and Children (WIC)
- **$3.5 billion**
  - School Breakfast Programs
- **$2.97 billion**
  - The Child and Adult Care Food Program
- **$424 million**
  - Summer Meals
- **$166 million**
  - Fresh Fruit and Vegetable Program
- **$16.5 million**
  - Farmers’ Market Nutrition Program
- **$11 million**
  - Special Milk Program

and residential child care institutions. Almost 13 million children receive school breakfast every day, and another 3.5 million children receive meals and snacks through the Child and Adult Care Food Program at family day care homes, child care centers, homeless shelters, and after-school programs, according to the Food and Nutrition Service at USDA.

**Summertime Blues**

While 31 million children receive lunch during the school year, only 7 percent of these children, or 2.4 million, participated in summer meals in 2013. Federal, state and local partners are gearing up to increase the availability of summer meals for children in low-income areas.

It’s easy to feed kids in school, but much harder when they are home. Challenges include transporting food and children to meal sites, finding enough sponsors, and educating parents, who are largely unaware of the summer meals.

Information on grants, toolkits and technical assistance available to help address these challenges is on the U.S. Food and Nutrition Service website. The federal service will be working with 13 states this summer—Alabama, Arizona, Kansas, Kentucky, Illinois, Michigan, Mississippi, Missouri, Nevada, Oklahoma Pennsylvania, Texas and West Virginia—to increase participation.

And states are making their own efforts as well. Texas lawmakers enacted legislation to develop a five-year plan to increase participation in summer meals, in collaboration with the Texas Hunger Initiative. In Nebraska, the Legislature funded competitive grants to conduct outreach, acquire equipment and train staff to expand summer meals. West Virginia is encouraging partnerships among the agriculture, education and health communities to expand summer meals as well as ensure that school children eat two nutritious meals a day.

**Congress Considers**

Congress is beginning to debate, as it must every five years, reauthorization of the child nutrition programs. These include school and summer meals, the fresh fruit and vegetable and milk programs, the farmers’ market program, as well as the Child and Adult Care Food Program and the Special Supplemental Nutrition Program for Women, Infants and Children.

The last reauthorization in 2010, the Healthy, Hunger-Free Kids Act, revised nutrition standards to increase the servings of fresh fruits, vegetables and whole grains, ban transfats, limit sodium, and establish a maximum calorie count. Some of these changes have met with a fair amount of criticism. Although the legislation included a $.06 increase in the cost of a school lunch (the first in 30 years), some schools found it still wasn’t enough to cover the higher cafeteria costs due to the new standards. Parents and others also have raised concerns that meal standards are too prescriptive and not flexible enough to accommodate local preferences. They argue that when children aren’t given a choice, food goes to waste. They also point out that student athletes may need more calories than the requirements allow.

The Healthy, Hunger-Free Kids Act expires Sept. 30, 2015, and state legislators will be watching as Congress debates the benefits and costs of the act. Will child nutrition programs continue to receive bipartisan support? How will Congress address the concerns about the changes made in 2010? Can Congress come up with a way to protect against waste yet ensure kids receive nourishing food? Will a compromise be reached?

Meanwhile, back at the pizza garden, kids aren’t too concerned about what’s happening in Congress. They’re stirring the pot, and it’s full of their own concoction of vegetables, herbs and spices.

**Fighting Hunger Together**

To raise awareness of hunger in America and improve the availability of healthy food, NCSL’s Foundation for State Legislatures launched the Hunger Partnership in 2010. It benefits from the expertise and contributions of more than 20 legislators from around the country, four legislative staff, and about a dozen public and private-sector groups.

Under the leadership of Georgia Senator Renee Unterman (R) and Pennsylvania Representative Dwight Evans (D), the partnership has served as a successful incubator where state legislators can come to share best practices and alleviate hunger among America’s children, elderly, veterans and other vulnerable populations.

Last year, the partnership became independent after four successful years under the umbrella of (and with seed funding from) the NC SL Foundation for State Legislatures. The mission and structure remain the same: Identify the best practices in addressing hunger through a strong partnership of public and private organizations.

Go to ncsl.org/magazine for more information.
Andrew Zimmern is a chef and author as well as creator, executive producer and host of the award-winning “Bizarre Foods” TV series. His fascination with the history of food has led him to explore more than 150 countries and made him an expert on world cuisines and cultures. He has fought off alcoholism, drug addiction and homelessness and has now turned some of his energy to fighting hunger in America.

STATE LEGISLATURES: What inspired you to get involved in hunger issues?

ZIMMERN: I try to focus on issues that I think have civic possibilities for resolve, the ones that I think we all know we can’t afford to let go any longer before we address them. I tend to gravitate toward issues for which a social change movement is required; I think that’s where people like myself can do the most amount of heavy lifting—things like hunger issues. It seems to me that in the greatest nation in the history of the world, the fact that one in five children go to bed hungry at night is something none of us should stand for. I think we do a deplorable job in our schools of feeding our children. You can go on and on and on, but hunger-related issues, food-related issues, those are where people like me can be the most useful.

What experiences have influenced your views toward hunger?

I have a global perspective. I’ve seen a lot of things that work and don’t work in other parts of the world. I’ve done a lot of myth busting in my life. Being able to use that expertise and influence to dissolve myth and to provide solutions to common issues is important.

And on a personal level, I’m a recovering addict and alcoholic and I was a homeless
person for a long time. I’ve lived on the streets. I’ve panhandled. I’ve slept overnight in shelters. I’ve taken holiday meals at the Salvation Army. I understand how sprinkling a little bit of dignity and respect on human beings under desperate circumstances can restore them to where they can contribute to society. I was a mess. I now contribute to society. End of story. That kind of recovery is available for a large percentage of people who have fallen below the safety net, and I know that from personal experience.

**Who are you working with in your efforts to fight hunger?**

I’m willing to work with everyone who touches hunger. I think we can do the most to combat the problem through entrepreneurship. I’ve seen very smart business people, young business people, civic-minded business people, come up with solutions for going into inner cities with mobile markets in Massachusetts. I’ve seen young entrepreneurs buy trucks and move food from people who want to throw it away toward people who can use it. A lot of these companies have developed for-profit models because their nonprofit model has failed to work. So if small business can solve these problems, especially ones of distribution and scale, I think we need to do what we can to let them.

**What role can lawmakers play?**

I think the answer is in creating social change through public, private and legislative partnerships that work. Look, I’m 53 years old. I grew up with the seat belts stuffed between the seats in the family station wagon. I grew up in the era of the Marlboro Man, so I smoked. But at some point I started wearing a seatbelt and I stopped smoking cigarettes and the reason was that private, public and legislative partnerships successfully brought about the social change needed to combat those problems.

Now, I can’t shut the car door without my 9-year-old reminding me to put on my seatbelt. That’s a social change that has worked. The same thing with smoking cigarettes. We now have cautions on the sides of the boxes; we have appropriate taxation; we’ve banned certain types of advertising; we’ve eliminated subsidies for tobacco farmers. But we’ve also offered incentives for those same farmers to get into other types of valuable farming.

When it comes to hunger relief work, we need to look at it in the exact same way we looked at landing on the moon, because I don’t think there’s a person in the world who thinks that a hungry child is any way, shape or form represents what America is all about.

The greatest civilization in the world? There should not be one hungry child in this country.

**Editor’s note:** This interview is part of a series of conversations with national leaders. It has been edited for length and clarity. The opinions are the interviewee’s and not necessarily NCSL’s.
Everybody is talking about social impact bonds—an innovative yet controversial approach to reducing homelessness, helping ex-offenders stay out of prison, giving young children the opportunity to go to preschool, training old workers for new jobs, and expanding preventive health care for low-income people.

States are striking deals with investors to deliver results—reducing prison recidivism by 8 percent within five years, for example—and save taxpayers’ money in the long run.

If programs meet their goals, investors, who put up millions of dollars, are repaid with interest by the state agency overseeing the project. If they don’t, the foundations, investment banks and others are out their money, and don’t reap a return. Financial heavy-hitters like the Rockefeller Foundation, Goldman Sachs and Bank of America Merrill Lynch are in the game.

Proponents say the financing method—with a track record of about five years—

By Jane Hoback

A Bond?

Social impact bonds are not actually bonds but rather contractual arrangements between government agencies and nongovernmental organizations—usually private nonprofits—to provide social services. The government promises to pay the organization a set amount when it achieves specific, measurable results. Investors—commercial, philanthropic or a combination—fund the project initially and are repaid with interest when the goals are met. If the goals go unmet, the government pays nothing.
presents little risk to taxpayers and ultimately saves states money. But critics caution it is too soon to tell, arguing the new model is unproven, risky and expensive, and potentially excludes social programs not attractive to investors.

**Millions in Massachusetts**

The idea’s popularity has grown fast. Today, some seven states and local governments have launched projects, and Massachusetts has the biggest—a $27 million, seven-year “Juvenile Justice Pay for Success Initiative,” begun in January 2014.

The state contracted with Roca, Inc., a nonprofit whose mission is to help former offenders get back on their feet. Roca is working with young men in the Boston area who have left prison or are on probation, and its goal is to cut the number of days these men are re-incarcerated by 40 percent.

Massachusetts officials estimate that would save the state as much as $41.5 million.

Depending on it success, at about the fourth year of the program, investor Goldman Sachs will be repaid at 5 percent, Kresge and other funders at 2 percent. Roca and Third Sector Capital Partners, which oversees the project, will be paid service fees for target results. But if the results exceed goals, Roca and Goldman can get up to an additional $1 million each and Kresge and other funders up to $300,000 each. If Roca fails to deliver, the government pays nothing and investors lose their money.

The initiative won strong bipartisan support from the legislature. “The members are interested in seeing that we can make these young people’s lives better,” says Massachusetts Secretary of Administration and Finance Glen Shor. “They know the state’s risk is diminished because success means shared savings. If the initiative doesn’t prove out, the government is not on the hook.”

Shor believes the financing method “gives us a chance to try something new and innovative. The investors take the risk. And the state is either doing something impactful or we learn important lessons about what works and what doesn’t. It’s a win-win either way.”

Although pay-for-success initiatives won’t replace traditional funding for all programs, according to Shor, “I do hope that some of the methods we use in social innovation finance will bring a new level of rigor in how government interventions are successful.”

**New York, New Targets**

New York also launched a pay-for-success program in January 2014. Its $13.5 million initiative to reduce recidivism and train and employ former prisoners is funded primarily through Bank of America Merrill Lynch, the Robin Hood Foundation and the Rockefeller Foundation, which has agreed to guarantee up to $1.3 million of investors’ principal should the project fail to repay 100 percent after five years. In addition, the U.S. Department of Labor awarded a $12 million grant for the project.

The program’s goal is to reduce recidivism by at least 8 percent and/or increase employment by 5 percent. If it succeeds, New York could save up to $12.8 million.

“I wanted to find creative ideas to solve problems,” says Senator Kevin Parker (D), the initiative’s sponsor. “I also wanted to focus on something that has not been working—and that’s juvenile justice issues. We’re prosecuting a lot of young people as adults and holding them in adult facilities. That’s not where we ought to be. So we want to look at some new ways. Some nonprofits have some innovative ideas, and we want to reward that innovation.”

The 100-year-old Rockefeller Foundation champions social impact bonds as part of its mission to “promote the well-being of

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**Is a Social Impact Bond in Your Future?**

This new way of paying for and running social programs can be a powerful tool for improving government services. But making a successful transition requires a large commitment of time. Before making the big leap, the Harvard Kennedy School Social Impact Bond Technical Assistance Lab recommends that projects contain the following four essential ingredients:

1. **Enthusiastic support from leaders.** Confirm that leaders are willing to be champions for the approach and to dedicate their time and energy to making it work.
2. **The potential to grow large.** Ensure the project’s scale is big enough to justify the change and receive a noticeable cost savings.
3. **Alignment with other goals.** Allow for the benefits of the project to spill over and support a broader reform effort.
4. **Sufficient interest from investors.** Verify early on that there are enough potential investors, both philanthropic and commercial, to give the project a go-ahead.

If moving to a social impact bond model appears likely, the assistance lab at Harvard recommends taking these steps to ensure a smooth transition:

1. Conduct a benefit-cost analysis.
2. Build a potential payment schedule.
3. Develop a financial cash flow model.
4. Engage potential investors early on in the planning work.
5. Obtain authority from the legislature to select partners in an open and transparent procurement process.
6. Decide how to choose service providers for the project.

Publicly funded attempts to help poor or vulnerable populations are often remedial, ineffective and expensive,” the foundation wrote in Building a Healthy and Sustainable Social Impact Bond Market: The Investor Landscape. “Social Impact Bonds or ‘pay for success financings’ could … [link] the government and the private sector in an unprecedented partnership to save taxpayer dollars.”

Others Don’t Buy the Hype

Others are more skeptical. Jon Pratt, executive director of the Minnesota Council of Nonprofits, says the concept “comes from a good place.” But he argues that measuring results is a complex task. “If you’re contracting for highway construction, you know the organization you pay to accomplish this task is completely responsible. Did they do it or not?” Pratt says. “But if you have a prisoner who’s leaving prison, maybe he’ll be in chemical dependency treatment, he’ll be in community housing, he’ll have job coaching, he’ll have all these other activities. Which organization caused that?”

Pratt emphasizes that funding a program through a social impact bond is not additional money, but a “displacement” from other funding. He also worries that programs with easily measured

First English Effort Failed

The United Kingdom established the first social impact bond in 2010 for a program aimed at reducing recidivism. A recent study showed that the first phase did not reduce the number of reconvictions sufficiently to trigger payments to investors. A second phase is scheduled for 2016.

In the United States, the Obama administration set aside $300 million to help fund pilot projects. New York City launched the country’s first social impact bonds in 2012 with a $9.6 million project to reduce recidivism among young men leaving Rikers Island prison. The project is subsidized by a guarantee from Bloomberg Philanthropies, and Goldman Sachs is the primary investor.

Several state legislatures are in various stages of developing initiatives. The Harvard Kennedy School Social Impact Bond Technical Assistance Lab, with support from the Rockefeller Foundation, conducts research on social innovation financing and provides assistance to state and local governments to develop pay-for-success contracts.

“This will revolutionize how we spend taxpayers’ money on social programs. They meet both our social as well as our fiscal responsibilities.”
—NEW JERSEY ASSEMBLYMAN ANGEL FUENTES

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results will be more attractive to investors and will have a competitive advantage over other necessary programs.

The council’s public policy director, Susan Brown, testified at a Minnesota legislative hearing on social impact bonds and cautions they carry a “high price tag. There’s a lot of intermediary activity that increases the cost—movement of money, establishing expectations around the outcomes, then doing the various evaluations that are needed to determine whether the outcomes have been met,” she says.

Some Just Say No

Governors in two of the nation’s largest states aren’t sold on social impact bonds. New Jersey Governor Chris Christie (R) pocket vetoed the New Jersey Social Innovation Act sponsored by Assemblyman Angel Fuentes (D). It would have established a $15 million, five-year pilot program to decrease chronic emergency room visits by providing preventive health care for low-income and uninsured patients. Fuentes reintroduced the bill, which “has wide bipartisan support, it has the support of the business community and we have a lot of interest from investors and foundations. It will save potentially millions of dollars and it’s not going to waste taxpayer money,” Fuentes says.

California’s Social Impact Partnerships Pilot Program also got the thumbs down from Governor Jerry Brown (D). It would have authorized the governor to solicit partnership agreements and submit them to the Legislature for funding. Contracts would be paid through the Social Innovation Financing Trust Fund in the state treasury.

Brown said the state budget was not appropriate for pay-for-success contracts and let the bill expire. He did, however, sign a similar Assembly bill authorizing the California community corrections board to provide grants to three counties to use the pay-for-success model to reduce recidivism.

Not Sold on the Idea

Not all state legislators are on board with this idea. In testimony at U.S. Senate Budget Committee hearings, Maryland Delegate Mark Fisher (R) said that although social impact bonds were “well-intended,” they “unnecessarily bloat bureaucracies.”

He cited Maryland’s Department of Legislative Services’ analysis that social impact bonds increase budgetary pressure, don’t save costs, and could exclude new providers and programs without established records of success that draw investors.

A House bill requiring the state board of education to issue requests for proposals for social impact bonds to improve public education was withdrawn.

In Washington, House Appropriations Committee Chair Ross Hunter (D) blocked a bill to finance the development of a pilot program to improve social services and health care with social impact bonds. He believes state governments should fund social programs by raising taxes or issuing state-backed revenue bonds because social impact investments are risky and interest rates are high.

“They’re well-intended but they unnecessarily bloat bureaucracies.”

—MARYLAND DELEGATE MARK FISHER

“I’m not convinced this is a good idea. No one has shown me data where the finances work.”

—WASHINGTON REPRESENTATIVE ROSS HUNTER
Drug shortages and court challenges are causing lawmakers to review their states’ method of execution.

By Amber Widgery

Utah lawmakers recently passed a law allowing the use of firing squads when lethal injection drugs aren’t available. It was a solemn decision that the Legislature took very seriously, says Utah Senator Curt Bramble (R). Lawmakers looked at secondary methods, he says, because “those who oppose capital punishment have been very successful at mounting opposition within the pharmaceutical industry to reduce the availability of lethal injection drugs.”

Other states are considering alternative methods and different drugs as well, and some states have turned to compounding pharmacies to obtain drugs that are no longer available for sale elsewhere.

Lethal injection is currently the primary method of execution in all 32 states that have capital punishment. Texas was the first state to use the method, in 1982.

In a 2008 case, Baze v. Rees, the U.S. Supreme Court approved a three-drug combination of (1) sodium thiopental, a sedative that induces unconsciousness, (2) pancuronium bromide, a muscle relaxer that induces paralysis, stopping respiration, and (3) potassium chloride, which causes cardiac arrest.

This was the same three-drug combination that was used in the first lethal injection execution, and at the time of the Baze opinion 30 states were using that exact mixture. The Court’s opinion also made it apparent that “substantially similar” drug combinations would be legally acceptable.

A Dwindling Supply

In 2011, the sole manufacturer of sodium thiopental tried to transfer production of the drug to Europe. European authorities objected to the use of the drug in executions and the company stopped production. When supplies of sodium thiopental expired or ran out,
states turned to new drugs, like pentobarbital. To date, 14 states have used pentobarbital in executions, but the owner of pentobarbital subsequently cut off state access to that drug when they discovered it was being used by states for executions.

Georgia, Missouri, South Dakota and Texas have since turned to compounding pharmacies to obtain pentobarbital or substitutes. In Ohio, the Department of Rehabilitation and Correction modified the state’s execution policy to allow the use of drugs from a compounding pharmacy. And in 2014, the Ohio General Assembly passed legislation to protect the confidentiality and licensing of pharmacies or people involved in lethal injection procedures.

Other states have enacted similar confidentiality laws that have been the frequent subject of litigation. In 2014, high courts in Georgia and Oklahoma upheld confidentiality laws, thereby allowing executions to continue with drugs from an undisclosed source.

As the more common lethal injection drugs have become harder to get, state legislatures have explored other lethal injection protocols. Eight states—Arizona, Georgia, Idaho, Missouri, Ohio, South Dakota, Texas and Washington—have performed an execution using only one drug, and in Arizona and Ohio they have performed executions using a combination of two drugs.

States have also tried other drugs. Arizona, Florida and Ohio have used Midazolam in combination with one or two other drugs. But it is now part of a U.S. Supreme Court case that stems from the 2014 execution of Clayton Lockett in Oklahoma that the 10th U.S. Circuit Court of Appeals described as a “procedural disaster.”

The justices will decide whether Oklahoma’s use of Midazolam violates the U.S. Constitution’s Eighth Amendment prohibition against “cruel and unusual punishment” because it cannot reliably produce a deep, coma-like unconsciousness that will prevent substantial pain caused by the effects of the second and third drugs.

Considering Other Methods

Lawmakers in Tennessee passed legislation last year that allows the use of electrocution as a secondary method of carrying out a death sentence if the state’s lethal injection method is found to be unconstitutional or when an essential drug is unavailable. Oklahoma passed similar legislation this session allowing the use of nitrogen gas if lethal injection becomes unavailable. Representative Mike Christian (R), the bill’s sponsor, told local reporters that lethal injection had become experimental and that it was on its way out. In mid-April, the enactment was awaiting the governor’s signature.

Fifteen states now have a secondary method of execution. Laws in Delaware, New Hampshire, Oklahoma and Wyoming are similar to the new laws in Utah and Tennessee and provide a secondary option if lethal injection is unavailable. Arizona, Arkansas Kentucky, Tennessee and Utah all have secondary methods for offenders who were sentenced before the introduction of lethal injection. And Alabama, Florida, Missouri, South Carolina, Virginia and Washington have other methods that are available if the offender requests an alternative.

Wyoming lawmakers passed legislation at the end of the session this year that would have changed the state’s back-up method of execution from lethal gas to firing squad. However, the Legislature adjourned before a conference committee took final action, postponing the measure indefinitely. Other bills have passed at least one chamber in Alabama, Arkansas, Mississippi and Virginia and more have been proposed.

More than 3,000 inmates continue to live on death row around the country.

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Execution Methods Used Since 1977

Source: The Huffington Post/Death Penalty Information Center
American lawmakers and political leaders have long pushed for clear, understandable writing in government documents. As far back as 1788, future president James Madison warned, “It will be of little avail to the people … if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood.”

It’s easy to see what prompted Madison’s warning. Governments are infamous for writing laws and important communications in complicated “bureaucratese.” Consider this 50-word sentence, which used to be part of a dense, page-long federal regulation.

A permit to construct and operate an individual production well facility of not more than 10-megawatt net capacity or heat energy equivalent, including all related on-lease facilities, must be obtained from the authorized officer prior to commencing surface disturbing activities related to the construction and operation of each such facility.

It was rewritten in clear, everyday English, to read like this.

If you want to use federal land to produce geothermal power, you have to get a site license and construction permit before you even start preparing the site.

This rewrite is just one example of a widespread shift toward “plain language,” defined by the federal Plain Language Action and Information Network as “communication your audience can understand the first time they read or hear it.”

Replacing jargon and acronyms with simple, direct language makes it more likely that citizens will understand what government is doing for them, and what it expects of them. As a result, public agencies can save time, effort and money. For example, by rewriting just one letter, Washington’s Department of Revenue tripled the number of businesses that paid a state use tax, collecting $2 million additional revenue in just the first year.

The plain language movement has gained momentum at all levels of government. According to the nonprofit Center for Plain Language, as of 2013, 32 states had a plain language program in at least one state agency.

Washington state launched a full-scale initiative in 2005, when the governor’s office ordered all state agencies to adopt the “plain talk” principles that four departments had already developed on their own.

At the federal level, the Plain Writing Act of 2010 now requires federal agencies to write documents about benefits, services, taxes and requirements in “clear, concise, well-organized” language that the “public can understand and use.” In 2013, a bill was introduced, but not enacted, that would have extended the plain writing mandate to federal regulations.

“In government, our mission is really to serve the public,” says Representative Mary Ann Dunwell (D), who introduced a plain language bill in Montana this session. “One of the best ways to serve the public is to communicate with your constituency clearly and for understanding, so the public can engage in their government—which is their right.”

Although there are no hard-and-fast rules for how to write in plain language, here are some guidelines that can help.

The use of language can either invite people in or turn them away.
Put yourself in your readers’ shoes.
Before you even start writing, the first step is to get to know your audience. Who are you writing for? What are their needs, and what do they already know about the topic? What questions will they have?
Does your audience include people with low literacy or people who speak other languages? If you think more than one audience will need to read what you’re writing—say, worried parents as well as departments of education—address them separately whenever you can.

Organize your material.
People read government documents to get answers. Think about the questions your audience is likely to ask, and put your material in the order that will best respond to those questions. Do your readers want to know how to go through a process, step-by-step? Or do they want the most important information right away? Using plenty of clear headings will also help people quickly find what they need.

Limit jargon.
Some experts, including lawyers, may worry that they’ll lose precision if they use everyday English instead of technical terms. And if there’s really no other good way to say it, specific terms can help. But writing everything else in clear language, using common words your audience is familiar with, will actually reduce the chances that your message will be misunderstood.
Readers can especially do without archaic legalisms like “pursuant to,” “subsequent to,” and “notwithstanding.” Try “under,” “after,” and “although” instead. Avoid acronyms, too.

Keep it short.
“Wordy, dense construction,” according to the Federal Plain Language Guidelines, “is one of the biggest problems in government writing.” Statutes and regulations can be especially full of long, hard-to-follow sentences with lots of commas and clauses. Instead, write short, direct sentences that use only the words you need. A good rule is to aim for sentences that are 25 words or less. The same idea applies to paragraphs, sections, and whole documents: Keep them concise and to the point.

Make sure it works.
The federal Plain Language Action and Information Network notes that plain language is defined by results, rather than techniques. No matter how you get there, plain language should be easy to read, understand and use. What is the best way to find out whether you’ve achieved these goals for your target audience? Ask them.
See if real-life readers can describe who and what the document is for, explain key concepts in their own words, and easily do what they need to do. Your writing works when users can find what they need, and understand and act on what they find.

Try following this advice to rewrite these true government scribblings into something that might better inform, instruct or even engage citizens. The examples and suggested rewrites come from the Plain Language website.

Can you write these more clearly?
A. For local PC printing, it is recommended that you use a high-resolution laser or wax-transfer type printer for color reproductions, and that the printer have at least 1 MB of memory.
B. If stuffing a turkey, use a meat thermometer. Cooking a home-stuffed turkey can be somewhat riskier than cooking one not stuffed. Bacteria can survive in stuffing which has not reached the safe temperature of 165°F, possibly resulting in a foodborne illness. Even if the turkey itself has reached the proper internal temperature of 180°F in the innermost part of the thigh, the stuffing may not have reached a temperature in all parts of the stuffing sufficient to destroy foodborne bacteria. If stuffing does not reach 165°F when the turkey itself is done to 180°F, further cooking will be required. During the added cooking necessary to bring the stuffing up to a safe temperature, the meat may become overcooked.
C. Once the candidate’s goals are established, one or more potential employers are identified. A preliminary proposal for presentation to the employer is developed. The proposal is presented to an employer who agrees to negotiate an individualized job that meets the employment needs of the applicant and real business needs of the employer.

HOW DO THESE SUGGESTED REWRITES COMPARE TO YOURS?
A. For printing color reproductions locally, use a high-resolution laser or wax-transfer printer that has at least 1 MB of memory.
B. Cook the stuffing separately—it’s much safer! If you absolutely have to cook the stuffing in the turkey, use a thermometer to make sure the stuffing reaches a temperature of 165°F and the turkey reaches a temperature of 180°F in the innermost part of the thigh. Measure the temperature of both the turkey and stuffing! Don’t just trust a pop-up indicator!
C. Once we establish your goals, we identify one or more potential employers. We prepare a preliminary proposal to present to an employer who agrees to negotiate a job that meets both his and your employment needs.

Looking for more plain language tips, tricks and examples? A wealth of information is available through the federal Plain Language Action and Information Network and other websites.

Go to ncsl.org/magazine for more information.
STATE LEGISLATURES MAGAZINE WINS GOLD

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Republican Delegate Saira Blair at age 18 is West Virginia’s—and the nation’s—youngest legislator. She was elected in November 2014 to a seat formerly held by her father, Craig Blair, who is now serving in the state senate.

How does it feel to be the youngest legislator in the country?
I forget unless somebody brings it up. When I’m down in Charleston it doesn’t really have that big an effect on me and when I’m at school or with my friends I’m not thinking about it much. It is an honor, but I’m more focused on getting the job done.

What made you run for office?
I participated in a program my junior year of high school called the Youth Leadership Association’s Youth in Government and it brought about 300 high school students to our Capitol in Charleston. We wrote a bill, presented it in committee and really followed the exact legislative process. After that weekend I came home and told my parents about what an amazing time it was and how I didn’t want to leave. Since then I’ve been working toward my goal I’ve had from the beginning—creating jobs for the people of West Virginia and my generation.

How do you encourage your generation to get more involved in politics?
I think there is a mindset that regardless of age, only people with the right connections, the right experience and a lot of education can hold a public office. My father didn’t have any political connections when he ran. He’s a certified plumber and electrician and doesn’t have a college education. But he’s accomplished a lot. I hope I encourage anyone who is fearful of running because they don’t think they will be taken seriously or they don’t think that they will be able to hold their own.

How has it been to juggle being a college student and a legislator at the same time?
I actually think that it’s easier for me than it is for a regular student or a regular legislator. I was able to defer my spring semester in order to serve. I can take summer classes so I don’t feel I’m missing out on any material.

How does it feel to be thrown into the spotlight? Do you have a media strategy?
The day after I won my primary election, I had no clue what to expect. I was not prepared for the amount of media I was getting. After my primary, I had to hire two people to help me handle the media. They made appointments, helped me decide which ones to go on and which ones to skip. I’ve learned a lot and it’s gotten a lot easier.

Did anything surprise you in your first term?
I was positively surprised about how well we worked across party lines. You hear in the media and national news that it’s very gridlocked and that nothing takes place and nobody can work together. But I was really proud, especially with our change in leadership this year, that we were able to work together and a lot of bipartisan bills passed.

Was it hard to make connections because of your age?
We actually have eight under 30 in the West Virginia House. There is a young lady who is 22 and another gentleman who is 24 and the three of us grew together and we call ourselves the “Young Guns.” Overall, there are a number of people I’ve become friends with of all ages.

What’s one piece of advice your father gave you about serving in the Legislature?
It was at the beginning of my campaign: “Don’t get too low on the lows and too high on the highs. It’s a roller coaster, but you have to remember your end goal, what you are working toward and the people you are serving.” And that has helped me so much.

What is the thing that would surprise people the most about you?
I’m actually pretty carefree. But when I’m working I like to be pretty serious. I like to hang out with my friends and have a good time, but I avoid talking politics as much as possible. I love to travel, go to basketball games and football games and just be a normal person.

TV or book obsession? What’s on your nightstand or in your Netflix queue?
Hmmm… I haven’t had a lot of time for TV lately. But I just walked by the TV and saw an episode of “Mad Men” was on and told myself I was going to start watching. That will be my next TV show when I get the chance. Maybe this weekend.
• Connect with legislative colleagues
• Learn how other states are solving critical problems
• Sharpen your leadership and professional skills
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