Advertising apples as oranges? Such type of misleading advertising occurs with health care services, too. In some states the term “physical therapy” is misrepresented or inappropriately advertised to the public by individuals who are not licensed as physical therapists. This characterization is misleading to the public, illegal in some states, and an issue of public protection for patients who think they are under the care of a licensed physical therapist, but in reality are not.

“Physical therapy” is not a generic term—it describes the care provided by or under the direction of licensed physical therapists. When people seek “physical therapy” they deserve to know their care is in the hands of a licensed physical therapist. Other health care providers might share some of the same treatment techniques or rehabilitative procedures used by physical therapists, but the care should only be described or advertised as “physical therapy” or “physiotherapy” when provided by or under the direction of a licensed physical therapist.

While two health care professions may share common elements, labeling them the same thing is not right—it’s like comparing apples to oranges.

APTA
American Physical Therapy Association.
www.apta.org

To obtain information about what you can do to ensure your constituents have term protection for “physical therapy” in your state please contact the American Physical Therapy Association State Government Affairs Department at 800/999-2782 ext. 3161.
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NCSL’s national magazine of policy and politics

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Lincoln Journal Star: “Occasionally, studies use the same data to reach different conclusions.” —NCSL’s Jeanne Mejeur on why the Federal Communications Commission should not preempt state laws governing municipal broadband.

CQ Roll Call: “In the absence of express congressional intent, they’re kind of trying to bushwhack their way into territory where they really don’t belong.” —NCSL’s Susan Frederick on why the Federal Communications Commission should not preempt state laws governing municipal broadband.

**FOCUSED**

Members of NCSL’s Task Force on Energy Supply, other legislative leaders and staff visit the Coteau Freedom Mine, the largest producing lignite coal mine in North America, while touring energy facilities in North Dakota.

Kansas Representative John Rubin (R), foreground, and Senate Vice President Jeff King (R) listen to experts discuss youth reforms at NCSL’s Juvenile Justice Model Site Visit in New York City.
LETTERS

Editor: Excellent article by Daniel Thatcher on the Core Standards in the September issue of State Legislatures. “Common Core: Put to the Test” did not have all the misinformation that reporters tend to have in their articles. I hadn’t realized the extensive preparation that Kentucky had done. The article shows why a lack of preparation before the implementation stage is one of the reasons some states have run into problems. In Iowa, we have at least delayed implementation in order to have enough time to develop the standards, which in my opinion has made it a success.

David Epley
House Democratic Staff
Iowa

Editor: The “The Power of Pride” article in September’s magazine asserts that “being a gay or lesbian state lawmaker is now so common it’s no longer an issue.” I must strongly disagree. Colorado Senator Pat Steadman is quoted saying, “It just keeps getting better” for lesbian and gay legislators, with which I agree. I have also personally witnessed the evolution of acceptance by the voting public and my colleagues since becoming the first openly lesbian or gay legislator in New York state in 1991. The acceptance and mutual respect my legislative colleagues and I have for one another has led to many LGBT and non-LGBT-related policy victories.

Although I am extremely proud of our work, there are still several “issues” to be addressed. There certainly is more work to be done until all LGBT members of our communities are afforded the same comfort, safety and rights as their heterosexual neighbors. Yes, being a lesbian or gay state lawmaker is now more common that it used to be, and I appreciate the spotlight you have shone on the fantastic strides my LGBT colleagues have made. It is simply my hope that you don’t let our progress lead you to the premature belief that being a lesbian or gay state legislator is no longer an issue.

Deborah J. Glick
Chair, Assembly Committee on Higher Education
New York

Karl Kurtz
NCSL Pillar and States’ Champion Retires

Karl Kurtz, a leading voice for state legislatures and NCSL, even before there was an NCSL, has retired. He was the longest-serving employee of the conference, and had worked for the Council of State Governments when three competing groups formed NCSL in 1975. He helped write the bylaws for the new organization, wrote its first budget and served as a director of several NCSL programs.

Kurtz most recently was the director of NCSL’s Trust for Representative Democracy, a public outreach and education program designed to promote civic engagement and counter public cynicism and distrust toward American democracy.

Kurtz has held various management positions at NCSL over the years and has advised on legislative structure, operations, process and procedure in many states and developing nations. “His knowledge of legislatures and their history and development is unsurpassed,” said William Pound, NCSL executive director.

Kurtz will continue to bring his talents and experience to bear on a new major project. “About three years ago, Brian Weberg, director of NCSL’s Legislative Management Program, and I started talking about the need for us to better understand partisanship and polarization in the legislature,” Kurtz said. “Our view was that most state legislatures are in situations that are just as polarized as is Congress but most of them are able to reach settlements and negotiate differences in the way that Congress is not able to.”

Funding was elusive for a study into why legislatures do what Congress can’t, until the William and Flora Hewlett Foundation announced this summer that it was funding a $50 million, three-year Madison Initiative to help alleviate polarization in government.

Kurtz is optimistic that NCSL will receive an award as part of this initiative. If so, he will be a consultant on NCSL’s study of policymaking in state legislatures.

“We’re going to be doing case studies of nine legislatures around the country to look at how they are able to mitigate the problems of polarization,” he said.

Kurtz said he was “an idealist about legislatures and I have this very, very positive view, but I, too, can become cynical from time to time. There have been points in my career when I’ve wondered why I’m doing what I’m doing. I was at one of those points in the early 1990s when I went to Brazil and visited the Rio Grande do Sul Legislature. I walked up to the legislative assembly building and there was this enormous sign that read ‘Povo sem parlamento ‘e povo escravo.’”

“I didn’t speak any Portuguese, so I had to ask what it meant. The translation I got was, ‘People without parliament are people in chains.’”

“I thought to myself, ‘Aha, that’s why I do what I do. That’s what I believe in—that legislatures are ultimately the guardian of people’s rights and freedom.’”
We wrap up our celebration of the magazine’s 40th year with a glance back on the decade of the 2000s—the start of a new century and millennium. Although the decade began with a fizzle—the much-ballyhooed, end-of-life-as-we-know-it Y2K issue that turned out to be nothing but a dud—it soon experienced some bangs, some very big bangs.

The 2000 presidential election was so close that it hung by a few chads and had to be resolved by a U.S. Supreme Court decision 36 days later. The disputed election installed George W. Bush as the 43rd president, and the public’s reaction to him, both positive and negative, was to color the red and blue politics of the decade. Two years later, in the 2002 election, Republicans gained control of more state legislatures than Democrats for the first time in 50 years. And even though Democrats recovered some during the end of the decade, generally there was greater political parity between the parties than at any time in recent memory. The decade ended with a different kind of presidential bang—the election of the first African American president, Barack Obama.

The 2000 election also brought calls for election reforms. Demands to change the Electoral College system soon sputtered, but debate over how to administer elections, especially whether to focus reforms on making voting easier or guarding against voter fraud, became an enduring subject of state legislation. The Help America Vote Act placed new federal mandates on the states, and in response, NCSL established a committee to focus on elections and developed expertise on election administration that continues today.

But by far, the cataclysmic, tragic events on Sept. 11, 2001, have had the deepest and most lasting effect on American life and politics. They spawned the ensuing wars in Iraq and Afghanistan and a recession early in the decade and contributed to the Great Recession later on.

The terrorists’ attacks also generated new topics for lawmakers. The federal government established new agencies and regulations on airline and public safety that required state responses. The REAL ID Act set standards for state issued driver’s licenses that states found to be a particularly bitter and costly federal mandate pill to swallow. So much so that more than a decade later, state compliance is still incomplete. States also dusted off and updated emergency plans and adopted policies to combat cyber terrorism.

The states weathered the relatively brief and shallow recession of 2001 following the collapse of the dot-com bubble and the 9/11 attacks in part with the help of the windfall of Tobacco Settlement money. The much longer and deeper Great Recession, however, had severe impacts on state budgets, causing large reductions in revenue and cutbacks in services. The federal American Recovery and Reinvestment Act that seemed “huge, massive, audacious and ambitious” at the time, according to a story in State Legislatures magazine, helped states and the economy for a while, but the state revenue shortages lasted much longer than the federal aid. State budgets are just now recovering.

**Challenging Policy**

Changes in technology also generated new concerns. Foremost among these was the growth in tax-free online sales. NCSL spearheaded a national effort to simplify state sales taxes to make them easier for vendors to collect and to encourage Congress to authorize states to collect them. The resulting Streamlined Sales and Use Tax Agreement went into effect in 2005 with 19 states participating. State and local officials hoped Congress would enact the Main Street Fairness Act to level the playing field between online and local sellers soon thereafter. But a decade later we are still waiting, and it continues to be NCSL’s top state-federal relations priority.

The perennial state legislative issues of education, health care and welfare experienced new policy twists as well. The federal role in education expanded with the No Child Left Behind Act of 2002, which imposed more mandates on states. The states and feds experimented with numerous solutions to rising health care costs and coverage of the uninsured. Massachusetts waded into the area of universal health care, which ultimately became the model for the federal Affordable Care Act in 2010. Welfare reform, however, stalled out in the states in the 2000s under the pressure of the two recessions and a lack of funds.

There are other issues that popped up during the decade worth noting today. In the 2000s, state legislatures were busy trying to regulate junk faxes (remember those?), defend the traditional definition of marriage, and define what constitutes a public use of land and is therefore subject to eminent domain. During the decade, the pages of the magazine were filled with...
advice for legislators about the new social media, with “how to blog” advice leading the way. Interestingly, hydraulic fracturing or fracking—as hot an issue as can be today—wasn’t even mentioned in a magazine article on “9 Hot Energy Issues” in the 2000s and another energy story laments that North American natural gas production had declined.

NCSL celebrated its 25th anniversary in 2000 at a gala dinner attended by President Bill Clinton. There, the organization launched the Trust for Representative Democracy, to tell the story of what’s right with American democracy and to combat the pervasive problem of public cynicism and distrust. Thousands of legislators have participated in the Trust’s flagship program, America’s Legislators Back to School, which teaches young people what it’s like to be a state legislator.

A 2001 issue of State Legislatures magazine on leadership and institutional changes in the Arizona, Colorado, Maine, Missouri, Vermont and Washington legislatures featured 41 notable legislators, who, interestingly, are almost all gone from legislative life today. In the same issue, nine members of Congress were listed as former state legislators. Most of them, on the other hand, are still serving in Congress today. Of course, four of the featured state legislatures had term limits, but the differing time perspective of service in Congress vs. state legislatures was nonetheless striking.

During this decade, term limits were invalidated—either by court decisions or repeals—in six of the 21 states that had enacted them the previous decade, leaving 15 states to deal with this stricture on legislative power. In 2007, a team of political scientists and practitioners, led by NCSL, published a comprehensive assessment of the impact of term limits. The most significant finding was that legislatures under limits were weakened in relation to governors. The study pointed to ways that states could best adapt to this fundamental institutional change and mitigate its negative effects.

A Peek Into the Future

In 2000, an NCSL task force of legislative staff offered four scenarios on how the legislature as an institution might look in 2025. In the first scenario, the legislature is harassed by the frequent use of the initiative process by voters, but nonetheless discovers how to build and maintain its strength. In the second scenario, the circumvented legislature is so ineffectual that it is weakened and overwhelmed by direct democracy initiatives. The third version contains the traditional legislature, a strong institution that maintains the confidence of the public and thus faces relatively few challenges from direct democracy. The final scenario involves a diminished legislature that has lost the public’s confidence and is supplanted by a strong executive or other level of government.

Where are we now, 15 years into this 25-year gaze into the future? As usual, the answer varies from state to state, with none of these scenarios playing out exactly as described. For the most part, the use of the initiative process has not increased over the last 15 years nor has it spread beyond the 24 states that already use it. So the harassed and circumvented legislature scenarios are no more prevalent than they were at the beginning of the decade.

Certainly there are plenty of examples of traditional legislatures that are effective institutions that maintain public confidence (more or less, given the diminished confidence in all institutions of our time). They are able to reach agreements on complex issues and to craft solutions to state problems. Congress is a clear example of the last scenario, the diminished legislature, so polarized by competing political views that it is unable to pass meaningful legislation. This has resulted in Congress ceding authority to the president and surrendering its power to the states to find innovative policy solutions to serious concerns.

For the most part, state legislatures have not fallen into congressional-style gridlock, and a more pragmatic, problem-solving approach prevails. But there is a danger, unanticipated by the scenario writers of 2000, that unless governors and state legislatures guard against it, the increasing polarization in Congress and the electorate will infect the state legislative process and lead to an even greater loss in public confidence in government at all levels.
American adults gain an average of one to five pounds during the holidays, and many of them never lose it. The not-so-jolly statistic is a reminder of our nation’s uphill battle against obesity.

More than one-third of adults and 17 percent of youth are obese, percentages that remain stubbornly high, according to the Centers for Disease Control and Prevention. In 2013, an estimated 78 million adults and 12 million children fit the definition of obese—roughly 35 pounds overweight for adults, and for children, a body mass index at or above the 95th percentile.

Last year, for the first time, two states reported that more than 35 percent of their adult populations were obese. Another 18 states reported rates at or above 30 percent, and no state had an adult obesity rate of less than 21 percent.

Younger Americans didn’t fare much better—obesity rates for 2- to 19-year-olds hovered between 15 percent and 18 percent from 2003 to 2012, the most recent years for which data are available.

For low-income preschoolers, however, a CDC study showed signs of progress; obesity declined for those 2- to 5-year-olds in 19 states from 2008 to 2011.

Because obesity prevalence remains high, however—increasing by roughly 20 percent for adults and 30 percent for children in the past 30 years—the epidemic remains a pressing public health concern, raising Americans’ risk for heart disease, stroke, type 2 diabetes and some cancers, and leading to an estimated $147 billion in annual medical costs.

—Amy Winterfeld

Private Sector’s Anti-Obesity Efforts

- The American Beverage Association has teamed with Bill Clinton and the Alliance for a Healthier Generation to reduce U.S. calorie consumption from sugary drinks 20 percent by 2025 by making low- and no-calorie drinks more available, selling smaller portions and promoting healthy eating.

- Walmart has pledged to bring healthier foods—more produce, whole grains and lean proteins—to communities that have little or no access to them now. By the end of 2015, the company also will reduce added sugars, sodium and industrially produced trans fats in house brands.

- Global food-service company Sodexo has pledged to expand healthier food choices in hospitals and, by 2018, serve 17 million more free school breakfasts and provide at least 30 percent healthier options in 45 percent of vending machines.

—Mary Winter

Sources: American Beverage Association, Walmart, Sodexo
NORTH CAROLINA SPEAKER OF THE HOUSE THOM TILLIS (R) WAS ELECTED TO THE U.S. SENATE, unseating first term Democratic Senator Kay Hagan in what has been called the most expensive election in the nation. Tillis, a businessman, was first elected to the House in 2006. In 2010, as House Republican campaign chairman, he led his caucus to the majority for the first time in nearly 20 years, and they elected him speaker. In 2012, the GOP gained an additional nine seats putting them at 77 in the 120-member House, giving it and the Senate veto-proof majorities. Democrats needed to win an additional four seats in the House to break the supermajority, but gained three.

A WEST VIRGINIA COLLEGE FRESHMAN MADE HISTORY IN NOVEMBER BY BECOMING THE YOUNGEST STATE LEGISLATOR IN THE NATION. Eighteen-year-old Saira Blair (R) won in a landslide, beating her opponent 63 percent to 30 percent. She has an “A” rating from the National Rifle Association and describes herself as a fiscal conservative. As a 17-year-old high school senior too young to vote for herself, Blair won the Republican primary against 67-year-old incumbent Larry Kump. Politics is in her blood. Her father, Craig Blair, is a state senator who once held the House seat she now holds.

TED KENNEDY JR. (D), THE NEPHEW OF A PRESIDENT AND SON OF THE LATE SENATOR TED KENNEDY, won his first foray into politics and a seat in the Connecticut Senate. The 53-year-old is an environmental lawyer who won an open seat vacated by retiring Senator Edward Meyer (D). He had been mentioned as a possible U.S. Senate candidate in his family’s home state of Massachusetts, but decided to run in Connecticut, where he has lived for about 20 years.

HAWAII SENATOR DAVID IGE (D), WHO OUSTED A SITTING GOVERNOR IN THE DEMOCRATIC PRIMARY, WENT ON TO WIN THE GOVERNORSHIP in a three-way race that included the state’s Republican former lieutenant governor and the former mayor of Honolulu. But on the mainland, two other legislators lost their bids to become governor. Georgia Senator Jason Carter (D), grandson of former President Jimmy Carter, lost his challenge to incumbent Governor Nathan Deal. Representative Dennis Richardson (R) of Oregon could not unseat three-term incumbent Governor John Kitzhaber, despite a series of ethical issues surrounding Kitzhaber’s fiancée and the failure of the state’s health care website. Kitzhaber, also a former legislator, won an unprecedented fourth term.

OCE SMITH, WHO BEGAN HIS CAREER AS A PAGE IN THE WEST VIRGINIA HOUSE OF DELEGATES, then worked for two U.S. senators before spending 45 years as sergeant-at-arms for the House of Delegates, died in November. He was 76. During his more than four decades as chief sergeant, he served with 12 governors, 13 House speakers and 10 Senate presidents. He was also a founding member of NCSL’s National Legislative Services and Security Association. In March, the association awarded him its highest honor: the President’s Charter Member Achievement Award. In 2012, the House honored him with a resolution marking his 45 years of service and naming him sergeant-at-arms emeritus.

MASSACHUSETTS SENATOR RICHARD MOORE (D), PRESIDENT PRO TEM AND A VETERAN LEGISLATOR WHOSE CAREER IN STATEHOUSE POLITICS SPANNE 35 YEARS, WAS DEFEATED by Representative Ryan Fattman (R). Moore was first elected to the Massachusetts House in 1977 and served until 1996 when he was tapped by President Bill Clinton to be associate director of FEMA. During his two years at FEMA he led efforts to develop a National Mitigation Strategy to help individuals, communities and states reduce the risk of disaster from natural and technological hazards. In 1996, he was presented with the Distinguished Service Award by FEMA Director James Lee Witt. Moore was elected to the state Senate in 1996 and became president of NCSL in 2010. He co-chaired NCSL’s Task Force on Homeland Security and Emergency Response, created in the aftermath of the Sept. 11 terrorist attacks. He is a national leader in health care, and promoted civility in the legislative process during his NCSL presidency.

WASHINGTON REPRESENTATIVE ROGER FREEMAN, A FIRST TERM LAWMAKER WHO MADE A MAJOR IMPACT ON CHILD-WELFARE POLICY, DIED at the end of October. He was 48. Freeman began his battle against colon cancer shortly after his election to the House in 2012, but he was confident he would be healthy for a second term. Freeman died before Election Day, but was headed for a decisive victory with 53 percent of the vote under Washington’s mail-in system. House Speaker Frank Chopp (D) and Representative Eric Pettigrew (D), Democratic caucus chair, said the Legislature had “lost a treasured colleague and friend. As a legislator he was passionate about social justice, strong families and educational opportunities for all.” Governor Jay Inslee said Freeman had “a passion for serving his community and advocating for the most vulnerable, particularly children with disabilities … and was one of the most professional, eloquent and kind-hearted legislators I’ve had the pleasure of working with.”
Charter Schools Checkup

School choice commanded state lawmakers’ attention again this year—with all but two of the nation’s 46 seated legislatures debating bills related to charter or private schools. Bills that focused on charter school policies alone numbered in the hundreds, with 53 of them ultimately passing in 24 states. The top five most common policy areas addressed by the new laws are:

Accountability—Regulating the oversight of charter schools including reporting their academic or financial performance data.
Authorization—Establishing who can authorize and renew charter schools and what process they must follow.
Enrollment and admissions—Identifying who may attend charter schools, usually clarifying that students from all ethnic, economic and academic backgrounds have an equal opportunity.
Facilities—Addressing the procurement of charter school buildings.
Teachers—Defining hiring, evaluation and dismissal policies for charter schools.

Other—Addressing virtual charter schools, charter school expansion, funding and governance.

—By Josh Cunningham

California Bags Plastic Bags

Plastic bags are one of the most common consumer items on the planet—and one of the most controversial. Around the world, an estimated 500 billion to 1 trillion bags are used each year, many of which can be recycled, but aren’t. In addition to clogging storm drains and piling up in landfills, they end up in rivers, oceans, parks and streets and are one of the earth’s leading sources of pollution. Wind and water currents carry bags to the ocean, where they can be lethal to marine life and the aquatic environment. Often, they can be found in large, swirling ocean expanses known as “gyres,” which capture as much as 1.6 billion pounds of plastic bags, bottles and other debris each year. And lastly, during the bags’ production process, greenhouse gases are emitted.

Over the past decade, a number of local governments have imposed bans, taxes and recycling measures to reduce their use. This fall, California became the first state to ban plastic bags, starting next July 1. Some jurisdictions have opted for an outright ban, while others have levied a tax, encouraged recycling or decided on some combination of the three. In 2007, San Francisco was the first U.S. city to ban plastic bags. Two years later, the District of Columbia established a 5-cent-per-bag tax on carryout bags—paper and plastic—provided by grocery stores, drug stores, liquor stores, restaurants and food vendors. Monthly city revenue from the tax has been steady and helped fund the clean-up of the Anacostia River.

Hawaii has essentially banned plastic bags statewide since all of the most populous counties prohibit non-biodegradable plastic bags at checkout, as well as paper bags that contain less than 40 percent recycled material. And legislation to ban single-use bags is pending in Massachusetts, New Jersey, Rhode Island and Puerto Rico. Massachusetts and New Jersey, along with New York and Pennsylvania, are considering a fee or tax on the distribution of bags, ranging from 1 cent to 15 cents per bag. Similar legislation failed this year in Hawaii, Vermont, Virginia and Washington.

Ban Starts in July

California’s law goes into effect July 1, 2015, when large grocery stores and supermarkets, including Target and Walmart, will face fines if they offer plastic bags at the checkout counter. Smaller stores have another year to prepare.

Under the law, stores that offer recycled paper bags, reusable plastic bags and compostable bags must charge at least 10 cents a bag, although it will be waived for customers on public assistance. Stores will keep the money to cover the cost of providing the bags and other costs associated with the law. Handle-less bags used to protect meat and produce are exempt.

California’s SB 270 also extends $2 million in loans to plastic bag manufacturers to help them shift production to reusable bags, but an industry group said it plans to seek a referendum on the 2016 ballot to repeal the ban. Opponents say the law will cost thousands of manufacturing jobs, hurt the poor and unfairly benefit the grocery industry.

Opponents of bans don’t want government involved in this issue. Others argue lawmakers should focus instead on promoting recycling, to reuse the plastic bags—along with other plastic products—to produce new bags, rugs, backyard decking, playground equipment and fences, among other products.

One thing is certain: With a life expectancy of up to 1,000 years, plastic bags will be around for generations, ensuring that the debate over what policymakers should do to lessen their negative effects will continue for some time to come.

—By Jennifer Schultz
Plastic bags are one of the most common consumer items on the planet—and one of the most controversial. Around the world, an estimated 500 billion to 1 trillion bags are used each year, many of which can be recycled, but aren’t. In addition to clogging storm drains and piling up in landfills, they end up in rivers, oceans, parks and streets and are one of the earth’s leading sources of pollution. Wind and water currents carry bags to the ocean, where they can be lethal to marine life and the aquatic environment. Often, they can be found in large, swirling ocean expanses known as “gyres,” which capture as much as 1.6 billion pounds of plastic bags, bottles and other debris each year. And lastly, during the bags’ production process, greenhouse gases are emitted.

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—By Jennifer Schultz
Buckling Down on Buckling Up

Seat belts saved more than 304,670 lives from 1975 to 2012, and increasingly strict state seat belt laws are at least part of the reason, according to the National Highway Traffic Safety Administration (NHTSA). Seat belts also spared the country $1.6 trillion in medical care, lost productivity and other injury-related costs during roughly the same years, the agency estimates.

Thirty-three states have primary seat belt laws, which allow police to stop and ticket drivers if they or their passengers are not buckled up. Another 16 states have secondary seat belt laws, meaning drivers and occupants can be cited for failure to wear seat belts only if the officer has pulled the car over for another infraction.

Primary law opponents often argue they infringe upon personal freedoms and can result in racial profiling.

Still, the number of states that adopted primary seat belt laws almost doubled from 2001 to 2012. At roughly the same time, national seat belt use has increased from 73 percent to 86 percent. In states with primary seat belt laws, use averaged 90 percent in 2012, compared to 78 percent in states with secondary laws, the traffic safety administration said.

West Virginia, the most recent state to enact a primary law, has seen the biggest increase in seatbelt use, from 53 percent in 2001 to 84 percent in 2012. On the other hand, seat belt use in Montana declined slightly, from 76 percent to 74 percent in roughly the same time frame. In New Hampshire, the only state with no seat belt law, use was 73 percent last year.

The Centers for Disease Control and Prevention include primary seat belt laws in a list of a dozen traffic-accident prevention interventions—such as ignition interlocks, red light cameras and sobriety checkpoints—in a new online tool that allows states to weigh the costs and safety benefits of the various policies. The CDC’s Motor Vehicle PICCS (Prioritizing Interventions and Cost Calculator for States), unveiled in October, is designed to help states estimate the cost of the intervention, how many lives will be saved and injuries prevented, and how much revenue fines might generate to help offset its cost.

—By Anne Teigen

For more information on seatbelt laws, go to www.ncsl.org/magazine
High-speed Internet access, commonly referred to as broadband, is becoming a must-have in today’s instant-information society. From training for a new job to providing almost limitless news and information, broadband enriches communities by attracting businesses, expanding educational opportunities, encouraging investment and innovation, and promoting e-commerce. It’s little wonder areas without high-speed Internet—some 19 million Americans, including a quarter of the 61 million people living in rural areas, according to federal estimates—are looking for ways to get it.

Building the infrastructure for high-speed Internet requires a huge upfront investment—especially in hard-to-reach rural areas. Municipal broadband proponents say local governments can provide faster, cheaper service than the private sector because they don’t have to worry about corporate pressures and short-term financial returns. But in the communities that have built and operated their own high-speed systems, the ventures have met with much controversy and have had mixed results.

Opponents to allowing municipalities to build their own systems say these efforts waste public money because so many fail, usually due to poor management. They argue that maintaining and updating broadband infrastructure is too costly for cities, many of which already carry heavy debt. They also point out that municipal broadband networks pose an unfair competitive threat to private providers because they receive taxpayer subsidies.

At least 20 states have passed laws since 2006 that limit local governments’ ability to build their own broadband networks. Laws vary in the details. Some require local referendums to ensure there is support among residents. Others prohibit municipal networks from receiving subsidies, benefits, tax exemptions or government incentives not available to the private sector. In South Carolina, for example, a local government seeking to build its own broadband network must also impute the “costs that private entities would pay for all costs associated with building a network.” And in North Carolina, any local government that builds a broadband network must make “payments in lieu of taxes” to the state equal to the taxes that a private company would have to pay.

This year, Utah lawmakers considered legislation to prevent a 16-city consortium that operates a broadband network from expanding into new markets. Kansas lawmakers also introduced legislation that would prevent cities and towns from establishing broadband networks, except in unserved areas. The legislation would also prohibit future public-private partnerships, such as Google Fiber in Kansas City.

On the other hand, Colorado, Michigan, Pennsylvania, Tennessee, Virginia and Wisconsin have passed laws making it easier to build municipal broadband networks in communities where commercial providers have declined to do so.

Like 20 states, the National Governors Association and the Council of State Governments, NCSL opposes the federal government pre-empting states from regulating municipal broadband services. Yet, Federal Communications Commission Chairman Thomas Wheeler has gone on record favoring municipal broadband networks. This past summer, NCSL officials wrote to Wheeler expressing their concerns about municipal broadband and joined officials from the National Governors Association and the Council of State Governments in requesting that the FCC deny petitions by local communities to build municipal broadband systems.

“Municipal broadband has had a checkered past,” wrote NCSL’s Executive Director William Pound. “It is unstable, and success stories are few and far between. When municipalities fail, states are left holding a very large fiscal bag. This fiscal bag is essentially taxpayer dollars that are lost when costs cannot be recouped. States have therefore chosen to regulate in this area to ensure that the benefits to their citizens outweigh the risks involved.”

As outlying communities look for ways to get affordable high-speed Internet, policymakers must continue the tough work of balancing community needs, states’ fiduciary obligations, market concerns and powerful legal precedents.
The Silent Campus Crime

In April, the U.S. Department of Education released a list of 55 colleges under federal investigation for their handling of sexual assault claims. The investigation exposed a disturbing number of assaults at state universities, elite Ivy League schools and two-year community colleges. Although Congress has introduced a handful of bills and the White House launched an “It’s On Us” initiative to raise awareness, some states already have taken action. In May, Connecticut became the first to pass comprehensive legislation that requires private and public institutions to:

- Work with a community-based organization to create a sexual assault response team to provide confidential counseling or services,
- Provide students with sexual assault prevention information,
- Report annually to the legislature the number of sexual assaults on campus, and
- Allow victims to report incidents anonymously.

California’s governor recently signed legislation requiring colleges to adopt a policy of “affirmative consent” by students before they engage in sex—meaning that silence does not constitute consent. Also called the “Yes Means Yes” law, the legislation defines consent as “an affirmative, conscious and voluntary agreement to engage in sexual activity” and reverses the traditional, unwritten rule that unless one party says “No,” the other party can assume he or she consents. The legislation also requires that students have access to counseling and health services and provides training for faculty who review complaints.

Legislation on campus sexual assault policies was introduced in at least four other states this year, and some created task forces. Individual campuses and university systems have also adopted policies around reporting requirements and awareness campaigns.

—By Suzanne Hultin

E-Liminating E-Waste

Use of consumer electronics has skyrocketed in recent years, with the typical American household now plugged in to about 24 different devices. Although electronics have revolutionized how we communicate, educate and entertain ourselves, the $206 billion-a-year U.S. industry has also created a rising stream of aging equipment in need of appropriate disposal.

According to the U.S. Environmental Protection Agency, almost 2.4 million tons of computers, cell phones, printers and other electronic devices were discarded in 2009, up more than 120 percent since 1999. Twenty-five percent of the equipment was recycled, and the rest ended up in landfills and incinerators.

Used electronics make up a relatively small percentage of the overall U.S. waste stream, but their disposal is an environmental and public health concern. Many devices contain metals and chemicals such as lead, mercury, arsenic, cadmium, copper, nickel, gold, silver and zinc. If disposed of improperly, these substances can contaminate soil, water and air, creating potential health hazards for humans and animals.

Electronics manufacturing also uses many resources. For example, it takes at least 530 pounds of fossil fuels, 48 pounds of chemicals and 1.5 tons of water to make a desktop computer. Cell phones contain copper, gold and other precious metals. Recovering and reusing these materials, rather than extracting new ones, can reduce energy use substantially.

Consumers have several options to recycle or donate their used electronics. A number of manufacturers and retailers offer return programs or sponsor recycling events. In addition, 25 states have enacted legislation establishing a statewide electronic waste, or e-waste, recycling program. Legislation typically follows two basic models for e-waste disposal. In 24 states, the manufacturer is responsible for collecting and recycling specified products, which vary widely from state to state. Similar legislation in the District of Columbia (Bill 641) was signed by the mayor in September.

Under the second type of program, known as the advanced recycling fee model, consumers pay retailers a fee of $6 to $10 at the time of purchase, which is deposited into a statewide recycling fund. California, the first state to establish an e-waste recycling program, adopted this method in 2003.

—By Jennifer Schultz and Brooke Oleen Tieperman
Municipal Broadband Debate

High-speed Internet access, commonly referred to as broadband, is becoming a must-have in today’s instant-information society. From training for a new job to providing almost limitless news and information, broadband enriches communities by attracting businesses, expanding educational opportunities, encouraging investment and innovation, and promoting e-commerce. It’s little wonder areas without high-speed Internet—some 19 million Americans, including a quarter of the 61 million people living in rural areas, according to federal estimates—are looking for ways to get it.

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—By Jennifer Schultz and Brooke Oleen Tieperman
1 **KARDASHIAN CONNECTION**

NCSSL and the Kardashian clan generally don’t hang in the same hot tub, but both institutions did wind up in the same Politico story recently. Politico reported that Kendall Jenner, “Keeping Up with the Kardashians” star and fashion model, teamed up with Rock the Vote, a nonprofit dedicated to encouraging young Americans to vote, to promote the organization’s mobile registration tool. Jenner, 18, is the half-sister of Kim Kardashian. She posted a video to Instagram and YouTube urging her peers to “make our generation’s voice heard” in the November mid-terms. Citing NCSSL research, Politico reported this election was the first in which voters could register entirely on a mobile phone in the 20 states that allow online registration—including California, where Jenner lives. Not everyone can keep up with the Kardashians, but NCSSL Kanye.

2 **LESS ENCHANTMENT, MORE EDUCATION**

New Mexico lawmakers long suspected the state’s high dropout rate was costing the economy, but only recently did they get a dollar figure. If New Mexico each year could graduate 2,600 more high school students—teens who otherwise might drop out—the state would save $700 million over the life of each graduating class, according to a new Legislative Finance Committee report. Benefits would come from higher incomes, fewer crimes and better health care, the Albuquerque Journal reported. The dropout rate was 4.7 percent in 2013, among the highest in the nation, when 7,185 students in grades seven through 12 left school. The committee recommended more efforts be focused on reducing truancy.

3 **NEW JOBS FOR THOSE WITH DISABILITIES**

Rhode Island is looking for mainstream jobs for people with developmental disabilities who currently work in segregated settings, often for low wages. The move is part of a consent decree with the U.S. Department of Justice, which last year found that a workshop in Providence violated the Americans with Disabilities Act by segregating about 200 workers with disabilities in repetitive jobs such as dropping buttons in plastic bags, recycling television remotes and stuffing peppers, many of which paid $1.57 or less an hour. Rhode Island will help about 2,000 residents find support services and jobs that pay at least minimum wage close to their homes, so they can fully integrate into their communities. Other states have begun to phase out so-called sheltered workshops, which employ about 450,000 people nationwide. Federal officials, who began a campaign in 2009 to eliminate the workshops, say Rhode Island will be a model for the nation.

4 **TYING THE KNOTS**

Can a person have more than one spouse in Utah? Technically, no. The state has outlawed polygamy, as well as cohabitation, for years. But debate around the issue has been swirling since September, when U.S. District Judge Clark Waddoups ruled that the cohabitation part of the law is unconstitutional. The case was brought in 2011 by Kody Brown and his four wives, stars of the TLC reality show, “Sister Wives.” The Utah county attorney had threatened to prosecute them after the show debuted, but he never did. The Brown family, members of a fundamentalist Mormon group, argued the law violated their guaranteed freedom of religion, and Judge Waddoups agreed. The state is appealing the ruling.

5 **PREYING ON SUNDAY**

Hunting on Sundays is banned or restricted in 11 states, including Maryland and Virginia, but hunters in these two states now have a few more opportunities on the Christian Sabbath. Virginia’s new law allows a land owner or anyone with the owner’s written permission to hunt wild birds or animals on private land on Sundays, except within 200 yards of a house of worship. Virginians also can hunt raccoons in most places until 2 a.m. on Sundays, and waterfowl are now fair game all day, with some exceptions. Maryland lifted restrictions on hunting deer, turkey and captive game birds in specific counties on Sundays. Laws vary in the other nine states. Maine forbids Sunday hunting entirely, while New Jersey allows bow hunting for deer and allows land owners to kill crows, woodchucks and other vermin. In Delaware, trapping is OK on Sundays, as is hunting red foxes with dogs. Michigan, New York and Ohio lifted Sunday hunting bans in the early 2000s. Some sporting groups argue that bans cost states millions in revenue and limit hunting opportunities, especially for youth.
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7 TURNOUT LOW—WITH EXCEPTIONS
Voter turnout in November’s midterms—36.4 percent—hit a 70-year low, according to preliminary estimates by the University of Florida’s U.S. Election Project. Not since 1942, when America was preoccupied with World War II, has turnout been worse—33.9 percent. But voter participation Nov. 4 was not dismal across the board. Battleground states with particularly hard-fought races saw healthy turnouts. In Maine, where incumbent Republican Governor Paul LePage barely prevailed, turnout topped 59 percent. The governor’s race in Wisconsin, which saw Republican incumbent Scott Walker pull out a victory, was also a big draw. More than half of Colorado’s voters cast ballots, likely due to the battle royal over a U.S. Senate seat, which Democrats tried desperately, but unsuccessfully, to hold.

6 HEALTHY PETS BILL PASSES
Starting in January, Minnesota dog and cat breeders must be licensed by the state Board of Animal Health, an effort to ensure humane treatment for animals. The new law establishes 31 rules commercial breeders must follow, including providing clean water and good ventilation, separating sick from healthy animals and giving animals collars that fit well. The law replaces a hodgepodge of statutes that many complained allowed bad breeders to raise animals in unhealthy surroundings. The law, opposed by some farmers, applies to cat and dog breeders with 10 or more adult animals that produce more than five litters each year. States that have no laws regulating breeders include Alabama, Alaska, Hawaii, Idaho, Kentucky, Mississippi, New Mexico, North Dakota, South Dakota, Utah and Wyoming.

8 FOR WHOM THE BILLS TOLL
Do New Jersey lawmakers introduce too many bills? Assemblyman Anthony Bucco (R) thinks so, which is why he felt compelled to introduce yet one more—one that would limit senators to 25 bills and assembly members to 15 bills per session. The carrot for lawmakers would be a guarantee that every bill they introduced would be heard in committee. Since the current session began in January, the state’s 120 lawmakers have introduced 6,777 bills, according to nj.com. Under Bucco’s proposal, the number of introduced bills for a two-year session would be capped at 2,200. Bucco argues his bill would save money and force lawmakers to work together more. Assemblywoman Valerie Vainieri Huttle (D) disagrees. “To me, drafting bills is part of responding to constituents,” she told nj.com. In 14 states, at least one chamber sets a cap on bill introductions, but many also allow lawmakers to pre-file an unlimited number of bills before the session begins.

10 TEST FOR UNINTENDED IMPACTS
Starting in January, Oregon lawmakers have a way to find out if a proposed bill might unintentionally harm racial minorities. A new law directs the Oregon Criminal Justice Commission to draw up a racial and ethnic impact statement for proposed legislation if a member of both major parties requests it. The measure, similar to ones in Connecticut, Iowa and Minnesota, is seen as a step toward eliminating unintended negative impacts, such as the 1980s federal drug laws that established much stiffer prison sentences for crack cocaine—used mostly by poor urban blacks—than for powder cocaine and other drugs more often used by whites. Such policies have contributed to blacks’ overrepresentation in U.S. corrections systems, according to many legal experts.

9 D.C. VS. GOLIATH
A U.S. Senate bill that would grant statehood to the District of Columbia was debated in September, but only two senators attended, and most say the measure is dead. D.C. is a federal district and the seat of U.S. government, but it has little autonomy. Congress controls its budget. In 1961, the 23rd Amendment gave D.C. residents three electoral votes and the right to vote for president. But the district’s 646,449 residents have only a non-voting representative in Congress, and many resent it. In 2000, D.C. adopted a license plate bearing the motto “Taxation Without Representation.” Some say Maryland should annex D.C., but most statehood supporters think it’s a less than capital idea.
Republicans reached historic highs following this year’s elections.

By Tim Storey

Even the prognosticators who saw a GOP surge coming didn’t think it would be so large. The scope of Republican victories in November’s election surprised just about everyone and thwarted Democratic hopes of suppressing the GOP’s momentum. Voters put Republicans in charge of 68 of the 98 partisan legislative chambers and in control of 30 state legislatures—the most the GOP has held since Reconstruction. When the votes were counted, Republican control of state legislatures matched their previous high point after the 1920 election when Warren Harding was elected president. Eleven chambers flipped from Democratic to Republican. That left Democrats in charge of only 11 legislatures—the lowest point for the party in more than 150 years.

“The key to our success this year was recruiting diverse candidates and women candidates who made the critical difference in chamber control in key state races,” says Matt Walter, president of the Republican State Leadership Committee. One such candidate was new West Virginia Representative Saira Blair. Representative Blair earned over 60 percent of the vote and instantly became a national sensation at 18 years old. She has already appeared on Fox television’s morning show, “Fox and Friends,” and been profiled in Newsweek and Politico.

Democratic Legislative Campaign Committee Executive Director Michael Sargeant says the tough political landscape contributed to his party’s setbacks. “We had our best fundraising year to date, recruited some of the best candidates we’ve ever seen, knocked on more doors than ever before—but it wasn’t enough to overcome the difficult political environment.”

On the bright side for Democrats, they did retain majorities in three key chambers that were highly coveted by Republicans: the Colorado House, the Kentucky House and the Iowa Senate. And they gained seats in a handful of chambers, including Oregon and North Carolina.

Despite the seeming scope of the GOP surge, the election cycle was typical in several ways. Democrats lost close to the average seats for the party holding the White House in a mid-term election. In fact they were below average on the overall loss of seats. The number of chamber switches, 11, was below the norm of 13. And even as good as it looks for Republicans in states after the November election, they are still well below the all-time advantage that Democrats had in the mid-’70s following Watergate.

Election turnout hit historic lows in 2014, and that likely contributed to the Republican blowout. “The national turnout rate was about 37 percent. If
turnout does not break 38 percent after all the ballots are completely tallied, it will be the lowest turnout election since 1942’s 34 percent,” says University of Florida professor and turnout expert Michael McDonald.

Republicans also took full advantage of the “mid-term curse” for the party in the White House. Headed into Election Day, President Obama’s approval rating sat at an average of only 42 percent according to the Real Clear Politics website that aggregates hundreds of polls. Since 1902, the party in the White House has lost an average of 411 legislative seats and suffered losses in 27 of the 29 mid-terms. That very strong trend in American politics doomed the president’s party once again as Democrats lost approximately 320 seats in this cycle.

### The New Partisan Numbers

Regular legislative elections were held in 46 states in 2014 to decide 6,049 of the 7,383 legislative seats. Louisiana, Mississippi, New Jersey and Virginia hold legislative elections in odd-numbered years. In Kansas, Minnesota, New Mexico and South Carolina the senates were not up this year.

In terms of legislative bodies, Republicans ran the proverbial table. They won the majority in 11 legislative chambers previously held by Democrats. Those chambers are: Colorado Senate, Maine Senate, Minnesota House, Nevada Assembly, Nevada Senate, New Hampshire House, New Mexico House, New York Senate, Washington Senate, and the West Virginia House and Senate.

Republicans are now in the majority in 68 of the 98 partisan legislative chambers, and Democrats control 30. Nebraska has a unicameral legislature and is nonpartisan. Before the election, the breakdown was 57 Republican chambers to 41 Democratic. In two of those Democratic chambers, the New York and Washington senates, the Democrats did not actually run the chambers before the election because small numbers of Democratic senators had allied with all of the Republicans to form coalitions. In both of those senates, Republicans won outright majorities in 2014.

When looking at the total number of legislatures, Republicans now control both the House and Senate in 30 states, equaling their post-Reconstruction high of 30 in 1920. Conversely, the number of legislatures controlled by Democrats dropped to the lowest point in more than 150 years. Democrats have both chambers in only 11 states—all in the Northeast and the far West, with the one exception being Midwestern Illinois. In eight states, party control is shared, with one party holding the senate and the other holding the house or assembly.

With shift of both chambers in West Virginia from D to R, the only legislative chambers south of the Mason-Dixon line in the Democratic column are the Kentucky House, along with both chambers in Maryland and Delaware. Republicans again added legislative seats in the South and now have about 95 more seats in the region than they did following the 2012 election. Republicans also gained seats in the South in the 2012 election even though they lost ground two years ago in all other regions.

Republicans saw modest success in the 36 races for governor this year. They netted three after wresting the office in Arkansas, Illinois, Maryland and Massachusetts. Democrat Tom Wolf defeated incumbent Republican governor Tom Corbett in Pennsylvania. At press time, the next governor of Alaska was yet to be determined due to thousands of outstanding absentee ballots. Independent Bill Walker held a relatively small lead over Republican incumbent Sean Parnell in the last frontier. With that race still undecided, the post-election count of governors was 31 R to 18 D. Before the election, the Republican advantage was 29 R to 21 D.
Remarkably, given the Republican wave that swept across the nation, Republicans emerged from the election controlling exactly the same number of state governments as they controlled before the election. The overall control of states, factoring in the legislature and the governor, stands at 23 R, 7 D and 11 divided. Before the election it was 23 R, 15 D and 11 divided. Democrats lost many chambers and governors, but most of those states now have divided state government. Alaska could stay Republican if Parnell pulls out a victory. The sharp increase in divided state governments could lead to Washington-style gridlock. Legislators and governors, however, are more likely to seek compromise especially when it involves the budget, since all states but one must enact balanced budgets.

It appears that Republicans will have a net gain of around 320 seats and control more than 4,120 of the nation’s 7,383 legislative seats once all the counts are in. At press time, roughly 35 seats were still undecided, including two races in the New Hampshire House that were tied. Of the seats held by the two major political parties, Republicans emerged from the election holding 56.5 percent, their highest point since 1928.

Although impressive, that number pales when compared to the 68 percent of seats that Democrats held after the election in 1974 which was the most lopsided point for legislatures since Reconstruction. Democrats netted seats in about 10 chambers including both chambers in Oregon and in the North Carolina House.

**Under New Management**

The biggest Republican gains were in the 400-member New Hampshire House that can now be considered the most competitive legislative body in the country. It has changed hands in four of the past five elections. Republicans added more than 60 seats to win control of the Granite State House once again after losing it in 2012.

West Virginia was probably the state with the most dramatic change. Republicans won 20 seats in the House to take control of the chamber for the first time since losing it in 1930. On the day after the election, the West Virginia Senate was tied 17 – 17. But by the end of the day, Democratic Senator Daniel Hall had changed his registration to the GOP, handing the Senate majority to the GOP for the first time since 1932.

Nevada was the other state where both chambers switched from D to R. In one of the nation’s smallest legislative bodies, the Nevada Senate, Republicans gained one seat, reversing their 10 R – 11 D minority to an 11 R – 10 D majority. The Nevada Assembly was one of the biggest surprises and was not on any pre-election watch lists. Republicans picked up a dozen seats in the body to secure a comfortable 27 R – 15 D majority.

As in West Virginia, it’s been a long time since Republicans controlled the New Mexico House. With the help of popular Republican governor Susanna Martinez at the top of the ticket, the GOP won a 37 R – 33 D majority for the first time in 60 years.

The closest legislative chamber going into the election was the Colorado Senate where Democrats held a one-seat majority. Many Colorado Senate races were nail-biters. Republicans managed to win enough of the very close Senate seats to flip the chamber back to their column after a decade in the minority.

The Maine Senate has also been one of the biggest battlegrounds in recent years. It has changed hands seven times since 1994, including this year when Republicans seized control again after losing it in 2012.

The Minnesota House switched for the third consecutive election with Republicans winding up with a 72 R – 62 D majority.

New York Republicans won back the numerical advantage in the Senate even though they had been in functional control of the chamber for the past two years after striking a deal with five Independent Democratic Caucus members two years ago. The Washington Senate majority also went from a coalition of all Republicans and two dissident Democrats to an outright Republican majority.

In one of the nation’s most Democratic legislatures, Maryland, Republicans won enough seats to end the Democrats supermajority, a feat they also accomplished in the California Senate.

**Looking Forward**

Democrats are eager to move past the 2014 election cycle and look toward 2016 when it could be a younger and more diverse electorate that leans more Democratic. In the meantime, Republicans can be expected to flex their policymaking muscle in the states over the next two years. Early signs do not look good for a divided federal government to accomplish much and the presidential campaign will be in high gear by next fall, so states will again have to lead in confronting the most challenging issues facing Americans.
Measure by Measure

Voters gave an enthusiastic thumbs-up to many ballot measures, from marijuana legalization to minimum wage hikes.

The voters said yes.
Yes, that is, to increasing the minimum wage, legalizing marijuana, helping veterans, protecting the environment and passing bonds.

In Alaska, Arkansas, Nebraska and South Dakota, citizens petitioned to have minimum wage hikes go before the voters, and in all four states, the measures passed handily. It could be that voters really were voting their pocketbooks—and lawmakers are taking note. Voters said yes to marijuana measures as well. Alaska, Oregon and the District of Columbia all approved legalizing marijuana for adult use. The measures in Alaska and Oregon were similar to Colorado’s and Washington’s, the two states that led the way in 2012 to recreational marijuana. D.C.’s measure is a bit different—it decriminalizes the possession of a small amount of pot or a few marijuana plants. Guam voters had their very first referendum of any kind this year, and they said yes to medical marijuana, now legal in 23 states. Although a majority of voters in Florida said yes to medical marijuana, the measure failed. That’s because in the Sunshine State it takes 60 percent to pass a constitutional amendment, but only 57.6 percent of the voters said yes.

Even conservation was popular at the polls. Alaska, Florida, Louisiana, Maine, New Jersey and Rhode Island all approved new measures to preserve wildlife.

BY WENDY UNDERHILL

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Wendy Underhill manages the elections team at NCSL.
ELECTION

Something for Lawmakers, too

Not all ballot measures can draw a crowd.

Sure, there has been plenty of chatter about marijuana, GMO food labeling and the minimum wage, but voters also weighed in on policy questions of particular importance to legislators.

Here are some of those measures that directly affect the actions and responsibilities of state legislatures:

• More than 68 percent of Arizona’s voters frowned on the idea of raising salaries for legislators to $35,000 from $24,000 annually, even though the raise was recommended by an independent commission.

• Measures to give more authority to legislators in Arkansas and Idaho broke differently. Voters approved a measure allowing legislative committees in Arkansas to have a say on administrative rules set by the executive branch, while a similar measure failed by a hair in Idaho.

• Also in Arkansas, voters narrowly decided to extend term limits for state lawmakers from six years in each chamber to 16 years total. The measure also sets limits on certain campaign contributions, lengths the time period to two years from one year before a former legislator can become a lobbyist and requires legislative salaries to be set by a commission.

• Louisiana voters rejected Amendment 14, which said no tax rebate, tax incentive or tax abatement legislation could be introduced in even years.

• Missourians thought it wise to impose restrictions on their governor’s budgeting authority when revenues fail to meet targets. Voters passed Amendment 10, giving legislators the ability to veto the governor’s budget actions at any point during the year with a two-thirds majority vote.

• Techies and trees ruled the day in New York, where voters approved a measure that will allow electronic copies of proposed bills to be distributed to legislators.

—By Michael D. Hernandez

or land, or to fund such programs. North Dakota was the holdout on this issue, turning down a proposal to use 5 percent of its mineral extraction tax for efforts to preserve clean water, wildlife and parks.

Bond Measures Pass

Staying with the thumbs-up theme, voters said yes to all statewide bond measures, no matter how big and no matter how small. California’s long-awaited $7.12 billion package to deal with infrastructure for a sufficient (and clean) water supply was by far the biggest. It passed with 67.7 percent of the vote—perhaps not a huge surprise in a state where residents sometimes worry where their next shower is coming from, thanks to a long-lasting drought.

The smallest bond measure? Voters approved $3 million for biomedical research in Maine.

Illinoians said yes to a trio of nonbinding advisory measures that served more as popularity polls than as policy decisions. They addressed three hot-button issues: whether health insurance should cover birth control, whether millionaires should be taxed extra to fund education, and whether the legislature should increase the minimum wage. Yes, yes and yes, the voters said—but the laws won’t change unless lawmakers act.

Voters in Massachusetts approved repealing the indexing of the gas tax to inflation. And voters in three states approved measures that offered a tax break or other generous nod to anyone involved in the military, past or present. Oklahoma had three such measures that received loud yes votes. The first will permit active military personnel to also hold other civic posts (69.4 percent). The second will offer a homestead exemption to disabled veterans (90.4 percent). And the last will extend the homestead exemption to the spouses of servicemen and women killed in action (90.5 percent). Louisiana and Virginia were equally generous with tax exemptions for disabled veterans and their spouses as well as spouses of those killed in action, respectively.

Overall, 66 percent of statewide ballot measures were approved. The percentage is even higher for measures put on the ballot by legislative referral (76 percent) than by citizen initiatives (43 percent). This difference is in keeping with history, and in keeping with the careful crafting and compromise that a measure receives under the dome.

Some No Votes, Too

In Colorado and North Dakota, voters turned down “personhood” amendments that would have given legal status to the

Now & Then

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<th>55%</th>
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<td>Voters who supported legalizing recreational marijuana in Oregon in 2014</td>
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<th>51%</th>
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<td>Americans who supported legalizing marijuana in 2014</td>
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<th>7.3%</th>
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<td>Americans who reported using marijuana regularly in 2012</td>
<td>Americans who reported using marijuana regularly in 2007</td>
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unborn. Coloradans did so for the third time, although the yes votes have crept up each time. In 2008, a similar measure garnered 26.7 percent of the vote. In 2010, it was up to 29.5 percent. This year, 35.3 percent said yes.

One abortion-related measure did receive voters’ approval, however. In Tennessee, a state constitutional amendment to permit the Legislature to enact laws to regulate abortion was approved by a margin of 54 percent to 46 percent. It adds these words to the constitution: “Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion.” It isn’t much of a spoiler alert to say we can expect to see bills introduced in Tennessee early next session on abortion.

Voters in other states said no to changing the way they vote. Studies have shown that voters say they prefer their current mode of voting, whether it is on paper or a machine, early or on Election Day, and this year’s results confirmed it. Voters in Connecticut and Missouri turned down early voting, an option available in one form or another in 36 other states. Montanans said no to repealing same-day registration in opposition to the will of the Legislature, which sent the plan on to the voters after facing a veto in 2013. And, in Oregon, voters rejected the idea of switching from typical primaries to a “top-two” primary, in which all candidates, regardless of party, would run on the same primary ticket. The only voting-related measure that did receive approval was in Illinois, where a right-to-vote amendment that prohibits denying anyone the right to vote based on race, ethnicity, sexual orientation or other grounds was added to the constitution.

And, yet again, statewide votes in Colorado and Oregon on whether foods should have labels indicating they contain genetically modified organisms (GMOs) went down. On this up-and-coming national issue, Oregon came closer, with 49.1 percent of voters saying yes. The movement is 0 for 4, with earlier no votes in Washington (2013) and California (2012).

A few other rejected measures include: a constitutional convention in Rhode Island; a measure to force dry counties to go wet in Arkansas; a requirement that public schools start after Labor Day in North Dakota; an expansion of gambling to fund education in Colorado; and an increase in the marginal tax on businesses with revenues greater than $1 million to fund education in Nevada.

That’s hardly a complete run-down of the 147 measures that showed up on ballots in 41 states plus the District of Columbia. The content of the others—and the results—were a mixed bag all around. Dig in to NCSL’s Ballot Measures Database at www.ncsl.org for the whole scoop.
David Long, a Republican senator from Fort Wayne, is the president pro tempore of the Indiana Senate. He is a leading voice in promoting the use of Article V of the U.S. Constitution to convene a convention to amend the U.S. Constitution.

**State Legislatures: What is Article V of the U.S. Constitution?**

**Senator David Long:** Article V lays out the process by which the Constitution may be amended. There are two ways to do it. The traditional way we’re all familiar with starts with a congressional-driven amendment. It requires two-thirds of both the House and the Senate to pass it and then must be ratified by at least 38 states. That’s the way we ended slavery. It’s the way we began and ended prohibition. It’s the way that women got the right to vote.

But there is a second way, and it starts with a state-driven process, which was inserted because James Madison and others pushed it. They felt strongly that, without a provision for states to utilize, the federal government might get out of control and usurp the limitations placed on it to protect states’ rights. Interestingly enough, the fact is, had this not been placed into the Constitution, it would not have been ratified. The founders felt strongly about needing to protect states’ rights.

**Why has it never been used?**

The reason is varied. There have been efforts to amend the Constitution by the states. It’s never gotten to the required threshold, which is that 34 states must call for an amendment. If they do, then it goes to Congress to call for—not to approve, but just to call for—a state-driven convention. Congress was used by the founders almost as a post office box. You had to send the petition somewhere and Congress would be the recipient. If 34 states requested an amendment to the Constitution, a convention would be called.

Article V has never been used in the 227 years since 1787. The modern reason is because people are afraid of a runaway convention. They fear there would be no way to control it and we might rewrite the Constitution.

Groups like the Eagle Forum and the John Birch Society on the right are against this. People on the left are opposed to it for various reasons as well.

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**What is behind the current movement to invoke Article V?**

A group of state legislators have banded together. We look at the country today and we think Congress is broken. It cannot fix itself, it cannot fix the things that scare us the most. In my case, it is the serious amount of debt that’s being accumulated right now, which I really believe has the potential to sink this country. No generation in the history of this country has dumped debt like this upon its children and grandchildren, but we’re doing it. And there are many people who, for various reasons, are interested in the convention, but the majority of people I’m involved with are concerned about debt.

We also recognize that there’s a legitimate concern about the process because the Constitution doesn’t tell us how to do this. There’s no blueprint telling us the rules and process for putting a convention together. There’s a reason for that, and that is because historically, the founders were involved in state conventions multiple times. They were very common. Everybody knew how they worked and they expected us to use them routinely. If the founders today had the opportunity to wake up and say, ‘What’s going on?’ and we said, ‘We’ve never used this process,’ they would be shocked and profoundly disappointed in us. The founders felt strongly that this was the way the states could stand up to the federal government and protect their sovereignty.

So we are trying to put a process together that ensures that...
the states are in charge, that there’s a set of rules in place that controls that process, and that people can have confidence that it will be limited to the subject matter that’s proposed by the states, and it will not be a runaway convention.

What has the timetable been?

We’ve met twice, once in Mt. Vernon in December 2013. We met again in June 2014 in Indianapolis, where for the first time in 227 years delegates from, in this case, 33 states got together and started discussing how we go about doing this. It was bipartisan, and we’re trying to keep it that way. We think that’s very important. We have red and blue state involvement. We’re going to meet again in 2014 and in 2015 to finalize this and put ourselves in a position to consider amendments to the Constitution from the states.

You need 34 states. What does the scoreboard say at this point?

We’re in the process of accumulating petitions from states that have called for various amendments to the Constitution through the years. If you don’t specify when the petition expires, it’s still alive. We want to find out exactly which amendments/proposals are out there, how many of them have not expired, and whether they, in our judgment, qualify for a call. It may be closer than people think.

The Balanced Budget Amendment is the one that seems to have the most momentum, but our group is not involved in picking a winner or a loser or a particular issue. That one seems to have the most momentum nationally right now, and we’ll be finding out exactly where that score is soon. In fact, one of our four committees has recently contacted Indiana and asked my legal staff to provide them with that information. We’re doing that in all 50 states.

The first couple of meetings involved mainly Republican legislators. Is there a process or an outreach effort from the group to try to bring in more Democrats?

There is, and we’re actively doing that. Some Democrats are involved with the co-chairmen of our committees and our executive committee. They are trying to ease concerns of some of the blue-state leaders—legislative leaders—who feel this might be a right-wing group or a group that might be trying to undo things that are important to the Democratic Party.

How difficult is it to come up with a process, a framework?

We’re going to have to work through that, there’s no question. But there are some blueprints that we’re following. We also have websites that provide information on our rules committee, for instance. We have to have Republicans and Democrats provide their thoughts, which are going to be accumulated, put into a final set of proposals, voted on by the committee and presented to the body at large. We are going to go about this in a bipartisan, very transparent and very inclusive way, so that, again, we can say everyone has been involved and we have some consensus on how to do this.

Is there a realistic timeframe when you think this group may bring a proposed amendment to the Congress and when it could wind up on ballots?

This group may never be the one that proposes an amendment. This group will put together a structure that we hope a strong majority of the states will support. It will say, ‘If we’re going to have a convention, this is how it’s going to be run, these are the rules and this is what we stand behind.’ And I think our congressional delegations will support that in Washington. When your state says, ‘This is the way it’s going to run and the states are going to remain in control,’ that’s the way it’s going to be.

There may be some in Washington who say, ‘Well, if they’re going to do that, we’re taking charge of it.’ This is a state-driven process, and it must be run by the states. I’m confident that we have good people in place on both sides of the aisle who honestly believe in states’ rights. And they feel there are problems in this country that need to be solved, and the states are in position to do it because Congress can’t or won’t.

We haven’t seen anything like this before. That’s why we have to be deliberate and careful. We have to build confidence that this can be done effectively and in a limited fashion to solve some of the problems that we all see and just can’t get fixed in Washington right now. If you care about your country, and we all do, then it’s worth trying and it’s worth saying, ‘We can do this.’ Our generation can step up as the founders thought we should have been doing a long time ago. We can step up to the plate and do something that may be a game-changing, positive thing for the nation.

“"The founders felt strongly about needing to protect states’ rights."
With the advent of Uber and Lyft, hailing a ride has never been easier. The popularity of these relatively new “transportation network companies” (TNCs) is disrupting the transportation status quo in the United States and around the world.

Critics claim ridesharing services have an unfair advantage over taxis by not having to play by the same set of rules, regulations and licensing requirements. The debate is capturing the attention of lawmakers as well. “Ridesharing companies are meeting a need,” says Illinois Senator Antonio Muñoz (D). “I am in strong support of the entrepreneurial spirit and innovative ways of creating jobs—as long as the service being provided is beneficial and safe for all parties involved.”

Americans’ use of these ridesharing networks has skyrocketed. Lyft and Uber, the two San Francisco-based giants in the transportation network world, along with others such as SideCar, Get Taxi, Hailo, leCab and Taxi Mobility, offer a convenient, low-cost way to get around. Appealing to users is their simplicity. The networks consist of a smartphone app and willing drivers.

From a passenger perspective, catching a ride with one of these services is the peak of convenience. After downloading the free app onto a smartphone and entering your credit card information, all you do to summon a ride is enter your location. Voila! A driver using his or her own car heads your way, monitored in real-time on your phone. When the driver arrives, you climb in, state your destination, sit back and relax. No need to count your cash or worry about tipping—your credit card will be billed at a preset level. You’ll even get the receipt on your phone, via text message.

Drivers for Lyft decorate their vehicles’ front grills with a pink moustache. The business began in 2007 and now operates in more than 68 U.S. cities. Uber followed two years later and has proved to be a fierce competitor with an eye overseas. UberX (its low-cost option) now operates in 45 countries and 117 U.S. markets.

As these ridesharing networks grow, state lawmakers are faced with a billion-dollar question: How do we ensure the safety of passengers and the fairness of regulations without stemming the remarkable growth and convenience of these alternative transportation companies?

Uber, Lyft and others have given millions of rides in the past year, creating a strong, committed customer base that has served them well wherever and whenever a regulatory debate is brewing. Many political and business leaders are eager to embrace them as well, recognizing their benefits and appeal, especially with young professionals and millennials who prefer to have several transportation options. Uber has particularly rallied its customers to action, using positive public opinion to blunt any regulation the network believed could harm its operations.
California Assemblywoman Susan Bonilla (D) notes, however, that “encouraging innovative business models and achieving adequate consumer protection are not mutually exclusive goals.”

The First Test Run

In early June, after some heated debate, Colorado became the first state to pass legislation that legalizes the operation of transportation network companies and creates a regulatory structure for the growing industry. Debate centered on a number of issues, including whether to require background checks of drivers for traffic violations and criminal behavior.

But the main point of contention was deciding what the proper insurance requirements should be for these new transportation networks. Insurance companies argued that the personal insurance drivers carry is not appropriate to cover commercial driving, which includes the “in-between” time when drivers are logged into their app, waiting to be e-hailed.

The final version of the bill requires primary commercial insurance coverage of $1 million from the time the driver is summoned to when the passenger is dropped off, and a lesser amount during the in-between gap time.

Colorado Representative Libby Szabo (R), co-sponsor of the legislation, heard from several concerned constituents during the debate.

Many were drivers. “They are a diverse group—from moms who want to use the time when their kids are in school to make extra money to send kids to ballet or soccer camp, to other folks who are making a living driving for a transportation network company.” She believes regulating these companies, as well as taxi cabs, is a work in progress.

“Let’s establish a statutory foundation,” she says, “then later address other concerns.”

Szabo says some of those concerns come from cab companies, who claim the networks don’t have to meet the same standards they do. But, she says, cab companies “wanted to be highly regulated in order to keep out the competition.” Now, that has “come back to bite them.”

The highly regulated environment led to a limited number of cabs on the streets of Denver, in particular. Consumers there were more than willing to try different transportation options when they were offered. Some taxi companies have responded with their own mobile apps that function similarly to TNC apps. And, Colorado’s law does allow cab companies to convert to a transportation network.

The Details

The Centennial State enacted the first-in-the-nation regulatory framework for transportation network companies. It gives the Public Utilities Commission the power to revoke and suspend a transportation network’s permit as the result of a violation, but it prohibits the commission from assessing a penalty against a driver. The law also directs the Division of Insurance to examine whether the levels of insurance coverage required are appropriate. Other provisions in the new law include the following.

• Transportation networks must carry primary liability insurance of at least $1 million to cover the time from when a driver is connected to a rider through an app until the rider is dropped off, and the company or the driver must also maintain a lesser amount of primary liability insurance for when the driver is logged on to the app but not engaged in a prearranged ride.
• Drivers must be at least age 21 and have a valid driver’s license, vehicle registration and personal auto liability insurance.
• Drivers must submit to a criminal history check initially and again every five years, and the network must review the driver’s driving history. Anyone who has been convicted of driving under the influence of alcohol or drugs (along with some other types of offenses) in the past seven years or anyone who has had more than three moving violations or one major moving violation (reckless driving) in the previous three years is prohibited from being a driver.
• Drivers are limited to working no more than 12 consecutive hours, and they may not provide driving services apart from a network. No “street hailing” is allowed.
• Networks must have safety inspections of drivers’ vehicles at least yearly, and each vehicle must display an exterior marking that identifies it for hire.
• The transportation network may not discriminate against riders based on their geographic departure point or destination nor charge additional fees to people with physical or mental disabilities.
• The transportation network is responsible for communicating how fares are calculated and issuing riders electronic receipts that contain the fare, duration of trip and other information.
• All networks must offer riders customer support phone service.
The regulatory landscape for transportation network services is quickly changing. Here are some notable actions from the past year.

**Airports—Hubs of Conflict**

Airports have become a flashpoint between taxicab companies and transportation networks. The network companies often don’t have the required permits and use the general passenger lanes, adding to congestion. Citations have been issued to network drivers at airports in Atlanta, Boston, Los Angeles, Houston and others.

In Orlando, the airport authority has warned drivers they may be arrested for trespassing if they continue to operate without proper permits. Taxi and shuttle owners in Orlando are quick to point out that they paid more than $10 million in fees last year, fees TNCs appear to be avoiding. Those fees support airport operations and help keep airline fares down.

And in California, the Public Utilities Commission recently issued a warning to transportation network companies, accusing them of not paying the permit fees to legally operate at airports, as well as using people who don’t have valid driver’s licenses.

“The bottom line is that all transportation companies, including transportation network companies, should abide by the rules required by California airports,” Bonilla says. “They are designed to protect passengers and create a safe environment for those traveling to and from an airport. No transportation service should avoid the costs to legally operate at California airports. Transportation network companies must pay the costs of doing business in the state. They should not be excluded from the required permits that taxis must already apply for—and pay the fees for.”

Transportation networks are quick to differentiate themselves from taxicabs. Their argument: They don’t hire drivers or purchase vehicles; they merely facilitate transactions between individuals. That doesn’t go down well with established cab and shuttle companies that pay handsomely to operate in a city. Taxis are required to charge flat fares, ensure the safety of their passengers, and serve everyone, including people with disabilities, families without cars, older Americans and people without smartphones, which is around 35 percent of all Americans and 75 percent of those over age 65. Taxis play an important role in helping people get to where they need to be, regardless of location, population density, convenience or wealth.

That’s why Illinois Senator Martin Sandoval (D) is a bit leery of this new way to catch a ride. He expressed his concerns during debate over legislation in Illinois. He accused networks of picking and choosing their customers, saying ridesharing drivers “cherry pick who to pick up. They don’t go to the Southeast Side, The Bush in the 10th Ward … They just stay close to Wicker Park, Wrigleyville.”

Several states have warned or fined transportation network companies and their drivers for operating outside various laws. Nebraska and New Mexico have issued cease and desist orders because the services did not fit under existing rules and were operating outside the law. Pennsylvania and Virginia have slapped fines on them for operating, although Virginia has since agreed on temporary rules that allow the networks to continue to operate. Pennsylvania’s Public Utility Commission is currently considering rules to allow service in portions of the state. Police officers in Pittsburgh are conducting “sting” operations, posing as riders, hauling drivers via the apps and issuing citations when they arrive to pick them up. And in Maryland, cab companies have filed a suit alleging anti-competitive practices by transportation network companies.

**Safety for All**

Lawmakers in Arizona, California, Georgia, Illinois, Maryland, New Jersey, Oklahoma, Pennsylvania, Rhode Island and the District of Columbia also have considered bills to regulate some aspect of transportation network companies.

Most bills define what a “transportation network company” is, set insurance requirements, require criminal and driving background checks for drivers, set standards and timelines for vehicle safety inspections, require clear communication of estimated and final fares, and restrict passengers from hailing a network driver from the street.
The networks claim they already meet many of these requirements, but questions remain concerning insurance coverage and driver and vehicle safety checks. Lyft’s website describes how the transportation pioneer is “changing the industry with safety front of mind” through liability insurance requirements, in-person driver screenings, vehicle inspections, an in-app rating system and 24/7 support. Likewise, Uber’s website claims it sets “the strictest safety standards possible.”

When Georgia Representative Alan Powell (R) first heard about Uber, he was impressed, saying it was “innovation and technology at its best.” Powell envisioned how the service could benefit his rural district, bereft of public transportation and taxi services, especially for people who have been drinking. When a sheriff informed him that the unregulated transportation services were technically violating state law, he decided to create a “simple regulatory model” to ensure a minimum level of safety. Powell didn’t expect the spirited response he received from Uber and its customers. His legislation, which would have required background checks, insurance coverage and tax collections, ended up failing against intense opposition.

Powell believes regulating ridesharing companies is a public safety issue. “If you’re going to hire a driver, you should be able to expect certain standards, like proper insurance and background checks.”

Bonilla also worries about the drivers. She says that, although these companies provide flexible jobs for people who work part-time or have no other job, drivers still need to be aware of the risks, mainly that their personal assets may be on the line if insurance limits are too low.

“I believe that most of the drivers not only are unaware of this, but what’s even more concerning is that the transportation network companies are not informing their drivers of this crucial detail.”

California recently enacted Bonilla’s bill, which requires the companies to carry extra insurance for the in-between times and also inform drivers of the specific insurance coverage they provide.

Illinois’ bills were vetoed amid heavy lobbying and political pressure, with Governor Pat Quinn stating in his veto memo: “To rush into a whole new statewide regulatory network before the need for one is clear would not only stifle innovation, it would be a disservice to consumers who utilize the service while setting a troubling precedent for the future.”

The bills addressed, among other things, chauffeur licenses, fare regulations and service in underserved areas. Illinois’ legislation appears to be the first to attempt to address the practice of “price surging,” which can increase rates two to five times when there is a limited supply of drivers or a high demand from riders. Uber spokesperson Natalia Montalvo defends the practice as a way to ensure the most reliable ride. “When demand outstrips supply,” she says, “surge pricing goes into effect to bring more drivers on the platform to always ensure we’re connecting riders to a transportation option when they need one.”

Illinois Senator Antonio Muñoz (D) wanted to “ensure the safety of our constituents,” and to make sure people weren’t being taken advantage of. “We approved legislation that would allow municipalities to regulate surge pricing, as long as it applies equally to taxis and ridesharing vehicles.”

Elsewhere, Governor Jan Brewer vetoed a bill in Arizona, citing safety and insurance coverage concerns. “Consumer safety must not be sacrificed for the sake of innovation,” she said in her veto memo. Rhode Island created a legislative commission to study transportation networks and review related statutes. In New Jersey and Pennsylvania, legislation is pending.

A Taxing Question

Still not well-understood is how TNCs may affect state and local tax revenue. Do drivers declare and pay income taxes on what they make? Which taxes should the networks pay, and do they?

The legislation that failed in Georgia would have established a study committee to look into the best method of taxation for taxi services, limousine carriers and rideshare drivers. Representative Powell, sponsor of the legislation, believes that TNCs should pay their fair share, just like a taxi service.

Colorado’s Szabo agrees, but believes the current regulatory model for taxis used in most states may be an endangered species, soon to be replaced with a version of the new Colorado law.

As states begin to prepare for 2015 legislative sessions, one thing seems as obvious as a pink moustache on a car: Transportation network companies are popular. They’re here to stay. But figuring out how they fit into the regulatory landscape? That may take some time.
Vampires, zombies, werewolves (especially the teen variety) and aliens have captured people’s interest once again. On TV, at the movies and in books, these fantastical beasts entertain and thrill those brave enough to watch or read about them.

But there is one creature that entertains no one and evokes only groans and sighs when its name is uttered, and that’s the “patent troll.” These real-life ogres are largely to blame for more than doubling the number of patent lawsuits in the last 10 years, and in 2011 alone cost U.S. businesses $29 billion in legal fees.

Beyond the Tolkien-inspired name, what is a patent troll? And more important, what, if anything, should state lawmakers do to curb the harm many claim they do to small businesses?

Patent trolls, formally known as patent assertion entities (PAEs), generally are holding or “shell” companies that don’t manufacture anything but hold a number of patents, typically purchased legally from bankrupt firms. They make their money by sending threatening letters to companies claiming they have been violating one or more of their (often vaguely defined) patents. The letters say that if the companies pay the license fees to use their patents, they won’t be sued.

PAEs usually request unreasonable fees in light of the alleged infractions and often fail to give companies any details about what the patent in question actually covers or how they allegedly infringed upon it.

It is important to note that not all PAEs are trolls. Some benefit the economy by buying patents from small businesses and inventors who may not have the interest or resources to develop the patents and selling them to those who do. These firms also take legal action when the patents are being used unlawfully. Without these firms, many instances of patent infringement would remain unenforced.

But trolls are another matter. While it’s certainly legal to sue for patent infringement, PAEs that act in bad faith have come under fire. Over the past two years, lawmakers in 18 states have passed legislation limiting their activities.

Vermont was the first to do so, last year, because Congress was not addressing the problem and because Vermont lawmakers saw the economic damage trolls were doing.

“Increasingly, growth in economic activity is coming from knowledge-based companies” with huge investments in intellectual property such as patents and trademarks, says Vermont Representative Paul Ralston (D). “If those firms are attacked with bad-faith assertions of patent infringement, it has a chilling effect on business. The firm suffers, the employees and shareholders suffer, the state suffers,” says Ralston, a member of the House Commerce and Economic Devel-

Jonathan Griffin is a policy specialist who covers intellectual property and patent issues for NCSL.
Often, trolls target small- to medium-sized businesses that cannot afford to fight lengthy court battles, so they willingly pay the amount demanded to settle out of court.

These lawsuits (3,608 in 2013, according to RPX Corporation, which helps companies fight PAEs) are especially crippling to start-up companies, many of which could lose funding because of fears that PAEs and their associated lawsuits and settlements would bleed the company of its initial funding. These threats also cause companies to redirect their resources to fighting these lawsuits and away from developing a product or service.

State attorneys general have been frustrated by these attacks on their local businesses, but patent litigation has always been considered the realm of the federal government. Patents are filed with the U.S. Patent and Trademark Office and patent litigation is handled in federal court.

**Vermont Takes the Lead**

Vermont began targeting PAEs when the state attorney general sued MPHJ Technology Investments under Vermont’s consumer protection laws, alleging the company engaged in “unfair and deceptive acts” by sending a series of threatening demand letters to many small businesses and nonprofit organizations.

MPHJ tried to have the case moved to federal court, the usual domain of patent litigation. But federal judges

**By the Numbers**

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<th>Entities that don’t manufacture or sell goods or services but own patents—including universities and inventors—are called Non-Practicing Entities (NPEs). A subset consists of Patent Assertion Entities (PAEs), whose sole function is making patent infringement claims.</th>
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<td><strong>3,608</strong></td>
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<td>Companies sued for alleged patent infringement by Non-Practicing Entities in 2013</td>
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*Source: RPX Corporation’s “2013 Non-Practicing Entity Litigation Report” by Jeremy Brodsky, a senior director in corporate development*

“The key to Vermont’s legislation is a careful separation of federal authority and the rights of states.”

—REPRESENTATIVE PAUL RALSTON, VERMONT
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Vermont lawmakers became involved by passing Act 44 in May 2013, which strengthens the state’s consumer protection statutes by prohibiting companies from making bad faith patent assertions. The law gives courts a number of factors to consider when determining if a patent assertion was made in bad faith, which include failing to cite the specific patent in question and failing to describe how the target company’s products infringe on those patents. The law also allows the court to consider if the license fee is reasonable in light of the infringement and if the patent troll has a history of sending vague, threatening letters to companies over the same patents.

If a court decides that the patent assertion was likely made bad faith, the PAE can continue pursuing an infringement suit only if it can post a bond to cover court costs. If the lawsuit is found meritless, the target company may recover its costs of litigation and countersue the troll for damages.

Other States Follow Suit

The Vermont General Assembly’s innovative response (using a consumer protection law, not patent law) clearly has caught the attention of other state lawmakers, as 17 more states passed bills on patent trolling during the 2014 legislative sessions. By March, Idaho, Oregon and South Dakota had passed legislation, and in April, Alabama, Georgia, Maine and Wisconsin joined the ranks, followed by Louisiana, Maryland, Oklahoma, Tennessee, Utah and Virginia in May. Illinois, Missouri, New Hampshire and North Carolina also passed legislation outlawing bad faith allegations of patent violations.

Most of the laws are structured similarly to Vermont’s, with minor variations concerning the limits on the bonds and damages.
“The key to Vermont’s legislation is a careful separation of federal authority and the rights of states,” says Representative Ralston. “The federal government regulates patents. The states have a right to regulate consumer protection. We created a consumer protection action that can be brought in Vermont state courts and created the framework for a series of penalties designed to deter this behavior.”

Ralston recalls that during committee hearings on the legislation, “targeted companies were often reluctant to testify for fear of reprisals. Those firms that did come forward described a business practice that looks remarkably like extortion,” Ralston says.

Support for the measure was bipartisan, and leading employers and tech companies in the state provided background information and helped draft the legislation, Ralston says. The collaboration allowed lawmakers to hammer out a measure that was not at odds with the state’s colleges and universities (which develop and license patents) or with patent-generating firms such as IBM.

“Our bill focuses on a particular behavior that has been found by a court to be in bad faith, and it protects individuals and companies—both of whom our committee has always considered ‘consumers,’’” Ralston says.

The Trigger: Federal Inaction

States are jumping into an area that typically has been preempted by federal law because of congressional deadlock. U.S. Senator Patrick Leahy, a Democrat from Vermont, introduced legislation in November 2013 to empower the Federal Trade Commission to treat bad faith demand letters as unfair acts or practices, and a companion measure was introduced in the House by U.S. Representative Bob Goodlatte (R) of Virginia. The House measure passed, but the Senate bill was ultimately tabled because universities and inventors were concerned it went too far in stopping patent trolls and could limit good faith patent assertions as well.

Once again, in the absence of federal action, states have found a way to protect their citizens without stepping on the toes of the federal government.

While nearly half the states are working to protect their citizens from trolls, many haven’t enacted legislation or are waiting for the federal government to take action in an arena it has typically controlled. Until the issues are resolved, many companies are left to fear attacks by trolls and anything else that goes “bump” in the night.
Modern chemicals perform miraculous feats. They boost crop production and kill bad bugs in our drinking water. They make our computers operate, our cell phones work, our iPods play music. They clean our swimming pools and make our clothes brighter. They give us hard and soft plastics and keep our furniture from going up in flames.

But chemicals can carry risks. At certain levels, specific ones can affect our nervous systems and cause developmental disabilities and cancers. Others have been linked to Alzheimer’s and Parkinson’s diseases.

So how do we enjoy the benefits of chemicals and ensure that we are safe?

Regulation Purview Problem

Congress passed the Toxic Substances Control Act in 1976, giving the federal government the responsibility to protect us from harmful chemicals. The Consumer Product Safety Commission was assigned the job of regulating chemicals in consumer products and the U.S. Environmental Protection Agency (EPA) received all the rest. But frustration with the federal government’s ability to do a thorough job has been growing. Illinois Senator Heather Steans (D) puts it simply: “The federal government doesn’t regulate chemicals very well.”

The toxic substances act hasn’t been updated since it was originally passed—the only federal environmental statute that has not been overhauled. The chemical industry has changed since the ’70s, but the regulatory system governing it hasn’t. The industry invests heavily in testing and research to ensure its products are safe. But the federal government has not kept pace. And this, says Cal Dooley, president of the American Chemistry Council, “has eroded the public’s confidence in the safety of chemicals and in the federal government’s regulation in the production and use of them.”

Former EPA Administrator Lisa Jackson agrees the Toxic Substances Control Act is “an inadequate tool for providing the protection against chemical risks that the public rightfully expects. As more chemicals are found in our bodies and the environment, the public is understandably anxious and confused,” she says.

It’s not that Congress hasn’t tried updating the act. It’s been a goal for many for a long time. And again this year, both houses of Congress held hearings on chemical safety reform. But states are growing impatient. As we’ve seen in other policy areas, from the federal government’s inaction comes state action. In 2014 alone, lawmakers in 43 states introduced 537 bills on chemical safety.

States Step In

Most recently, California, Connecticut, Maine, Massachusetts, Minnesota, Oregon, Vermont and Washington have developed comprehensive chemical policies to prioritize and study the chemicals of concern in a systematic way, filling in data where they are missing and restricting the uses of the most threatening chemicals. Another 15 states, including Indiana and Michigan, have statutes that regulate certain chemicals of concern individually.

This year, state lawmakers reviewed 43 bills on bisphenol A, 25 bills addressing chemicals in flame retardants, 97 bills on lead hazards and 59 bills on mercury. As of the end of October, 55 bills on chemical safety had become law in 20 states.

California now is regulating chemical flame retardants and the amount of arsenic and lead in glass beads. Connecticut is limiting cadmium in children’s products. Illinois has banned synthetic plastic micro-beads. Minnesota has eliminated formaldehyde. New York now collects unused mercury thermostats rather than allowing them into landfills. And school janitors in Tennessee are encouraged to use certain chemical cleaners only when students and teachers are not present.

But by far, the top four chemicals states have focused on are bisphenols (BPA) in plastic products, cadmium and lead in children’s products and flame retardants in furniture. Half the states have passed laws regulating the use of these chemicals.

Of greatest concern is the use of bisphenol A in babies’ and children’s products, including toys, plastic bottles and pacifiers. Bisphenol A also is found extensively in medical devices, dental sealants, water bottles, the lining of canned foods and drinks and many other products. Studies of the chemical have been less than conclusive, although some suggest the chemical may harm the brain and prostate glands in fetuses, infants and young children. Other studies link it to infertility and breast cancer.

Excess levels of cadmium can cause severe joint and spinal pain, respiratory and lung disease, kidney renal damage and cardiovascular problems. In Japan, excessive cadmium in the diets of some older women has caused “itai-itai”—or “ouch-ouch” disease. Chemicals in flame retardants (used in children’s pajamas and furniture cushions to keep them from burning) have been linked to developmental and reproductive problems. And even a trace of lead in a developing fetus can cause neurological problems.

Is Regulation the Answer?

Not everyone agrees, however, that state regulation is the way to reduce chemical risks. Some question whether legislators have enough information and the requisite knowledge to regulate chemicals at all. “States don’t have the depth of staff to review information,” says Illi-
The public tends to overreact to environmental hazards, and legislators respond to the public,” he adds, but often “legislators don’t know the difference between parts per million versus billion, nor do they understand bioaccumulation, nor risk assessments. And the resulting bill passed often is more problematic than the original issue.

“I voted against banning lead in toys in the state,” he says. “I feared the Chinese would substitute lead with a more harmful product, which they did—cadmium. Now we have legislation on banning cadmium in children’s products.”

A More Comprehensive Approach

California’s was one of the first legislatures to look into chemical safety. Lawmakers were interested in addressing public and environmental health concerns and supporting the development of safer chemicals. Committees from both chambers explored various chemical policies in other states and the European Union.

The committees’ 2004 report recommended the state adopt a comprehensive chemical safety policy rather than ban single chemicals or adopt other piecemeal approaches to support the design, manufacture and use of safer chemicals. This “green chemistry” policy, the report stated, would boost economic development in California by improving health and environmental quality. It would also require a long-term commitment from California policymakers.

“The report made the state Legislature more aware of chemical concerns,” says Bob Fredenburg, clerk to the California Assembly Committee on Environmental Safety and Toxic Materials. The report led to the passage of the California Green Chemistry Initiative in 2008, which required the state Department of Toxic Chemicals to contain “priority chemicals” when safer alternatives are available.

The second set of regulations, Safer Consumer Products, requires manufacturers of widely used products to seek safer alternatives to harmful chemicals, so that California has “the opportunity to lead the way in producing safer versions of goods already in demand around the world.”

Plans Are Ambitious

Maine and Washington also adopted comprehensive regulatory approaches. Maine’s Protect Children’s Health and the Environment from Toxic Chemicals law allows state regulators to collect information about the use of chemicals and prohibit the sale of children’s products that contain “priority chemicals” when safer alternatives are available.

Washington’s law focuses solely on children’s products. It requires the state Department of Health to compile a list of “high concern” chemicals, based on their potential exposure to children and developing fetuses, and to submit a report and policy recommendations to the Legislature. The department does not have the authority to ban or restrict these chemicals, but may impose civil penalties on manufacturers that violate the reporting requirements.

One of the biggest concerns about the law was whether the state health department had the resources to carry out the work, says Washington Representative Eileen Cody (D). “The Washington Department of Health is a small department—it doesn’t have a lot of state money to work on these programs.”

These state approaches are indeed ambitious. Maine now has a list of more than 1,400 chemicals; 49 are listed as high concerns, and five are on the priority list: Bisphenol A, Nonylphenol/Nonylphenol Ethoxylates, cadmium, mercury and arsenic. In Washington, based on testing of more than 200 children’s products, 65 chemicals are listed as a high concern for children. And in California? The Green Chemistry initiative is so complex it took until 2013 just to promulgate the regulations.

But that has not deterred similar programs from being developed in Connecticut, Massachusetts, Minnesota and Vermont. Connecticut’s commissioners of public health and environmental protection are compiling a list of toxic substances and maximum levels to be used in children’s products. Minnesota’s Department of Health is generating a list of chemicals of high concern. Vermont’s law, adopted this year, requires the commissioner of health to develop and review a list of chemicals of high concern every two years.
Federal Efforts

U.S. Representative John Shimkus (R) of Illinois, chairman of the House Environment and the Economy Subcommittee, says that the House of Representatives’ latest attempt to reform chemical safety regulations acknowledges states’ role in managing potentially dangerous chemicals. “In my view, where states have the inherent capability to protect health and the environment, we in Congress should defer to them.”

“Congress must also have a rationale to step in where a state is not constituted to take the steps it needs to achieve that protection,” he says, and that’s exactly what is concerning about the most recent draft legislation in Congress.

But the Chemicals in Commerce Act discussion draft, championed by Shimkus, includes “onerous preemption language that would handcuff states from acting against harmful chemicals to protect their population,” Massachusetts Senator Michael Moore (D) told Congress earlier this year when he testified before the House Environment and the Economy Subcommittee on behalf of NCSL.

“The act essentially ignores nearly 40 years of state policy in an attempt to provide a one-size-fits-all approach to toxic chemicals regulation. It would essentially eliminate the ability of state policymakers to regulate toxic chemicals by divesting all authority away from states and localities and placing this authority solely with the administrator of the Environmental Protection Agency,” he said.

The Senate is also working on reforming the Toxic Substances Control Act through legislation introduced by Senator David Vitter (R) of Louisiana last summer. Details of the bill are being ironed out in the Environment and Public Works Committee, headed by Senator Barbara Boxer (D) of California. Boxer adamantly opposes a provision that would preempt state laws, referring to it as a “non-starter.”

So, what’s the best approach? Although Representative Fortner has concerns about states becoming involved with chemical policy, he’s also suspicious of the federal government’s approach. He says he would support federal oversight of chemicals, if the EPA had good rules and Congress gave them the resources to enforce them.

“We often have the data,” he says, yet do not understand or know how to use the research to know what chemicals get into humans, how they get into them, who is susceptible and who is vulnerable. “These questions are never answered.”

Until some of those questions are answered, lawmakers are left trying to figure out how best to live with the chemicals we can’t live without.
“Candidates should have some skin in the game. I wanted voters to know I was serious.”
—Saira Blair, an 18-year-old university freshman who won a West Virginia House seat on Nov. 4, on why she donated nearly $4,000 to her own campaign. Representative-elect Blair (R) will be the youngest legislator in the nation.

“When you have a $1 billion shortfall and nobody is in favor of raising taxes, you really have to look behind the seat cushions.”
—Arizona Representative John Kavanagh (R), on how the state will deal with a budget crisis caused by sluggish economic growth and weak tax revenue, as reported by Bloomberg News.

“There’s always gonna be bad guys. Why put the good guys at a disadvantage?”
—Utah Representative Curt Oda (R) on why he supports more guns on campuses after an anonymous emailer threatened to kill Anita Sarkeesian, a feminist scheduled to speak at Utah State University. Sarkeesian canceled her lecture after USU said by law, it could not ban guns from the lecture room, in the Salt Lake Tribune.

“I think the people want to see more of a two-party system working things out rather than one party slam-dunking things.”
—California Senate Minority Leader Bob Huff (R), after Republican midterm wins cost the Democrats their supermajority in the Senate, in the Sacramento Bee.

“I would rather us, as elected leaders, be the ones directing the conversation and the debate, and ultimately controlling the policy, as opposed to letting it go to a citizens’ initiative where you can’t change the law once it’s in place.”
—Arizona Representative Ethan Orr (R), on his plan to introduce a bill next year to legalize recreational marijuana before a similar proposal appears the 2016 ballot, at azcentral.com.

“The farce of redistricting set this in motion.”
—New York Senator Timothy M. Kennedy (D), who blamed Democrats’ loss of the New York Senate in the mid-terms to new district boundaries drawn by Republicans in 2012, at boston.com.
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