Flint calls the question: What about our water systems?

Aging infrastructure, lead pipes, nitrate runoff and funding among challenges vexing Midwest’s drinking water systems

by Jon Davis (jdavis@csg.org)

The crisis in Flint, Mich., has pushed drinking water quality into the forefront of national conversation, but problems with the Midwest’s aging drinking water infrastructure are not new.

Plenty of lead pipes nearing the end of their service lives remain, and nonpoint source pollution from agricultural runoff besets watersheds and municipal water systems before ultimately affecting the Great Lakes, Mississippi River and Gulf of Mexico.

States have taken steps to clean up their water systems and sources (several of which were noted in Stateline Midwest’s September 2015 edition), but the overall tab to modernize is tremendous.

At least $1 trillion will be required nationwide through 2035 to replace pipes at or reaching the end of their service lives, according to a 2010 report, “Buried No Longer: Confronting America’s Water Infrastructure Challenge,” from the American Water Works Association.

The Midwest’s aggregate share (including Missouri) was estimated at $172.2 billion.

“As daunting as the figures in this report are,” the authors say, “the prospect of not making the necessary investment is even more chilling.”

The U.S. Environmental Protection Agency’s 2011 “Drinking Water Needs Survey and Assessment” came in much lower, however, estimating a total investment of $77.4 billion over 20 years.

For Cory Mason, the Wisconsin representative who chairs the nonpartisan Great Lakes Legislative Caucus (CSG Midwest provides staff support to the caucus), the Flint crisis is a two-pronged warning: first, of the dangers of “really bad decision-making,” second, of local and state water systems in need of repairs and upgrades.

Clean drinking water has been almost a given in the Midwest, but aging infrastructure and nonpoint source runoff (along with human error) is straining that assumption. The tragic water crisis in Flint, Mich., has raised awareness about that aging infrastructure and the need to replace it. Part of the responsibility to protect drinking water and ensure public health rests with states and their legislatures.

Aging infrastructure is critical, but being underground, it’s “out of sight, out of mind” until something goes wrong, says Nick Schroock, executive director of the Great Lakes Environmental Law Center at Wayne State University.

As systems age beyond their service lives, some health hazards can be contained by vigilant, skilled water system operators — but only to a point, Schroock says. Aging systems also mean more breakdowns in equipment, boil alerts for customers, and problems maintaining pressure.

“You always have to have pressure going through these systems; you need positive pressure,” meaning the pressure inside pipes is greater than pressure outside them. This keeps contaminants from getting into the system.

“If you have a water main break and you don’t have that positive pressure, then you can get water leaking into the system and there is the potential for health hazards,” says Schroock, adding “there are literally lives at stake with breakdowns in this infrastructure.”

One outcome of the Flint disaster is that water infrastructure, at least for the time being, is now “top of mind,” among the public and policymakers at all levels.

Investments needed to meet drinking water infrastructure needs over next 20 years

<table>
<thead>
<tr>
<th>State</th>
<th>Billions of Dollars</th>
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</thead>
<tbody>
<tr>
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</tr>
<tr>
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<tr>
<td>Total</td>
<td>$7.4 billion*</td>
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</tbody>
</table>

* Dollar figures are based on a 2011 assessment of needs to deliver safe drinking water to the public. — For example, investments in pipes, storage tanks, and treatment plants. The needs in Nebraska, North Dakota and South Dakota were only “partially surveyed.”


“We have an aging infrastructure for water in this country, and particularly in the Midwest,” Mason says. “Eventually we’re all going to have to pay the piper on aging infrastructure.”

Out of sight, but not out of mind
College readiness rules in Ohio lessening need for remediation, but rate still tops 30 percent

In 2012, concerned about the high rate of students who had to take remedial-level math and English classes during their first year of college, Ohio legislators decided to intervene. And the early results under HB 153 are promising. With this law in place, Ohio now sets college readiness indicators across all of its public colleges and universities. These statewide standards are then used to determine which students are placed into remedial-level versus college-level classes during their freshman year.

“By establishing this consistent threshold, students, high school teachers, parents and all stakeholders can understand and work toward reaching the common threshold for readiness,” says Rebecca Watts, associate vice chancellor of P-16 initiatives at the Ohio Department of Education.

These indicators also address concerns that some students were unnecessarily being placed in remedial classes. Previously, institutions were able to select their own placement assessments and expectations, so a student deemed "college ready" at one school might be placed in a remedial-level class at another.

Though the remedial courses are often necessary for future postsecondary success, students taking them are at a disadvantage because they are not earning credits like their peers in college-level classes. Between 2012 and 2015, the percentage of students in Ohio needing remedial coursework has dropped from 40 percent to 32 percent.

In late 2012, a few months after passage of HB 153, the presidents of 13 Ohio public universities and 23 community colleges reached a shared understanding of what it meant for a student to be "remediation-free" in math, science, reading and writing.

For example, a student who scores 22 or higher on the math portion of the ACT is deemed remediation-free for that subject. If a student scores below the threshold, institutions may also consider high school GPA or other assessments.

Despite the recent progress, Ohio education leaders say the remediation rate remains too high and more work needs to be done. They are recommending:

• new strategies that would allow students who need remediation to enroll in credit-bearing courses while also receiving the necessary academic support;
• deeper involvement by high school academic and career advisers in creating pathways that help students transition from K-12 schools to success in higher education and a career; and
• development of customized "mathematics pathways" that align a student’s coursework in this subject area with what will be needed in her or his major program of study and future career.

Economic Development

State-federal partnership to increase business exports gets congressional reauthorization

A state-federal partnership that helps small and medium-sized businesses in the Midwest reach global markets has been reauthorized through 2020. The State Trade and Export Program, or STEP, was included in legislation signed into law in February. It provides states with matching funds to help more small businesses export their goods and services.

The Council of State Governments, through the work of the State International Development Organizations, helped federal lawmakers and trade agencies establish the reauthorization language. (SIDO is a CSG affiliate.)

“The STEP program has been instrumental in our shared mission to help more small businesses sell their products or services in the global marketplace,” says Andy Karella, director of federal affairs for CSG and SIDO. “Those exports help support and create thousands of good-paying jobs in the states.”

SIDO helps manage the program at the state level. In 2015, 40 states (all but Indiana and South Dakota in the Midwest) received STEP grants totaling $17.4 million. These grants support a variety of services — for example, participation in international trade missions, marketing products and campaigns, export trade show exhibits and export training.

“For our new-to-export companies, STEP has been the catalyst for them to enter the world of exporting through training and travels to international markets,” says Donavon Johnson, resource management group director with the North Dakota Trade Office.

“For the more experienced North Dakota exporters,” he adds, “the STEP program has allowed them to increase their sales by selling into new foreign markets.”

In Wisconsin, the state’s Economic Development Corporation is using part of the grant money to fund its ExportTech Graduate Assistance Project. Designed for businesses that already have an export expansion strategy, the “graduate-level” program offers education on compliance with foreign markets, translation services, and assessments on different global markets.

“Wisconsin is putting its STEP grant funds to good use, connecting Wisconsin companies with international market opportunities,” says Katy Sinnott, vice president of international business development for the Wisconsin Economic Development Corporation.

STEP’s new authorization language also aims to strengthen coordination between federal trade promotion offices and the states. This, in turn, should help small firms navigate an export process that can involve more than 20 federal agencies.

Lastly, the U.S. Small Business Administration will now be required to analyze and report on the impact of future trade agreements on the nation’s smaller firms.
In 3 Midwest states, future of corporate farming laws in doubt

For North Dakota Sen. Terry Wanzek, recently passed legislation in his state to provide ex-ceptions to a ban on corporate hog and dairy farming is all about the preservation of the family farm — including his own.

“My cousin owns a dairy farm next door to our crop farm,” explains Wanzek, who sponsored SB 251 last year. “He is investing heavily in updated facilities, but if we wanted to incorporate together to add value to my crops, any corporation would be illegal should our children inherit it, because they are not closely enough related.”

SB 251, passed by the North Dakota Legislative Assembly, would provide the necessary exemptions. Specifically, it would allow corporations to own up to 640 acres for a dairy or hog farm; corporate ownership of any other type of farming operation, or of farmland, would remain illegal in North Dakota.

“We have to provide ways for family farms to grow and continue to the next generation,” Wanzek says.

But opponents of the legislation (including the North Dakota Farmers Union) say SB 251 is not the answer, and they gathered enough signatures to force a statewide vote on it in June. A “no” vote would mean that corporate dairy and hog farms owned by individuals further apart than three degrees of kinship would remain illegal.

Sen. Joe Miller, also a farmer, is leading a coalition of farm groups working for a “yes” vote.

“We have to grow our dairy industry,” says Miller, noting that the state currently only has two milk processors in operation. “And when we do, it will help our grain industry.

“We are a nation of family farmers, many of which incorporate because of liability concerns. This bill isn’t going to change that. What I do hope it does is ignite the livestock industry and help the crop farmers too.”

Contentious debate over corporate farming laws is nothing new for the Midwest. Starting in the 1970s, as farm profitability dropped and farms grew larger across the country, this region became the center of a movement to restrict corporate farming.

Over the years, many of these laws have been removed or weakened by court rulings or legislative changes. And this year in North Dakota, Nebraska and South Dakota, the restriction issue has sparked intense policy discussion, inside and outside of state capitols.

“Traditionally, state restrictions have prevented corporations from either owning land and/or livestock or from contracting with farmers to grow livestock.

In Nebraska, a previous ban on corporate ownership of land was ruled unconstitutional, but meatpackers are still prevented from owning in-state livestock, including by entering into contracts with producers. This year, however, LB 176 lifted the restriction in one sector of the livestock industry — pork production.

Nebraska’s long-time restrictions have been designed to prevent vertical integration in the market. But according to Sen. Ken Schlitz, meatpackers have been able to pay farmers in a neighboring state to feed hogs and then process them in Nebraska. They could not contract with in-state farmers to do the same thing, he adds.

Some of his colleagues, though, are not convinced that LB 176’s changes are best for agriculture, and family farms, in Nebraska.

“Fair prices for livestock require an open market,” Sen. Al Davis says. “Contract production takes this away, and as it increases, farmers lose that open and public market. Nebraska’s ban on packer ownership has kept hog farms under the control of family farmers.”

Sen. Beau McCoy agrees. He notes, too, that the state’s corporate restrictions on owning cattle have long been in place — and will continue to be under LB 176.

“Nebraska is the No. 1 cattle-feeding state, and yet it bans packer ownership of cattle,” McCoy says. “How can the hog industry be that different?”

South Dakota also bans contract feeding or ownership of hogs (but not of other livestock). But Sen. Gary Cammack, sponsor of SB 98, says his bill would ensure “that all species are treated equally, ending the practice of additional restrictions on hog farms.” As of early March, SB 98 seemed likely to pass the Legislature.

Brief written by Carolyn Orr, staff liaison to the Midwestern Legislative Conference Agriculture and Natural Resources Committee. She can be reached at corr@sarl.us. The committee’s co-chairs are North Dakota Sen. Don Schaalbe and Iowa Sen. Mary Jo Wilhelm.

Citing benefits of continental market, U.S., Canada, Mexico pursue closer ties on energy

Canada and the United States have long been each other’s most important energy partners, with annual trade between the two countries in this economic sector at nearly $100 billion.

Cross-border pipelines bring natural gas and oil south to major U.S. markets, and two Midwestern states, Minnesota and North Dakota, imported 12 percent of their electricity from Canada in 2014.

“North America is an integrated market,” notes Dan D’Autremont, speaker of the Legislative Assembly of Saskatchewan.

But leaders at the federal, state and provincial levels are taking steps now to deepen the two countries’ relationship, this time with an emphasis on sharing information and working more closely on innovations to reshape the future of energy policy and energy use across the entire continent.

In February, leaders of the U.S., Canadian and Mexican federal energy departments signed a new Memorandum of Understanding Concerning Climate Change and Energy Collaboration.

With this new agreement in place, the three countries are expected to move more freely to share information in areas such as:

• improvements in energy-efficiency equipment;
• deployment of carbon capture, use and storage technologies;
• strategies to help communities adapt to climate change; and
• best practices to reduce emissions from the oil and gas sectors.

The three countries have also begun producing a continent-wide outlook on trends in energy resources, infrastructure, production and trade.

D’Autremont believes all three countries will gain from the strengthened relationship. “It is to all of our benefit to maintain a continental market, to gain the benefits of efficiencies, to gain the benefits of shorter transportation routes no matter where the energy comes from” in the region, he says.

In the “2015 Trilateral Energy Outlook,” the authors note that a mix of factors already make the three countries “a single [semi-integrated] energy market.” Those factors include geographic proximity of Canada, Mexico and the United States to one another; their isolation from other markets; and the fact that many energy commodities are already traded freely.

“Having an integrated system, where we can draw power from each other across North America, is a security benefit for all of us,” says D’Autremont, adding that a continental market also leads to greater efficiencies.

D’Autremont is leading a region-wide effort to strengthen the energy relationship between the Midwest’s states and provinces, as chair of the Midwestern Legislative Conference’s Midwest-Canada Relations Energy Subcommittee.

The subcommittee will meet in June to explore state and provincial policies on renewable energy and to discuss energy trade, including the expanded use of renewable resources such as hydropower.

Source: 2012 Ag Census, U.S. Department of Agriculture

Energy production, use in North America, 2014

<table>
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<tr>
<th>Source</th>
<th>% of total production</th>
<th>% of total consumption</th>
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<tr>
<td>Hydro</td>
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<td>2%</td>
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Source: The Dept of Energy
States and the U.S. Supreme Court: More uncertainty over big cases

In the wake of the death of Supreme Court Justice Antonin Scalia earlier this year, some of the big constitutional questions before the court this term have been overshadowed by questions about the future of the court itself. Who will replace Scalia? And when?

And there also is this question: How will the absence of a ninth member affect the outcome of some key cases involving states and state legislatures? The U.S. Supreme Court has two choices in cases that will be decided by a 4-4 vote. The first is to wait for a ninth justice to join the court and rehear the case; the second is to issue a non-precedential decision that affirms the lower-court decision. According to Lisa Soronen, executive director of the State and Local Legal Center, that first scenario (waiting for a ninth member) appears likely in at least two cases—one on state redistricting practices, a second on the constitutionality of “fair share” laws.

In the redistricting case, plaintiffs say states should draw their maps based on “voting-eligible residents.” States have typically redrawn their districts based on total population.

“This case seems ripe for rehearing unless Justice [Anthony] Kennedy sides with the liberals,” Soronen says.

She predicts a similar outcome in a case over state “fair share” laws, which require public sector employees who don’t join a union to still pay for costs associated with collective bargaining.

Even with the loss of Scalia, Soronen says, conservatives on the court are likely to prevail in a third case with ramifications for affirmative action policies around the country. At issue is a race-conscious admissions policy at the University of Texas.

“Justice [Elena] Kagan is recused [from the case], and Justice Kennedy is no fan of affirmative action,” Soronen says.

Texas is also at the center of a dispute between the federal government and about half the U.S. states over a presidential executive order protecting certain immigrants from deportation (known as “deferred action”). With a 4-4 vote, a lower court’s decision to put President Obama’s plan on hold would stand.

Lastly, justices will weigh in on the constitutional validity of state abortion laws—specifically in this case, a Texas requirement that abortion providers have hospital admitting privileges and that abortion clinics meet the standards of an ambulatory surgical center.

Kennedy will again be the swing vote—this time perhaps in favor of liberals on the court.

[He] voted to prevent these laws from going into place before the court decided to review the case,” Soronen notes, an indication that “he may be skeptical of the laws, making a 4-4 vote less likely.” A lower court upheld the Texas law.

Nomination of Supreme Court judges again a big issue in Kansas

More than a half-century ago, some unpopular political maneuvering in Kansas caused voters there to create one of the nation’s more unique structures for appointing judges to a state supreme court.

That change purposefully reined in the nomination powers of state elected officials, namely the governor. Over the past few years, the legislative and executive branches have been exploring ideas to get some of that authority back.

“Kansas is the only state in the country where the selection of supreme court justices is controlled by a handful of lawyers,” Gov. Sam Brownback said in his annual State of the State address this year.

He has been among the state’s political leaders pushing for a constitutional change, one that would either alter Kansas’ merit-based selection process or get rid of it altogether.

Like many states with merit-based appointment systems, Kansas uses a nominating commission to create a pool of candidates to fill open positions to the Supreme Court.

Unlike other states, a majority of members on Kansas’ commission (five of the nine) comes from a vote of the state’s practicing attorneys (the other four members are appointed by the governor). When choosing a Supreme Court justice, the Kansas governor must choose from one of the three candidates selected by the commission. Once on the court, a justice is then soon subject to a retention election.

Kansas’ independent nominating commission has been part of the state Constitution since 1958. A year before, incumbent Gov. Fred Hall had been defeated in the Republican primary and then resigned from office. But the lieutenant governor appointed Hall to fill a vacant Supreme Court seat—a move that caused a political scandal and that served as a catalyst to change the nomination process in order to avoid favoritism.

Brownback and some legislators, though, believe the current process is too “undemocratic.”

A constitutional amendment introduced in the Kansas Legislature would discontinue the use of a nominating commission and create a process similar to the federal model: nomination by the governor and consent by the state Senate. This proposal has thus far failed to get the super-majority vote needed for legislative approval.

But lawmakers continue to search for alternatives, with HCR 5013 being one of the latest constitutional changes under consideration.

This proposal would keep the state’s judicial nominating commission but expand its membership to 15: four elected by attorneys in the state, five appointed by the governor and six appointed by legislative leaders from both political parties (the majority party in each chamber would get two appointments; the minority party in each chamber would get one appointment).

Proposals to tweak judge selection

Kansas is not the only state where legislators are scrutinizing how judges to the “court of last resort” are selected, according to Bill Rafferty of the National Center for State Courts.

One legislative trend, he says, has been to consider moving to a “quasi-federal” model: allow the governor to choose anyone who meets basic minimum requirements and then provide a state senate or other “collegial body” with the power of consent.

These proposals are “quasi-federal” because they differ from the U.S. constitutional model in important ways. For example, state supreme court judges, once appointed, would still face voters in retention elections. Another difference is the inclusion of a “default confirmation mechanism.”

“So if the Senate doesn’t act,” Rafferty says, “the process is not held up.”

In Kansas, for example, one measure (HCR 5005) would require the state’s chief justice to vote on a nominee within 60 days (if in session) or within 20 days of the beginning of the next legislative session.

According to Rafferty, Kansas’ HCR 5013 reflects another legislative trend: proposals that would retain the use of judicial nominating commissions, but put control of their members more in the hands of elected officials.

Overview of process in Midwest

In the Midwest, five states currently employ some type of judicial “nominating” or “qualification” commission as part of its merit-selection process. In states such as Iowa, Indiana and Nebraska, there is an even split between the number of commissioners elected by attorneys and appointed by the governor. One spot on these states’ commissions is also reserved for a justice of the supreme court.

In all five of these states, supreme court justices (though initially selected via merit selection) face retention elections once their initial term is complete.

In the Midwest’s six other states, justices come to the supreme court via a direct election by the people. South Dakota was last to change its method of judicial selection; it moved to a merit-based system in 1980. In all Midwestern states, altering the method of supreme court elections requires a constitutional amendment.

Article written by Laura Kliwer, a CSG Midwest senior policy analyst. She can be reached at kliwer@csg.org.

Capital Closeup is an ongoing series of articles focusing on institutional issues in state governments and legislatures. Previous articles are available at www.csgmidwest.org.
**QUESTION OF THE MONTH**

**QUESTION:** What age criteria do states use to determine jurisdiction in cases that involve a young person charged with violating the law?

According to the National Center for Juvenile Justice, every state has a set of “age boundaries” that help determine jurisdiction in these cases — in particular, whether they should go through juvenile court or criminal court.

As of 2014, most U.S. states (41) set the “upper age” of juvenile court jurisdiction at 17. This age limit, though, is lower in two Midwestern states: Wisconsin and Michigan, where the upper age for juvenile court jurisdiction is only 16.

Under twin proposals introduced this past fall in Wisconsin (AB 378 and SB 280), the state’s non-violent, first-time 17-year-old offenders would no longer be tried as adults. The sponsors of these bills point to studies showing that young people with criminal records are less likely to graduate from high school and have more difficulty finding work.

Neither of these Wisconsin measures had made it out of legislative committee as of February. A proposal in Michigan (HB 4955) to change that state’s upper age from 16 to 17 passed out of a House committee earlier this year.

**Age boundaries for determining juvenile court jurisdiction**

<table>
<thead>
<tr>
<th>State</th>
<th>Upper age</th>
<th>Extended age</th>
<th>Lower age</th>
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<tr>
<td>Wisconsin</td>
<td>16</td>
<td>24</td>
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</table>

Source: National Center for Juvenile Justice

Every state also provides the statutory authority for juvenile courts to “extend” their jurisdiction of a juvenile after he or she exceeds the upper age limit. In the Midwest, the National Center for Justice reports, the oldest age at which a state’s juvenile court may retain jurisdiction of an offender ranges from age 18 (Iowa) to 24 (Wisconsin).

It is less common for states to have “lower age boundaries” for juvenile courts. However, four states in the Midwest are exceptions to this rule. Kansas, Minnesota, South Dakota and Wisconsin set the minimum age at 10. In these states, individuals below this age who violate the law instead receive child protective services. According to the 2014 study “Juvenile Offenders and Victims,” states that do not set a lower age boundary rely on common law or case law to determine how to handle cases involving younger offenders.

In addition to age, other factors can determine jurisdiction of a case — for example, the type of violation, first-time vs. repeat offenses, and statutory language that leaves the decision to the discretion of judges and/or local prosecutors.

Every U.S. state has laws allowing at least some juvenile-age offenders to be transferred to adult criminal court. However, this type of transfer can also be limited or prohibited in state statute, and one of the common constraints is the age of the offender.

In the Midwest, eight states specify that an individual under a certain age cannot be tried in criminal court (no judicial or prosecutorial discretion is allowed, regardless of the offense). The region’s minimum transfer ages are as follows: age 10 in Kansas and Wisconsin; age 13 in Illinois; and age 14 in Iowa, Michigan, Minnesota, North Dakota and Ohio.

<table>
<thead>
<tr>
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Source: National Center for Juvenile Justice

**Article written by Tim Anderson (tanderson@csg.org), CSG publications manager. Question of the Month highlights an inquiry sent to the CSG Midwest Information Help Line: csgm@csg.org or 630.925.1922.**
States struggle to find the billions needed to repair, replace drinking water infrastructure

In the wake of water crises in Flint (drinking water being contaminated) and Detroit (water being shut off due to residential bills not being paid), a host of bills have been introduced in Michigan, including a “Human Right to Water Act.”

This proposal (HB 5101) frames a $1 billion package dealing with — among other subjects — water access, billing, service shut-offs and testing. And under HB 5120, local water users would have to be notified within 72 hours of a “Tier II” violation of the state’s drinking water standards. (Tier II is defined in Michigan law as violations or situations other than short-term exposure to contaminants that could “have serious adverse effects on human health.”)

Within Flint itself, the city has launched a $55 million “Fast Start” initiative to replace lead pipes with copper ones, kick-started by $2 million from the state and technical expertise from the city of Lansing, which is in the midst of its own lead pipe replacement program.

Flint officials have also announced a low-interest $25 million loan program from Union Labor Life Insurance Co. to further boost the program. First in line are houses in neighborhoods with the highest concentration of children under 6, senior citizens, pregnant women, people whose immune systems are compromised, and homes where tap water tests have already shown high lead levels.

In a March press release, Gov. Rick Snyder outlined some of the state responses to the crises:

- offering $30 million in credits on residents’ water bills dating back to April 2014;
- assisting homeowners with lead abatement;
- replacing water fixtures in day care centers, hospitals and schools;
- supplying free bottled water, water faucet filters (and their replacement cartridges) and water testing kits.

According to Snyder, the state had spent $70 million between October 2015 and early March.

**Examples of recent state actions, proposals to protect drinking water supplies and users**

**In Illinois, lawmakers passed “right to know” legislation (HB 4021) in 2009 that requires all water users to be notified when their drinking water has been contaminated. Previously, the state’s Environmental Protection Agency only had to notify water supply owners and operators. Two years ago, the General Assembly expanded the reach of the state’s Clean Water Initiative — which makes hundreds of millions of dollars in low-cost loans available for local governments to upgrade their wastewater, stormwater and drinking water infrastructure.**

**In Michigan, in addition to the emergency actions and funding assistance for Flint in the wake of that city’s drinking water crisis, legislators introduced a 10-bill package that includes the proposed Human Right to Water Act (HB 5101). The legislative package also addresses water access (HB 5177), billing (HB 5097, 5110 and 5178, SB 678), service shut-offs (HB 5122, SB 665), water quality testing standards (HB 5004) and public notice of violations (HB 5120).**

**A year after Minnesota legislators approved $5.5 million for water-quality buffer strips on an estimated 11,000 acres of land, they are now considering a $1 billion bond proposal from Gov. Mark Dayton that includes $220 million to help communities upgrade their drinking water systems and fund water quality protection projects. The $5.5 million for lake, river and streams, the average width of the vegetation buffer must be 50 feet. For all public ditches, a buffer width of at least 16.5 feet is required. Placing vegetation near these waterways will help filter out phosphorus, nitrogen and sediment.**

**In 2014, Nebraska legislators created a new fund (LB 1096) to better manage and protect the state’s water resources. About $11 million a year (from the general fund) is now going to the Water Sustainability Fund, in, turns, finances a variety of local water initiatives. The statutory goals of the new fund include reestablishing or mitigating threats to drinking water.**

**Members of the Ohio Legislature’s Lake Erie Legislative Caucus are contemplating whether to seek a referendum on a proposed constitutional amendment, SR 3, that would authorize the issuance of $1 billion in bonds over the next 10 years to help local governments pay for sewer and water infrastructure. Last year, lawmakers passed SB 1, a bill that seeks to address nutrient runoff in the Lake Erie basin. In 2014, a toxic algae bloom in Lake Erie caused a contamination of the city of Toledo’s supply of drinking water.**
Some cities didn’t wait for legislative action before acting to “get the lead out.” Madison, Wis., spent $15.5 million over 11 years to remove all lead pipes in the late 1990s and early 2000s after a series of consent orders with Wisconsin’s Department of Natural Resources.

In Michigan’s capital city of Lansing, local officials are removing their lead pipes and have offered technical assistance to Flint.

In February, a lawsuit filed in an Illinois circuit court seeks to force the city of Chicago to replace its lead pipes. (Chicago required lead-water-service pipes until 1986, the Chicago Tribune recently reported that almost 80 percent of properties in the city still have lead connections, and that city officials do little to warn residents when work on water mains might create higher levels of lead in their tap water.)

The federal Lead and Copper Rule, which limits concentrations of those elements in drinking water and sets acceptable pipe corrosion levels, says cities should replace old lead and copper water fixtures. While lead’s health hazards are well known (there is no safe ingestion level and no cure for lead poisoning), the problems with copper are more complex. Bodies need it for proper metabolic functions, but too much can cause upset stomachs, nausea and diarrhea, and other tissue damage (primarily in the liver).

A lack of coordination and funding between federal and state governments, utilities and customers has prevented the wholesale removal of the nation’s old pipes, Schroec says.

“The collective ‘we’ have known there is a problem for many years … and it hasn’t been a priority for many reasons to go in and replace them,” Schroec says.

“Flint has shined a light on this problem, but people in the industry have known about this for years.”

The U.S. Environmental Protection Agency is currently considering revisions to the Lead and Copper Rule, soliciting comments about how to improve oversight of corrosion control treatments and potential requirements for additional actions that equitably reduce the public’s exposure to lead and copper when corrosion control treatment alone is not effective.

Flint’s crisis exposed gaps in the existing rule. And these gaps “are the most significant policy question at hand right now,” says Joel Brammeier, president and CEO of the Chicago-based Alliance for the Great Lakes.

One concern, he notes, is how states’ water samplers conduct tests and interpret data. Currently there is much confusion about the testing methodologies that determine lead and copper levels and, as a result, potential violations of existing health standards.

The EPA’s National Drinking Water Advisory Council, meanwhile, is recommending that the federal government pursue a full replacement of lead pipes, including into customers’ meters.

That recommendation is new getting a lot of attention from the EPA and the U.S. Congress, Brammeier says.

“That would be a huge shift nationally to go down that path,” he adds. “It would be a significant recalibration of how we pay for water.”

Rep. Mason hopes at least one positive can come from the tragedy in Flint.

“It put everyone on notice that you’d better figure out the expiration date on your aging infrastructure and start making plans to replace it,” he says.

“As if that’s not difficult enough, Mason says, “what happens if there’s no political will to do anything”?

“I think that’s going to be the toughest question going forward.”

State-federal collaboration needed to protect nation’s supply of drinking water

For decades, protecting the U.S. supply of drinking water has been a responsibility shared by all levels of government, with a federal law and state-federal revolving funds helping direct and finance efforts to ensure public health.

Under the Safe Drinking Water Act (first enacted in 1974), the U.S. Environmental Protection Agency establishes quality standards for drinking water, testing protocols, and national limits on contamination levels. States oversee implementation of the act in their respective jurisdictions.

The Drinking Water State Revolving Fund was created in 1996. Money from the fund comes from a congressional appropriation and is awarded to the states, which must provide a 20 percent match. The states, in turn, support various local drinking water projects — for example, replacing and fixing pipes, or upgrading treatment plants and storage facilities. Through their revolving funds, states can offer loans (from 0 percent to market rate) or other types of financial assistance.

More recently, the U.S. Congress has developed another way to support these local infrastructure projects: the Water Infrastructure Finance and Innovation Act of 2014. This law provides low-interest loans that cover up to 49 percent of the costs for large water projects (no less than $20 million) of regional or national significance.

As first enacted, the law barred the use of tax-exempt bonds to fund the remaining 51 percent. (Most local communities use these types of bonds to finance their water infrastructure projects.) The U.S. Congress removed this barrier in December, but still hasn’t appropriated money for the WIFIA loan fund. (It did appropriate $2.2 million in December 2014, allowing the U.S. EPA to hire staff as well as develop guidance and application materials and a credit subsidy model).

“The great thing about WIFIA is its leveraging ability” and the way it complements tax-exempt financing, says Tracy Mehan, executive director of government affairs for the American Water Works Association.

“Negotiations are still in progress,” he says. “We’d like to think that given the WIFIA fix [in 2015], we’ll get something.”

For communities, too, the potential benefits of WIFIA include low borrowing costs as well as provisions that do not require repayment until five years after project completion and that allow for a 35-year payback period.

The WIFIA fund was authorized for $20 million in fiscal year 2015, $25 million in the current fiscal year and $35 million in FY 2017 (with continuing ramp-ups to $50 million in FY 2019). The U.S. EPA is gearing up to offer loans via WIFIA in 2017, pending congressional appropriations, Mehan says.

“Negotiations are still in progress,” he says. “We’d like to think that given the WIFIA fix [in 2015], we’ll get something.”

Some state environmental officials opposed WIFIA, saying it would take federal dollars away from the Drinking Water State Revolving Fund. To address some of these concerns, federal lawmakers included language giving states a “right of first refusal” — when the U.S. EPA receives an application for assistance under WIFIA, a state can request that it instead receive a grant from the State Revolving Fund.

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“We have known there is a problem for many years … and it hasn’t been a priority for many reasons.”

Nick Schroec, executive director of the Great Lakes Environmental Law Center
Jim Durkin grew up in a self-described blue-collar, Democratic family in the suburbs of Chicago and first got introduced to politics in the 1970s by his older brother. But it wasn’t until the 1980s that Durkin found his own interests in public service and government — and also his political home.

“The enthusiasm about Ronald Reagan and patriotism made me feel really good about the country,” Durkin recalls, “and I was able to identify with a lot of his policies.”

That led him first to become active in local Republican politics and, eventually, to the Illinois statehouse.

“I decided I didn’t want to be a guy sitting on the sidelines,” Durkin says of his decision in 1994 to run for a House seat after previously serving as a local prosecutor and as an assistant state attorney general.

Two decades later, he is now leading Illinois House Republicans through a turbulent time in the state’s political history. Illinois has been operating without a budget this fiscal year due to an ongoing impasse between Republican Gov. Bruce Rauner and the Democrat-controlled General Assembly. Meanwhile, a reform of the state’s ailing pension system remains an elusive, yet essential, legislative priority.

“The environment we exist in right now has become very, very challenging,” Durkin says. But since the beginning of his tenure in the Illinois legislature, the work has been interesting from being involved in the impeachment of a governor, to working with a future U.S. president, to contributing to history-making changes in criminal justice policy.

In a recent interview with CSG Midwest, Durkin reflected on his career in Illinois politics and discussed the policy challenges that he and fellow legislators must now confront. Here are excerpts.

Q: How has the politics in Illinois changed from when you were first elected to the House?
A: There was a time back in the 1990s, and maybe even the early 2000s, when there was much more collegiality on both sides of the aisle. We would do our work, but we would go out and have dinner together. We don’t have that anymore. Now, our side feels the Democrats aren’t doing enough to bring the budget impasse to a resolution, and Democrats feel the same way about us. This frustration boils over on the House floor, which you can tell by the tenor of the debate.

Q: In addition to trying to resolve the state’s current budget impasse, what are your top policy priorities for this legislative session?
A: It’s extremely important that we revisit pension reform. It’s been almost nine months since the state Supreme Court stated that our [reform] bill from a few years ago was unconstitutional. There seems to be more of a willingness to revisit that issue, and to me, that’s a priority for this year. We can’t give up.

Q: What are some of your most memorable moments in Illinois politics and the legislature?
A: One of the most memorable moments happened after I lost my race for the U.S. Senate in 2002. Even though I was beaten pretty handily in the general election, I was able to get a lot done without any money in a primary race against two millionaires.

About a year and a half later, then-state Senator Barack Obama came up to me and said, “Jim, I’m thinking of running for the U.S. Senate. There’s a bunch of rich guys in the race, just like you had, and I’m going to do what you did back in 2002. I’m going to outwork them, I’m going to get every newspaper endorsement, and I’m going to have a great grassroots organization.” Then poof — he wins the primary and eventually becomes president of the United States.

I’m not saying I gave him the inspiration to run for the U.S. Senate, but I distinctly remember that moment when he said he wanted to capture what I had done in my primary campaign.

Q: What advice do you have for newly elected legislators?
A: The easiest way to get up to speed on an issue is to talk to a colleague with that background. It’s also important to talk to the people who will be impacted by policy changes. At the end of the day, someone’s going to be affected, and we have to make sure there are no unintended consequences.

Joining the legislature is like drinking out of a firehose. It’s important to observe and not try to do too much at once. Work on building alliances — not only among your own members, but among the other party, because you’ll need their support as well.

New legislators also need to realize they’re not going to get everything you want, so if you can get 75 percent of what you originally intended to do, you do it and you embrace it. If you’re successful and get that much signed into law by the governor, then you figure out how you can get that 25 percent as part of a future legislative initiative. Rome wasn’t built in a day.

Bio-sketch of Rep. Jim Durkin

✓ House Republican leader since 2013; served in Illinois House from 1995 to 2002, then returned in 2006
✓ Former assistant Illinois attorney general and assistant Cook County state’s attorney
✓ Lives in Chicago suburb of Western Springs with his family

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Q: What are some of the most pressing issues that need to be addressed in the Illinois legislature?
A: One of the most pressing issues that needs to be addressed is the pension reform. It’s been almost nine months since the state Supreme Court stated that our [reform] bill from a few years ago was unconstitutional. There seems to be more of a willingness to revisit that issue, and to me, that’s a priority for this year. We can’t give up.

Q: How do you see the current budget impasse affecting your work?
A: It’s an elusive, yet essential, legislative priority. Two years later, state Senator Obama incorporated my legislation into a larger bill to force the use of a pretrial reliability hearing on testimony of a jailhouse informant. I believe it made the system — which is never perfect — better. It’s not about getting a conviction or a not-guilty verdict, it’s about finding the truth.

Q: What advice do you have for newly elected legislators?
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Restricting emergency refills of expired prescriptions can cost lives
Ohio man’s death sparks reform of state’s ‘rigid’ refill law

by Ohio Sen. David Burke

For Dan and Judy Houdeshell, Jan. 8, 2014, is the date that their worst nightmare, as parents, had become reality. While on vacation in Florida, they received the phone call informing them that their 36-year-old son, Kevin “Howdy” Houdeshell, had passed away in his home from ketosis, a complication that diabetics prevent with routine insulin treatments.

Kevin Houdeshell, from a suburb of Cleveland, was diagnosed with diabetes at the age of 27, and he regularly took insulin to help manage his blood glucose levels. In Kevin’s final days, he faced an uphill battle while attempting to refill his expired insulin prescription, without success.

As a pharmacist, I know firsthand how difficult it is for individuals dealing with chronic illness to monitor expiration dates for their various medication.

A failure to connect turns fatal

It is common for pharmacists to assist patients in renewing medications by contacting their physicians directly. However, when Kevin’s pharmacist tried to reach his physician, he was unsuccessful because the physician’s office was closed for the New Year holiday.

In the days following New Year’s Day, at no fault of his own or the physician, Kevin was still unable to connect with his physician because they had conflicting schedules. After several days away from work, recovering from what he believed to be the common flu, Kevin stopped responding to friends’ and co-workers’ attempts to contact him. One of his friends stopped by the house to check on him, only to find that Kevin had passed away.

It is easy for individuals to be consumed by their symptoms and not realize the severe health implications they face. When my good friend and colleague, Sen. Gayle Manning, shared this story with me, I was deeply disturbed because I knew this tragedy was avoidable.

Our law was too rigid to accommodate individual emergencies — allowing pharmacists to dispense only up to a 72-hour supply in emergency situations. The law was originally intended to allow pharmacists to dispense refill prescriptions in cases of emergencies, such as natural disasters and major power outages. Also, many medications can be filled in 72-hour supply packages; however, others, such as insulin, cannot.

It was clear that more needed to be done to equip pharmacists to deal with these unique situations. We brought together a coalition of doctors, pharmacists and patient advocacy groups to reach a consensus and help us produce legislation that included emergency refill provisions and expanded the scope of working relationships between physicians and pharmacists.

State Reps. Nathan Manning and Steve Huffman (a practicing pharmacist) carried the flag for this issue in the House, where they introduced companion legislation in the form of HB 188.

The legislation allows pharmacists to dispense emergency refill supplies to patients when the following criteria are met:

- The pharmacist is unable to contact the prescribing physician.
- The prescription is not a controlled substance.
- The patient is on a consistent drug therapy program and is documented that the patient has previously refilled the prescription with the pharmacist.
- The refill does not exceed a 30-day supply or the standard unit of dispensing.
- The pharmacist exercises his or her best professional judgment.

After passing the Senate in December 2015, HB 188 was signed into law by Gov. John Kasich later that month and took effect this month.

Under the new requirements, pharmacists can only dispense an emergency refill for a patient once per year. This ensures that the patient promptly schedules a follow-up visit with his or her physician immediately following an emergency refill.

I truly believe that the best public policy is derived from life experiences and constituent outreach. In my tenure as a member of the Ohio Legislature, I have worked on many different issues and bills, but working with colleagues and constituents to find reasonable solutions will always be the most rewarding.

During this process I have learned that Kevin Houdeshell’s story is not as rare or unique as one might think.

I encourage all my fellow lawmakers across the Midwest to review their corresponding laws and statutes to see if a similar resolution may be applicable in their state, as it could one day make the difference in saving someone’s life.

Ohio Sen. David Burke, a Republican from Marysville, was appointed to the Ohio Senate in 2011 and elected to a full term in 2012. He previously served as state representative from 2009-2011.

Submissions welcome

This page is designed to be a forum for legislators and constitutional officers. The opinions expressed on this page do not reflect those of The Council of State Governments or the Midwestern Legislative Conference. Responses to any FirstPerson article are welcome, as are pieces written on other topics. For more information, contact Tim Anderson at 630.925.1922 or tanderson@csg.org.
CSG lends hand to North Dakota leaders on new Justice Reinvestment Initiative

Policy goals are to reduce recidivism, cut costs and improve public safety

A bipartisan group of leaders from all three branches of North Dakota government has launched a review of the state’s criminal justice system with help from The Council of State Governments. The CSG Justice Center has previously worked on justice reinvestment strategies in six other Midwestern states: Indiana, Kansas, Michigan, Nebraska, Ohio and Wisconsin.

North Dakota policymakers will focus on reducing recidivism, lowering corrections spending, averting costly future expansions of the state’s correctional facilities and increasing public safety. Gov. Jack Dalrymple, Attorney General Wayne Stenehjem, Supreme Court Chief Justice Gerald Vandewalle and Sen. Ron Carlisle announced the new Justice Reinvestment Initiative at a January event inside the state Capitol.

“The legislature has focused on criminal justice policy in recent sessions and we are looking forward to continuing this work,” Carlisle said. He is serving as chair of the Incarceration Issues Committee. This interim legislative committee includes state lawmakers, members of the executive branch, police chiefs, a local state’s attorney, district court judges, Chief Justice Vandewalle and Attorney General Stenehjem. The committee will work with the CSG Justice Center on analyzing data, engaging stakeholders, and developing and implementing new policies.

Between 2005 and 2013, North Dakota’s crime rate increased by 8 percent and the prison population spiked by 19 percent, pushing the state’s correctional facilities to capacity. If no action is taken, the prison population is expected to grow another 75 percent between 2015 and 2025, from 1,751 to 3,061 people.

“We welcome this opportunity to further review our criminal justice system and build on our work to reduce recidivism and to ensure that spending on corrections is as cost-effective as possible, while adhering to our high standards of public safety,” Gov. Dalrymple said.

The rise in the prison population has led to increases in corrections spending. From biennial budget years 2005 to 2015, North Dakota’s general fund appropriations to the North Dakota Department of Corrections and Rehabilitation increased 114 percent, from $83 million to $178 million.

More than half of the incarcerated population in North Dakota is being held in county jails, causing a strain on those facilities. Between 2005 and 2015, the county jail population increased by 82 percent, from 959 to 1,754 people.

The state’s top-to-bottom analysis of its criminal justice system is also made possible by a partnership with the Pew Charitable Trusts and the U.S. Department of Justice’s Bureau of Justice Assistance. A comprehensive policy package will be ready for legislators to consider when they reconvene for the 2017 session.
Applications due April 6 for Midwest’s premier legislative leadership program

Legislators wanting to participate in this year’s Bowhay Institute for Legislative Leadership Development program must submit their applications by April 6.

This year’s BILLD program will be held Aug. 12-16 in Madison, Wis.; applications are available at www.csgmidwest.org.

Designed for state lawmakers in their first four years of service, BILLD includes a mix of sessions on public policy, professional development and leadership skills. These sessions are led by nationally renowned policy experts; legislative leaders from the Midwest; and specialists in areas such as media training, consensus building and time management.

The highly interactive curriculum also gives participants the chance to meet, learn from and work with lawmakers from across the region. Each year’s class includes legislators from all 11 Midwestern states and four Canadian provinces.

Now in its 21st year, the five-day leadership institute is run by CSG Midwest’s Midwestern Legislative Conference in partnership with the University of Wisconsin-Madison’s La Follette School of Public Affairs.

Each BILLD fellowship covers the cost of tuition, lodging and meals; participants also receive a nominal travel stipend to help cover a portion of any travel-related costs.

A bipartisan group of the Midwest’s legislators (the Midwestern Legislative Conference’s BILLD Steering Committee) oversees the program — including the annual selection of BILLD fellows.

For more information about BILLD or the application process, contact Laura Tomaka at 630.925.1922 or l.tomaka@csg.org.

‘BILLD’-ing relationships on annual visit to Iowa Capitol

As a part of a visit this year to the Iowa Legislature, CSG Midwest staff met with alumni of the Midwestern Legislative Conference’s Bowhay Institute for Legislative Leadership Development, or BILLD, program.


Every year, CSG Midwest staff travels to the region’s state capitols to meet with legislators, other state leaders and legislative staff. The purpose of these visits is to learn how CSG can best meet the needs of legislators and its other constituents. CSG provides staff support for several interstate groups of state elected officials, including the Midwestern Legislative Conference.
**Clash over transgender access to bathrooms in South Dakota, Illinois**

**South Dakota** legislators fell short this year in their efforts to pass a first-in-the-nation law banning transgender students from using school bathrooms and locker rooms that correspond with their gender identities.

Gov. Dennis Daugaard vetoed HB 1008 in March.

The bill’s legislative proponents said it would help protect student privacy. Opponents derided the measure as discriminatory. In his veto message, Daugaard said decisions on bathroom use and access should be left to local school officials.

“This bill would place every school district in the difficult position of following state law while knowing it openly invites federal litigation,” he noted in his veto message.

In late 2015, the U.S. Department of Education ruled that an Illinois school district violated federal civil rights law by denying a transgender high school student’s access to the girls’ locker rooms. An agreement was soon reached between the district and the department’s Office of Civil Rights.

The student now has access, the department’s Office of Civil Rights reports, and the school has added privacy stalls to the boys’ and girls’ locker rooms.

**Minnesota, Wisconsin hail savings from new health care programs**

Eight years ago, Minnesota lawmakers established a new way of paying for health care that they said should lead to lower costs and higher-quality care.

The hopes for this “health care home” model appear to have been realized. A five-year evaluation found that this model saved Medicaid and Medicare $1 billion. In addition, participating health clinics outperformed others on various quality measures, University of Minnesota investigators found.

Under this model, clinics voluntarily apply to be certified as a “health home.” This patient-centered approach to care involves coordination among a team of doctors, nurses and other providers. These clinics receive a per-patient payment for coordinating care. A central goal of this model is to improve how patients and their providers prevent and manage disease.

The Minnesota study was released in February. A month later, Wisconsin Gov. Scott Walker unveiled results of his state’s ramped-up efforts to prevent Medicaid fraud and overpayment. Five years ago, he created the office of inspector general within the state’s Department of Health Services. Between 2011 and 2015, the office recovered nearly $40 million of inspector general within the state’s Department of Health Services.

**North Dakota leaders having to adjust to new economic realities**

North Dakota, whose nation-leading revenue growth was the envy of other states before, during and after the Great Recession, has begun to feel the effects of changes in the global market for oil.

Budget leaders announced earlier this year a revenue shortfall of more than $1 billion in the state’s biennial general fund. In response, Gov. Jack Dalrymple ordered across-the-board agency cuts of 4.05 percent. The Forum of Fargo-Moorhead reports. The state will also close the shortfall by tapping into its budget stabilization fund and ending balance funds from the previous biennium.

North Dakota’s biggest drop in revenue has resulted from a decline in projected collections from sales and use taxes — down close to $750 million from previous estimates.

Because the price of crude oil has fallen, drilling activity in western North Dakota has declined. The state’s economy has also been hurt by a drop in prices for farm commodities, The Bismarck Tribune reports.

According to the Rockefeller Institute of Government, many other U.S. states are also expecting to have weaker growth in fiscal years 2016 and 2017 — though not nearly as dramatic as the changes in North Dakota.

**Ohio, Wisconsin join states that ‘ban the box’ on job applications**

Two more Midwestern states have recently adopted “ban the box” laws, which are designed to improve the job prospects of individuals with criminal records.

These laws require public employers to remove questions about an individual’s criminal history from job applications and during the initial screening process. Background check inquiries are delayed until later in the hiring process.

Ohio’s new “ban the box” measure (HB 56) took effect in March, and Wisconsin’s AB 173 was signed into law in February as part of legislation that changed many of the state’s rules on civil service. According to the National Employment Law Project, Illinois, Minnesota and Nebraska already have ban-the-box laws in place. The statutes in Illinois and Minnesota also apply to private employers.

More states, too, have been passing “second chance” laws that seek to eliminate other employment barriers. These laws, for example, make it easier for individuals to expunge their criminal records. Recent examples in the Midwest include laws enacted in Illinois (HB 3010 in 2013), Indiana (HB 1482 in 2013), Michigan (HB 4186 in 2015), Minnesota (HF 2576 in 2014) and Ohio (SB 317 in 2012).