Decisions on oil pipeline run through Midwest

Nebraska special session shows role for states in project that aims to boost U.S. use of Canadian oil

by Hene Grossman (hgrossman@csg.org)

TransCanada has faced many hurdles in its multi-year effort to get a new 1,700-mile oil pipeline built. But this fall, the energy infrastructure company ran up against perhaps its stiffest opposition yet — from concerned residents and lawmakers in the state of Nebraska.

“There have been two things right now,” state Sen. Ken Haar said in advance of a special legislative session called by the governor in November, “Big Red football and the Keystone pipeline.”

Public outcry over the Keystone XL pipeline being routed through the Sandhills, an ecologically sensitive area of the state that also contains areas of shallow groundwater, had been building for months.

That outcry ultimately resulted in a special legislative session in November, new laws that will beef up Nebrasaskan oversight of future oil-pipeline projects, and an agreement to route the proposed pipeline away from the Ogallala Aquifer, a critical resource for irrigation and drinking water.

The events in Nebraska were also cited by the Obama administration when it announced that a decision on whether to grant a presidential permit for the Keystone XL pipeline would not cause any significant impact to resources along the pipeline route.

The Keystone XL pipeline project: A time line of the application and approval process

- September 2008 — TransCanada application to build pipeline received by U.S. State Department.
- November 2011 — TransCanada agrees to work with the state of Nebraska on developing an alternative route for the pipeline.
- November 2011 — Nebraska Unicameral Legislature holds special session due to concerns about pipeline being routed through Sandhills and Ogallala Aquifer.
- November 2011 — TransCanada agrees to work with the state of Nebraska on developing an alternative route for the pipeline.
- November 2011 — Citing the need to explore alternative routes for the pipeline, the U.S. State Department announces that a final decision will be delayed until at least the first quarter of 2013. Previously, an announcement on whether to grant a presidential permit for Keystone XL had been expected by the end of 2011.

The state of Nebraska on a new route.

More state oversight of pipelines

During Nebraska’s special session, TransCanada — the energy infrastructure company that developed plans for and will own the pipeline — agreed to work with the state of Nebraska on a new route.

The Legislature, meanwhile, passed two bills to improve state oversight over any new proposal from TransCanada or other pipeline projects.

Prior to those measures being passed, Haar says, Nebraska had lacked the kind of pipeline-siting laws that some states already had on the books.

In Montana, for example, the state’s Major Oil Pipeline Siting Act requires that major projects apply for certification from the Department of Environmental Protection before proceeding with a new route. In neighboring South Dakota, similar legislation is pending and New Mexico has a pipeline-locating law that requires permits before construction.

Alberta oil sands development, mining and exploration continues, as does the controversy over plans to build a pipeline that would allow much more of this oil to be shipped to and used in the U.S. The pipeline expansion would go through the Midwest.

(photos: David Webb/Dreamstime.com)
Health & Human Services

With new laws and technologies, states strengthening review of rate increases by insurers

Earlier this year, the federal government issued its first request for a health insurer to justify a premium increase.

Under the 2010 Affordable Care Act, insurance companies must explain premium hikes of 10 percent or more. The goal of this provision is to make sure insurance companies are basing their rates on sound data and that they are being fair to the consumer.

But how proposed increases are handled varies widely from state to state. The insurance company that was flagged in November, for example, is based in Pennsylvania — one of a handful of states in which the federal government is reviewing health insurance rates. In these states, the U.S. Department of Health and Human Services has determined that state officials are not able to properly monitor rate hikes.

In these states, the federal government cannot force insurance companies to lower a proposed increase, it can only require them to explain reasons for the hike and post them online.

But in 42 U.S. states, including all 11 in the Midwest, “effective rate review” programs exist to monitor insurance rates. In 26 of these states, regulators have the authority to reject the increases proposed by health insurance companies. Nine Midwestern states (all but Illinois and Wisconsin) have this ability — known as prior-approval authority — in at least some insurance markets.

South Dakota is the most recent Midwestern state to pass prior-approval legislation. SB 43, signed into law in March, gives state regulators the ability to approve or deny rate increases in the individual health insurance market. Companies in the small-group market are subject to “file and use” rules: They must publish their rates in advance of implementation, but the state cannot block changes in rates.

Every Midwestern state except Iowa has been awarded the $250 million in federal grants (part of the Affordable Care Act) designed to set up or improve rate-review programs. As a result of the first cycle of funding, awarded in 2010, nine U.S. states passed legislation to enhance rate review. During the most recent round of funding, granted in September, seven states are introducing legislation to strengthen their rate-review programs, according to HHS.

States are also using federal funds to hire more staff, upgrade the technology used to collect and analyze data, and improve consumer access to information. Indiana, for example, launched a “Rate Watch” website for residents to search insurance companies’ rate filings.

The federal government will award more grants to states in 2012.

Economic Development

With new federal grants, states target increase in export activity among small businesses

The Midwest’s economy has long been reliant on the ability of agricultural producers, manufacturers and others to export their goods and services to foreign markets.

In 2008, export activity accounted for close to or more than 10 percent of total state gross domestic product in most of the 11 Midwestern states, according to the Business Roundtable. (Its study found a range of between 4.5 percent of total GDP in South Dakota and a high of 11.8 percent in Michigan.)

But is the Midwest — and the nation as a whole — meeting its export potential? Some data would suggest no.

First, many U.S. trade competitors and partners have much higher export figures relative to their total GDP. According to a 2010 Brookings Institution report, for example, exports accounted for 35.8 percent of GDP in China and 35.1 percent in Canada. Second, only a small portion of American firms (less than 1 percent) currently sell their goods or services to foreign markets.

Many of the factors influencing export activity are beyond states’ control, from the monetary and tax policies of national governments, to international trade agreements, to demographic changes and economic conditions in overseas markets.

But states do have a role to play.

In fact, through their international development offices and services, states have proven to be important partners and resources for many small businesses wanting to become exporters. Now, these state-level assistance programs are being given the chance to expand.

Every Midwestern state except North Dakota has applied for and secured a federal grant under the State Trade and Export Promotion program, a pilot initiative included in the Small Business Act of 2010. The Council of State Governments and the State International Development Organizations (an affiliate of CSG) were instrumental in getting the legislation through the U.S. Congress.

First-year grant awards under the program will increase total state spending on export promotion by more than 30 percent, with some states doubling their export budgets.

In the Midwest, states plan to sponsor new trade shows and missions, provide more training programs and technical assistance (marketing services, market analysis and foreign language translation, for example), and expand efforts to match in-state sellers with overseas buyers.

Kansas, for example, is targeting help for its agricultural sector, with plans to have new trade shows and missions that link producers with key foreign markets such as Germany, Russia and China. Wisconsin will focus on helping small and medium-sized firms expand sales activities in India.

Brief written by Tim Anderson, who can be reached at tanderson@csog.org. Ohio Rep. Ted Celeste and South Dakota Sen. Mike Vehle serve as co-chairs of the Midwestern Legislative Conference Economic Development Committee.
Agriculture & Natural Resources

Rising problem of unwanted horses could lead to return of once-banned processing facilities

The door is open for horse processing to return to the Midwest.

In 2007, the region’s lone horse processing plant — in the Illinois town of DeKalb — was closed as a result of Illinois HB 1711, which made it unlawful to slaughter a horse for human consumption. But some recent state and federal actions now point to the possibility of new processing facilities opening in the region.

At the federal level, a de facto ban on horse slaughter had been in place for several years. A rider in the annual U.S. Department of Agriculture appropriations bill prohibited the agency from inspecting horse processing facilities, and such inspections are required for a facility to export the product for human consumption.

This year, however, for the first time since 2005, no such rider was included in the bill.

The exclusion is a result of a groundswell of efforts by horse owners, horse councils and American Indian tribes as well as multiple state legislative initiatives to reintiate horse processing in the U.S. In a recent national survey by the Unwanted Horse Coalition, more than 90 percent of respondents indicated that the number of neglected and abused horses is increasing, and 87 percent — compared with only 22 percent three years ago — said the issue of unwanted horses is a “big problem.”

According to the U.S. Government Accountability Office, state investigations of horse neglect are up 60 percent since domestic horse slaughter ended in 2007. Almost all states have reported significant increases in the number of horses abandoned on state and private lands, a problem exacerbated by rising costs for hay and feed.

The idea of slaughtering horses, though, does not sit well in a country where the animals are treated as companion animals or pets and not thought of as livestock. Leading the opposition to horse slaughter has been the Humane Society of the United States.

“Horses are not raised for meat, as cattle are, but rather opportunistically gathered with the intention of slaughter and processing,” says Wayne Pacelle, president of the Humane Society.

But South Dakota Sen. Billie Sutton disputes this notion. A self-professed horse lover, he has been active in his state’s efforts to reinstate domestic processing options.

South Dakota is among the dozen or so states to have passed resolutions urging the U.S. Congress to reinstate federal inspections of horse processing facilities and to oppose restrictions on horse transport.

(Midwestern Legislative Conference has also adopted like-minded resolutions.)

“I believe that we have people in South Dakota that will build or convert a plant to process horses,” says Sutton, who, like many horse owners, has been confronted with the problem of what to do with a horse that is no longer serviceable.

The cost of euthanizing and disposing of an unwanted horse can run upward of $800. An American Horse Council study found that the maximum capacity for all horse rescue operations in the United States is about 18,060 horses per year. The annual cost to maintain one horse averages $2,300.

In Nebraska this year, a bill (LB 305) to create a state meat inspection program was signed into law. The bill did not mention horses, but a companion measure that failed to make it out of committee would have required every horse rescue operation to provide care for every animal brought to it. This fueled speculation that LB 305 was a step toward processing horses in Nebraska — by establishing a state meat inspection agency to do what federal inspectors were forbidden to do. The bill’s sponsor, Sen. Tyson Larson, has said that it is more humane to allow owners to send their horses to a processing plant than to allow them to starve or be abandoned.

Now that the U.S. Congress has removed the ban on USDA inspectors in horse processing facilities, it is up to the federal agency to determine how it will add this service.

Brief written by Carolyn Orr, staff liaison to the Midwestern Legislative Conference Agriculture and Natural Resources Committee. She can be reached at corr@msu.edu. The MLC committee’s co-chairs are North Dakota Sen. Tim Flakoll and Kansas Sen. Carolyn McGinn.
Michigan ends health benefit for legislators now only available in 2 Midwest states: Ohio and Illinois

Rep. Joel Johnson says he entered elective office this year looking to save taxpayers money whenever and wherever he could.

Within weeks, he found one of his first targets: a health care benefit for him and his legislative colleagues. The state was picking up 90 percent of the health care premium of any former legislator who was at least 55 years old and who had six years of legislative service.

“That is not something you see in the private sector,” Johnson says, “or any sector really.”

The cost to the state was roughly $5.3 million a year, a drop in the bucket considering Michigan spends more than $50 billion a year.

“Five million dollars is still real money,” Johnson says. “And my feeling is that when we talk about public service, service does not mean serving yourself. At a time when people are having to get by with less things, we should do the same.”

His colleagues apparently agreed. HB 4808 — a measure similar to bills introduced in previous sessions that failed to pass — received overwhelming bipartisan support in the House and Senate and was signed into law in October.

Some current legislators will still be eligible for retiree benefits if they have served at least six years before Jan. 1, 2013. (Because of term limits, many current legislators, including Johnson, have not served long enough to meet that requirement.)

Eventually the benefit will be gone completely.

In comments submitted to a Senate committee, leaders of the Michigan State Employee Retirees Association warned the change may save $5 million a year, but could also cost the state in another way: limiting the people willing and/or able to run for office in a full-time Legislature like Michigan where lawmakers meet year-round.

“Eliminating the retiree health care benefit for future legislators will diminish, rather than enhance, the motivation of highly qualified people to run for the House and Senate,” they said in the letter.

The association had instead proposed raising the age of eligibility (from 55 to 60) and reducing, but not doing away with, the premium assistance provided to retired legislators.

Regional overview of health benefits for retired legislators, employees

Prior to the change in law, Michigan had one of the most generous health insurance programs for retired state legislators in the Midwest.

A 2007 CSG Midwest survey found that most states in the region provide either no post-retirement health benefits for legislators or no premium assistance. Michigan was one of three exceptions to that rule, with the other two being Illinois and Ohio.

In Illinois, retired members of the General Assembly who have been in the state health insurance program for four years have their entire health care premium paid for by the state.

In Ohio, former legislators with at least 10 years of service are eligible for insurance and premium assistance via the Ohio Public Employees Retirement System. They receive a monthly allowance to pay for health care coverage. Depending on how long the individual has worked in state government and when he or she retired, the allowance covers anywhere from 25 percent to 100 percent of health insurance costs.

Michigan, Illinois and Ohio are also the three states that have traditionally provided the most generous health coverage for retired public employees. In the other eight states, retired public employees must pay most or all of their insurance premiums upon retirement.

Retired workers in these states mostly just receive an “implicit subsidy”: the ability to purchase insurance through a group plan that includes younger, healthier individuals who drive down the cost of health coverage for everyone in the plan. (In most states, retired legislators are eligible to participate in these group health plans but must pay the full premium. Michigan lawmakers will not have this option under the new law.)

Some Midwestern states, though, offer other ways to help employees bridge what can be a costly gap in health care coverage between when they retire from government and when they are eligible for Medicare. In Iowa and Wisconsin, for example, retired workers are able to apply their unused sick leave to their health insurance premium. And over the past decade, Indiana and Minnesota have set up tax-free accounts that help employees save for post-retirement health care.

Retiree health care plans in the Midwest:

Some states pay insurance premiums; others leave bill to retired workers

State pays for most or at least some of its retired workers’ health insurance premiums

Retirees are responsible for paying most or all of their health care premiums

Even with uptick in tax revenue, states not at pre-recession levels

State tax collections were up across the Midwest in FY 2011, a year in which all 11 states in the Midwest either met or exceeded original revenue projections, according to the “Fiscal Survey of States” released in November.

In comparison, only three states in the region (Iowa, Michigan and Wisconsin) hit or surpassed their revenue estimates in FY 2010.

There are also signs of an improving revenue picture in FY 2012. Nationally, states enacted budgets with a 2.9 percent increase in general-fund spending — the second year in a row that expenditures rose following an unprecedented two-year drop.

Spending by U.S. states still remains below its pre-recession high; in the Midwest, four states enacted FY 2012 budgets with total expenditures lower than they were in FY 2008: Kansas, Michigan, Minnesota and South Dakota.

The fiscal survey is released twice a year by the National Association of State Budget Officers and the National Governors Association.

Those two organizations warn that despite improvements in tax collections, states are now being squeezed in two different directions. First, the budget assistance provided to states via the federal American Recovery and Reinvestment Act is gone. The loss of that money alone wipes away state increases in tax collections. Second, local governments are experiencing revenue declines due to the loss of housing values — a situation governments are experiencing revenue declines due to the loss of housing values — a situation that will put pressure on state legislators to boost funding for cities, counties and schools.

Meanwhile, the cost of state Medicaid programs continues to rise. The health insurance program now accounts for nearly 1 of every 4 state expenditures, FY 2008 vs. FY 2012.
One of the many services provided by CSG Midwest is its Information Help Line, a research service intended to help lawmakers, legislative staff and state officials from the region. Through the Help Line, CSG Midwest staff responds to members’ inquiries or research needs regarding various public policy issues. The Question of the Month section highlights an inquiry received by this office. To request assistance, please call 630.925.1922 or email us at csgm@csg.org.

**QUESTION: What states in the Midwest have graduated driver’s license laws, and what are the differences and similarities in these laws?**

According to the National Transportation Safety Board, traffic crashes are the leading cause of death for teenagers, and multiple studies have shown that graduated driver’s license (GDL) laws are effective in improving teen driving safety. Under these laws, a state imposes restrictions on young drivers until they gain more experience behind the wheel.

In 1993, the NTSB recommended that states implement a GDL consisting of three stages: 1) a learner’s permit stage, when a teenager can drive only under the supervision of an adult; 2) an intermediate or provisional license that allows unsupervised driving but includes restrictions on when the young person can drive; and 3) a full license.

The NTSB has since added recommendations aimed at reducing distractions for novice drivers: for instance, prohibiting them from transporting other teen passengers or using wireless communication devices.

Today, every Midwestern state has some type of graduated driver’s license law in place.

The minimum age for obtaining a learner’s permit ranges from 14 (in Iowa, Kansas, North Dakota and South Dakota) to 15½ years old (in Ohio and Wisconsin). In several states, the minimum age varies depending on whether the person has completed a driver’s education program.

The NTSB was the first Midwestern state to limit the number of passengers that someone without a full license could carry. In 1998, it restricted a young driver from carrying any passengers other than family members for the first 90 days after obtaining a learner’s permit; in 2009, that period was increased to 180 days.

Now, all Midwestern states except for Iowa, North Dakota and South Dakota impose some type of passenger restriction on unsupervised young drivers. Generally, these state restrictions limit the number of teenage passengers to one. In Illinois, Indiana, Michigan, Minnesota and Ohio, the restriction can be lifted once the driver turns 17. In Nebraska, Kansas and Wisconsin, the restriction can be lifted while the driver is still 16.

Every Midwestern state bans unsupervised driving by young novice drivers during certain evening and overnight hours. The minimum age at which these bans may be lifted, though, varies from state to state: 18 years old in Illinois, Indiana, Iowa, Ohio; 17 years old in Iowa, Michigan and Nebraska; and 16 years old in Kansas, Minnesota, North Dakota and Wisconsin.

More recently, states have adopted laws that ban cell phone use among teen drivers, including Illinois, Indiana, Iowa, Kansas, Minnesota, Nebraska and North Dakota in the Midwest. (Every Midwestern state except Ohio and South Dakota bans text-messaging by drivers of all ages.)

This year, North Dakota became the latest Midwestern state to strengthen its driver’s license law. The new law requires teenagers under age 16 to complete 50 hours of supervised driving before obtaining an initial, or intermediate, driver’s license. In addition, drivers younger than 18 cannot use electronic communications devices. The new North Dakota law also establishes nighttime driving restrictions for individuals with an intermediate license.

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Concerns about pipeline lead to new siting laws in Nebraska and rerouting of project

Quality.
In Minnesota, North Dakota and South Dakota, the states’ public utilities commissions have the authority to approve or deny applications to construct crude oil pipelines. (South Dakota granted a permit for Keystone XL in 2010, contingent on TransCanada meeting 50 different conditions; the pipeline route did not run through Minnesota and North Dakota.)

Nebraska, though, had no such processes in place — until November.
The new laws approved during the special session will establish a siting permit process for the state while also authorizing and funding an environmental impact study of TransCanada’s proposed pipeline.

“From the beginning, I sought a process similar to what neighboring states have to determine the route of oil pipelines,” says Nebraska Sen. Annette Dubas, who helped push for the special session and served as the sponsor of the Major Oil Pipeline Siting Act, LB 1.

Under this new law, the Nebraska Public Service Commission has the authority to evaluate and approve applications to site major oil pipelines in the state. The applicant will have to pay any costs associated with public hearings and state investigations.

LB 1 also sets time lines for the commission to make a decision — seven months upon receipt of the application, though the commission could extend that time period by another five months for “just cause” — and requires a company to have an approved application before it is given eminent domain rights.

This new state law, though, will not apply to any new rerouting plan for TransCanada’s Keystone XL project. The Legislature instead crafted a second bill to deal with that project.

Under LB 4, the state Department of Environmental Quality will conduct a $2 million environmental impact study (paid for by the state) and prepare recommendations to the governor, who will then notify the federal government whether the state approves or disapproves of the new route.

Long route for pipeline approval

The special session in Nebraska put the state at the center of an international controversy over the pipeline and the use of oil from the province of Alberta’s oil sands.

Haar says his constituents have not necessarily been against tapping into the oil sands or even building a new pipeline through Nebraska. (An existing Keystone pipeline, in fact, already runs through the state.) What they didn’t like was the proposed route.

But outside of Nebraska, opponents of the project have been asking another question: Should a pipeline transporting oil from Albertan’s oil sands to this country be built at all?

That question will be debated for at least another year even if a new route addresses Nebraska’s specific concerns about potential contamination of the Ogallala Aquifer.

Opponents say the pipeline will take the U.S. on the wrong energy path: a greater use of fossil fuels (the oil sands, in particular, have been criticized because of the amount of greenhouse gases emitted during the recovery process) and an abandonment of efforts to reduce the country’s carbon footprint.

TransCanada officials say they have been surprised at the level of opposition to the project.

“Four years ago, we thought it would be embraced with great enthusiasm,” Scott Farris, director of government relations for TransCanada, said during a policy session in October at The Council of State Governments’ National Conference & North American Summit.

The first two phases of the pipeline project had already been approved without resistance, he said, and the proposed Keystone XL expansion would bring additional jobs and reduce U.S. dependence on oil from more-hostile parts of the world.

The first part of the pipeline project received a permit in less than two years. (That permit was approved by President Bush in 2008.) In contrast, TransCanada submitted its application for Keystone XL in September 2008 and will now have to wait until at least 2013 for a final decision on the presidential permit.

The Obama administration cited recent developments in Nebraska as the reason for the delay, but the decision was also expected to be politically difficult, in part because the decision split union and environmental groups.

The National Wildlife Federation, for example, says the proposed expansion is a “game-changer” that would “lock the U.S. into a dependence on this dirty fuel and drive a massive expansion of the tar sands operations in Alberta.”

Key unions, meanwhile, have hailed the project’s “game-changing economic benefits”: more jobs and state and local tax revenue. TransCanada has said the expansion would create 20,000 U.S. jobs in construction and manufacturing, as well as additional jobs for communities along the pipeline route.

Pipeline through 6 Midwest states

The first presidential permit allowed the construction of an oil pipeline from Alberta to refineries in the Illinois towns of Wood River and Patoka.

That pipeline, which runs through six Midwestern states — North Dakota, South Dakota, Nebraska, Missouri and Illinois — became operational in 2010. A second phase of the project was up and running in 2011; it extends the pipeline to storage and distribution facilities in Oklahoma.

The goal of an additional pipeline expansion — the Keystone XL project — is to create a new route carrying oil from Alberta’s oil sands to Port Arthur, Texas. It would dramatically increase the amount of oil that could be shipped to and used in the U.S.

The new pipeline would also transport oil produced in Montana, North Dakota and South Dakota; according to TransCanada spokesman Shawn Howard, about 25 percent of the oil carried in the pipeline would come from those states.

In all, the pipeline could transport up to 830,000 barrels of oil a day.

Regardless of whether Keystone XL is built, Canadians will not sit on such a valuable energy resource. Some Canadian officials, including federal finance minister Jim Flaherty, have said that Canada could also look toward other pipeline options and export markets for the oil sands.

Flaherty told Bloomberg News that one possibility would be to build a pipeline to British Columbia for export to Asia.

As pipeline proponents have noted, too, Canada is a friend, neighbor and stable democracy — qualities that aren’t necessarily true of some other countries from which the U.S. gets its oil.

When a nation [like the United States] imports three times more energy than it produces, it makes sense to go next door to borrow a cup of sugar or borrow a million barrels of oil a day,” Murray Smith, a former member of the Alberta legislature who now works in the private energy sector, told legislators at the CSG summit.

Canada, in fact, already is the leading supplier of U.S. oil imports (21 percent of the total), with the oil sands accounting for 170 billion barrels of Canada’s 176 billion barrels of proven reserves. Another 315 billion barrels could potentially be captured with advances in technology and the recovery process.

Whether the U.S. decides to use more of that oil remains to be seen. But as the recent special session in Nebraska shows, any pipeline project will likely need the backing of all states along the proposed route.
As differences surface among governors, bill passes in U.S. House to take away permitting authority from Great Lakes states

by Tim Anderson (tanderson@csg.org)

The political, environmental and economic battle over the future of rules governing ballast water discharges took some new twists and turns during the latter half of 2011.

In this region, a dispute has surfaced among some governors over how stringent state-level permitting programs can and should be.

Meanwhile, in the nation’s capital, moves were made to take such decisions out of the hands of governors and legislatures. A proposal passed by the U.S. House in November would strip states of the authority to establish ballast water standards more stringent than those set at the federal level. It would also set a new national treatment standard in line with that of the International Maritime Organization (IMO).

The ballast water provisions in HR 2838, the Coast Guard & Maritime Transportation Authorization Act, have been criticized by several key Great Lakes conservation groups, including the Alliance for the Great Lakes.

“To my mind, it makes very little sense for Congress to be stepping in at a time when we’re actually seeing the most progress among federal agencies in the last decade,” says Joel Brammeier, president and CEO of the Alliance, noting that tougher new regulatory programs are being established by the U.S. Coast Guard and Environmental Protection Agency.

“Congress is proposing something less protective than what we expect the agencies to put into place and less protective than what some of the Great Lakes states are doing.”

An amendment to HR 2838 (proposed by U.S. Democratic Rep. Tim Bishop of New York) would have preserved states’ rights to impose more-stringent ballast water standards.

**Ballast water, invasive species and the Great Lakes**

There are an estimated 180 invasive species in the Great Lakes, an ecological and economic problem that costs an estimated $200 million a year.

Over the last half-century, the leading source of these invasions has been the ballast water of ocean-going ships.

Beginning in 2006, all overseas vessels entering the Great Lakes were required to conduct saltwater flushing and ballast water exchanges. Since then, there have been no reports of invasive species entering the Great Lakes via ocean-going vessels. However, there are limits to the efficacy of exchanges and flushing. For example, some species may be able to tolerate high salinity levels, and there are other variables such as weather conditions and the knowledge of the crew on board.

As a result, there is an ongoing push for tougher standards as well as for advances in treatment technologies, Pending U.S. Coast Guard and U.S. Environmental Protection rules, as well as federal legislation, would set a numeric ballast water standard based on one already established by the International Maritime Organization (IMO).

Great Lakes advocacy groups say this standard is not protective enough and are supporting New York’s plan to implement tougher rules. The Great Lakes shipping industry has said the treatment technologies needed to meet standards tougher than the IMO’s are not available.

**Differences among Great Lakes states**

In September, the governors of Indiana, Ohio and Wisconsin sent a letter to New York Democratic Gov. Andrew Cuomo asking him to ease ballast water rules set to take effect in his state in August 2013.

If not changed, the governors wrote, New York’s regulations would “forbid the use of the St. Lawrence Seaway and imperil thousands of maritime-related jobs in the Great Lakes states and Canada.”

In response to the governors’ letter, Wisconsin Democratic Rep. Cory Mason circulated a letter among his legislative colleagues in support of New York’s efforts. The letter, sent in September to Gov. Cuomo, urged New York to “hold fast on its ballast water standards to prevent dangerous invasives from entering the Great Lakes basin.” It was signed by 22 Wisconsin state representatives and senators. In Michigan, a resolution was introduced in November (SR 98) urging the state of New York to “reject appeals to weaken its ballast water standards.”

Three Great Lakes states — Michigan, Minnesota and Wisconsin — already have ballast water permitting programs up and running. But New York’s rules would be the region’s most stringent, with discharge standards exceeding those of the International Maritime Organization — 100 times more stringent than the IMO standard for existing vessels and 1,000 times more stringent for ships built after 2013.

In developing its own permitting program, Wisconsin had considered implementing tougher-than-IMO requirements but decided against it after a state feasibility study determined that treatment technologies did not exist to meet the 100-times standard. Wisconsin instead settled on requiring ships to meet the IMO standard.

In U.S. House debate over the Bishop amendment, New York’s proposed rules were cited by U.S. Rep. Steve LaTourette, a Republican from Ohio, as a reason not to give states regulatory leeway.

In his effort to stop the New York regulations, LaTourette also proposed an amendment to a Department of Interior spending bill prohibiting any state from receiving Environmental Protection Agency funding if it adopts ballast water requirements more stringent than federal regulations.

The erosion of state authority is only one reason groups such as the Alliance for the Great Lakes, the National Wildlife Federation and Great Lakes United consider HR 2838. They also say the measure limits the ability of federal regulators to address the ecological and economic threats posed by invasive species.

The bill, for example, explicitly exempts ballast water discharges from the federal Clean Water Act. This exemption would strip the U.S. EPA of its authority to regulate ballast water discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The EPA already has a Vessel General Permit in place, and in November, it proposed a new, more stringent regulatory program. Under the new permit, standards would be tied to the IMO’s. The Vessel General Permit would be eliminated if HR 2838 becomes law.

The U.S. Coast Guard is also expected to soon finalize its new rule on ballast water discharges. Under its proposed rule, the initial standard would be the same as the IMO’s but could be raised upon completion of a “practicability review.”

HR 2838 calls for use of the IMO standard as well, but according to Brammeier, language in the legislation would make it more difficult to raise the standard as treatment technologies advance and become available for use.
Since he joined the Legislature in 2003, Kansas Rep. Paul Davis has always been in the minority party. But the Lawrence native always had fellow Democrats leading the executive branch — until 2010, when state elections brought in a Republican governor as well as a wave of GOP statewide officers and legislators. For Davis, those results have meant he is no longer just the leader of his caucus, but the leading voice of Democratic policies in Kansas along with his counterpart in the Senate (Minority Leader Anthony Hensley).

Davis, though, isn’t discouraged by his party’s status. Instead, he has worked to get bipartisan support for issues he considers legislative priorities, from bolstering the state’s education system to diversifying its economy.

“We understand sometimes that our role is to disagree and to hold the majority party accountable,” he says. “You’ve got to pick your battles.”

One battle in 2012 will be over the state’s tax structure. This coming session, Republican Gov. Sam Brownback is expected to propose reducing, or even eliminating, the state income tax. Davis doesn’t believe that’s the right direction for the state because he fears property taxes would rise. He does support the idea of easing the tax burden for some Kansans, but would rather see the state eliminate its sales tax on groceries.

“That would certainly help people on the lower end of the income scale; they are really hurting during this recession and probably de-”

According to the Federation of Tax Administrators, Kansas is one of two Midwestern states that charge a full sales tax on groceries (South Dakota is the other; Illinois charges a lower rate for food).

Strengthening communities

Davis points out that many states without income taxes have economic and revenue bases much different from Kansas.

“What we hear from the advocates of [eliminating the income tax] is that we need to be more like Texas, Florida or Wyoming,” he says. “We don’t have a big pool of oil sitting under us and we don’t have huge deposits of coal. … Those states have other sources of revenue that we don’t have. We have to deal with reality.”

The reality for Kansas, he says, is that the state must retool an economy that has been largely dependent on manufacturing. He suggests investing in areas such as the bioscience and energy sectors.

“Having a competitive tax structure is very important,” he says. “But there are other significant factors — such as making sure that you have good schools, a well-trained workforce and good infrastructure — that are equally important factors in terms of creating jobs and creating communities where people want to move to or locate their business.”

That’s why since becoming a legislator, Davis has become a supporter of projects that help make communities more attractive for residents and businesses. He is particularly proud of his work on a 2007 bill to authorize casino gaming in Kansas. The legislation allows up to four casinos to be built, with the state receiving a cut of the revenues.

“We decided we were going to [authorize] a handful of casinos and they needed to be destined facilities,” he says. “We have a couple of great facilities that have led to all kinds of other development activities beyond them. … We didn’t put up a bunch of buildings with slot parlors like a lot of other states have done, and I am happy with the way that we did this.”

Earlier this month, CSG Midwest talked with Davis about leadership, his legislative priorities and his career in public service. Here are some excerpts from the interview.

Q: Your interest in politics started with internships at the Kansas Legislature and with a member of the U.S. Congress. What made you decide to continue your career at the state level?

A: A lot of the critical decisions are being made at the state level right now. Whereas the federal government is having a difficult time addressing problems that need to be addressed, state government is still a place where things can get done and we can be responsive to the needs of the people. That is why state government is the best place to be right now for people who are trying to solve problems.

Q: What have you learned from riding the “roller coaster”?

A: When you make budgetary decisions, they don’t just last a year until the next budget is passed. They have a very long-lasting impact, and sometimes there is a very short-sighted approach that legislatures take in the budgeting process because they say, ‘Well, we’re just going to be doing this again next year.’ But, in fact, if they decide to cut a program, that’s going to have implications for maybe a decade to come. And then if you decide you’re going to invest in a new program, that’s money that you’ve oftentimes committed to in perpetuity. … You have to look beyond the numbers in the budget. … You have to understand that there are faces behind those numbers that are going to be affected by the decisions that we make. Budgets are really a reflection of values and priorities.

Q: What have you learned from riding the “roller coaster”?

A: You have said that education funding is the issue that first inspired you to run for office. Why?

A: I felt like we were on the verge of having the quality of our public schools go downhill because the Legislature was not providing adequate funding for schools. In 2005 we made a very large investment in our schools; unfortunately it was the result of a court case … We have seen some of that roll back because of budget cuts, and I am again concerned about the quality of public education.

Q: How would you like to see your state improve quality in education?

A: The core of education is having good teachers. We’ve got to make the teaching profession more attractive, and that is going to happen with offering more competitive pay structures at the start. But I think there are also other things that we can do, such as improving teacher-mentoring opportunities and continuing educational opportunities for teachers to keep them in the profession. We are now losing half of our new teachers within the first five years, and we have to change those numbers.

We also have to get curriculum examples that are working in other states and school districts. I am very intrigued with the magnet-school concept of offering kids who have an interest in a particular subject an opportunity to have an enhanced educational opportunity because of that. Science, in particular, is a place where we’ve got to place more resources. … The United States is falling behind in training our children. A lot of those jobs are the jobs of the 21st-century economy.
Kansas steps up DUI prevention

Scathing report, public outcry spark passage of new measures to keep drunk drivers off the streets

by Kansas Sen. Thomas C. (Tim) Owens (Tim.Owens@senate.ks.gov)

No matter how the public might perceive the issue of DUI, it can be summed up as a public safety issue.

In approximately five years ago, it became apparent that the DUI program in Kansas was broken and needed to be fixed.

The journey to SB 6, which passed with 100 percent of the vote in both houses of the Kansas Legislature in May of this year, began with a report done by the Substance Abuse Policy Board (SAPB) — the group formed after it became apparent that too many people were driving on the streets and highways of Kansas with multiple DUIs on their records but had had little or no corrective or rehabilitative action taken to cause them to alter their behaviors.

There were too many deaths and injuries caused by drunk drivers, and when the public became aware of incidents such as one in Wichita where a mother and her daughter were killed by a driver who had in excess of a half-dozen DUI convictions and was still driving, pressure mounted on the Legislature to act.

In response, I was appointed (in my role as vice chair of the House Corrections and Juvenile Justice Committee) to chair a subcommittee to begin exploring measures to address the SAPB’s concerns.

Hearings were conducted and valuable information was received from a variety of disciplines that dealt in some manner with DUI offenders. From those committee hearings came a decision three years ago to form the DUI Commission, which was to conduct an extensive investigation into the problems as well as potential solutions that could improve public safety by reducing the numbers of DUI offenders on Kansas roadways.

The DUI Commission was made up of 23 members from a wide variety of disciplines from all three branches of government. This blue-ribbon panel was given the task of drafting recommendations for the Legislature; it was asked to work over a two-year period and develop recommendations for the Legislature in the 2011 session. That task was accomplished with recommendations that became SB 7 in 2011.

SB 7 had one glaring deficiency, however, and was dead on arrival when it hit the Senate floor.

While the bill had extensive hearings in the Senate Judiciary Committee and passed out of that committee with a strong majority vote, it had a fiscal note exceeding $10 million to implement all of the recommendations. This proved to be too heavy a cost for a legislature in a state that was strapped financially. Therefore, modifications in the recommendations had to be made, and those resulted in SB 6, which reflected changes made in both houses and was passed on right up to the closing days of session.

The major accomplishments in SB 6 were those that addressed some of the core needs for rehabilitating the weak DUI system. Here is it look at some of the primary achievements, which went into effect on July 1.

• A central repository will be implemented and will be the central resource that allows prosecutors and courts to have a clearer idea of how many DUIs an individual offender may have so that appropriate prosecution and sentencing may ensue.

Creation of the repository was made possible thanks in no small part to the secretary of transportation, who helped us address the financial issues surrounding its implementation by deferring other information technology projects and entering into an agreement with the Kansas Bureau of Investigation. It is our hope that through this program and the recommendations of SB 6, there will be a uniform application of the law and sentencing across the state — in every jurisdiction and in every court, whether district or municipal. There must be uniformity in application of the law, and the central repository creates the opportunity for that to occur.

• The new law addresses the issue of safety by requiring all DUI offenders to have an ignition interlock device installed on their own vehicle, and

When a mother and her daughter were killed by a driver who had more than a half-dozen DUI convictions but was still behind the wheel, pressure mounted on the Legislature to take action.

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*State requires ignition interlocks for vehicles of all DUI offenders.
• State conducts sobriety checkpoints.
• State uses Administrative License Revocation, which allows immediate confiscation of offender’s driver’s license by arresting officer.
• State enhances penalties for DUI with child or children in vehicle.
• State holds no-refusal events during which suspected offender cannot refuse blood-alcohol testing.

Source: MADD, “Fifth Anniversary Report to the Nation”

Every state wrestles with the public safety issue of DUI just as Kansas has. Perhaps it is time for the Uniform Laws Commission (of which I am a commissioner) and other national organizations to take a look at this issue and see if there is a potential for uniformity, not just within a state, but also among states in order to address our collective primary concern regarding DUI: public safety.

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 First Person article are welcome, as are pieces written on other topics. For more information, contact Tim Anderson at 630.925.1922 or tanderson@csg.org.
n November, some of the region’s newest legislators joined policy experts in Cleveland to discuss key education issues that will shape legislative sessions in 2012 and beyond. During the summit, first-term legislators who have been appointed to legislative education, higher-education and appropriations committees received training and information about critical education issues facing their states: Common Core State Standards, state assessments, teacher effectiveness, state accountability systems, and college and career readiness.

More than 20 legislators from the Midwest attended the two-day academy. In addition to hearing presentations from experts in a variety of key areas of education policy, attendees visited a Cleveland high school that is implementing innovative strategies for teaching science and math.

The recent conference was part of CSG’s Policy Academy Series, which seeks to

- promote informed policymaking on key issues,
- foster critical analysis of public policy,
- encourage information sharing and networking among legislators,
- help participants effect change and influence policy in their states and at the federal level, and
- prepare legislators to assume leadership positions in key policy areas.

These CSG academies typically include plenary and interactive sessions led by top policy experts. When possible, participants are offered opportunities to interact with federal policymakers and/or to take part in hands-on learning experiences.

D.C. meeting on transportation policy

This fall, The Council of State Governments also hosted a Transportation Policy Academy in Washington, D.C.

Academies on state transportation and education policy have already been held, and in 2012, legislators will take part in a series of health care-related workshops.

Policymakers from 11 states — including four legislators from the Midwest (see photo) — took part in the October event.

The conference provided attendees with information about the status of reauthorization of transportation legislation in the U.S. Congress. Attendees also learned how federal transportation programs work, what kinds of best practices states are pursuing in transportation finance, and how the state and federal governments can work together to improve America’s infrastructure.

Medicaid. They will focus especially on how states can prepare for 2014, when millions of people will be added to Medicaid rolls and new rules will take effect under the Affordable Care Act.

CSG is working with state legislative leaders to identify a select group of lawmakers for participation in the academy. For more information, or to nominate a participant for either of the health-related policy academies, please contact Deb Miller at 859.244.8241 or dmiller@csg.org.

In addition, a panel of experts discussed how to set and reach goals for reducing the number of people who re-offend once leaving prison. One of the panelists was Kansas Rep. Pat Colloton, who is chair of the Justice Center’s board of directors and head of the House Committee on Corrections and Juvenile Justice in her state.

Several key members of the U.S. Congress gave remarks to the group. Representatives of relevant federal agencies, such as the U.S. Department of Justice, also attended and shared their insights on how to improve prisoner reentry and reduce recidivism.

The Justice Center evolved from The Council of State Governments’ Eastern Regional Conference justice program to a national center in 2006. It serves policymakers at the local, state and federal levels of government.

Among its projects is the National Reentry Resource Center, which provides education, training and technical assistance to states and other organizations on prisoner reentry.

The CSG Justice Center has also been active in helping states reform their corrections and sentencing policies. Over the past five years, the Justice Reinvestment project has provided assistance to state policymakers in Indiana, Kansas, Michigan, Ohio and Wisconsin.

The Justice Center receives support from the U.S. Bureau of Justice Assistance and private grant makers such as The Pew Center on the States. For more information, please visit http://justicecenter.csg.org.

Legislators who participated in October’s CSG Transportation Policy Academy pose for a picture outside the U.S. Department of Transportation in Washington, D.C. Representing the Midwest were Ohio Sen. Frank LaRose (left), Illinois Rep. Dan Beiser (second from left), Indiana Rep. Ed Soliday (third from left) and Minnesota Rep. Alice Hausman (fourth from left).

Focus on Medicaid, chronic disease

This spring and summer, CSG will hold academies focusing on health care policy. In May — in conjunction with CSG’s National Leadership Conference — CSG will convene the first in a series of policy academy sessions on diabetes and chronic disease prevention and treatment.

Thirty state lawmakers from each of CSG’s four regions will be selected to participate. Attendees will share ideas on how states can address the growing problem of diabetes and how to reduce the impact of chronic disease on state budgets. In addition, CSG will be conducting a 50-state research survey on diabetes-related statistics that will shape a new curriculum guidebook: the “CSG Policy Guide for State Policymakers on Diabetes.”

A policy academy on Medicaid is being planned for June 2012.

Attendees will interact with leading thinkers in the health care field, as well as experts on healthcare trends in national and state-by-state recidivism data. Attendees also explored policies and practices that are essential to reducing recidivism nationwide.
MLC Annual Meeting to feature Brazile, Galen, O’Rourke and other top speakers

Legislators from around the Midwest are encouraged to make plans now to attend the region’s premier event for state policymakers. The Midwestern Legislative Conference Annual Meeting will be held July 15-18 in Cleveland and will offer a variety of policy sessions and networking opportunities for attendees.

Among the distinguished speakers on this year’s agenda are political commentators Donna Brazile and Rich Galen, who will preview the 2012 elections.

Brazile, a Democratic political strategist, author, professor and syndicated columnist, appears regularly on CNN as one of the network’s political contributors. She is currently vice chair of voter registration and participation at the Democratic National Committee and managing director of Brazile & Associates, a consulting, grassroots advocacy and training firm. Her decades of work as a political strategist included serving as Al Gore’s campaign manager in 2000.

Galen served as press secretary to former Vice President Dan Quayle and former Speaker of the House Newt Gingrich when they were in Congress. He also spent six months reporting from Iraq, at the request of the White House, in 2003 and 2004. Galen currently writes an online political column, Mailings, and contributes to publications such as Town Hall. He frequently appears on television programs to provide his expertise on politics and elections.

Political satirist and author P.J. O’Rourke will be a featured luncheon speaker at this year’s MLC Annual Meeting. An Ohio native, O’Rourke is the author of numerous best-selling books and has been called the “funniest writer in America” by Time magazine and The Wall Street Journal.

The MLC Annual Meeting provides attendees with the chance to hear from top speakers on a variety of issues, as well as to share ideas and innovative solutions with one another in a nonpartisan environment. The event includes a mix of plenary sessions, small-group discussions and policy committee meetings.

Evening events at the MLC meeting give policymakers the opportunity to network with colleagues while also serving as a showcase for the host state. This year, the evening program will include an event at the Rock and Roll Hall of Fame. Daytime activities are also being planned for attendee guests of all ages.

Meeting registration will begin in January. For more information, contact CSG’s Midwestern Office at 630.925.1922 or csgm@csg.org.

Bright start: CSG Midwest holds legislative institute on child development in Minnesota

A group of legislative leaders and policy experts met in Minnesota this fall to discuss early childhood development research and its implications for public policy. The three-day Minnesota Legislative Leadership Institute on Child Development Research and Policy was sponsored by CSG Midwest and the University of Minnesota.

Attendees learned from nationally recognized researchers about the latest science on brain development in young children, as well as how experiences between birth and age 3 affect developmental, health and behavioral outcomes across life spans. The conference was made possible by a grant from the Minnesota Community Foundation.

The first Minnesota institute was held in 2009, and similar events have also been held in North Dakota and South Dakota.

For more information on these institutes, please contact Laura Kliewer at kliwer@cs.org or 630.925.1922.
Cameras to target speeders on roads near parks, schools

Illinois lawmakers have paved the way for speed cameras to be used in designated safety zones in the city of Chicago.

SB 965, passed by the legislature in November, establishes these zones as being roadways within one-eighth of a mile of a school or park. An individual will be ticketed if he or she is caught by a camera driving more than 5 miles per hour over the speed limit. The fine is $50 a day for driving up to 10 mph over the limit and $100 for higher speeds. The cameras will be used between 6 a.m. and 10 p.m., and signs must be posted at the intersections warning motorists.

According to the Chicago Tribune, a pedestrian study done by the city of Chicago served as the impetus for the legislation. Between 2005 and 2009, the study found, there were 861 crashes involving children near schools and parks. The bill, SB 965, passed by the legislature in November, sets aside $1 million for a potential lawsuit against the U.S. Environmental Protection Agency if it attempts to regulate fracking.

Questions about future of fracking reaching Midwest’s capitol

With the practice of hydraulic fracturing, or “fracking,” on the rise, state lawmakers are increasingly being asked to weigh in on a process that boosts oil and gas production but also raises environmental concerns.

In North Dakota, the General Assembly has voiced its support for this method of extracting more oil and natural gas from the ground. Earlier this year, lawmakers passed legislation (HB 1216) designating fracking as “an acceptable recovery process” and adopted a resolution (HB 3008) urging the U.S. Congress to delegate regulatory responsibility to the states. Then, during a special legislative session in November, legislators set aside $1 million for a potential lawsuit against the U.S. Environmental Protection Agency if it attempts to regulate fracking.

According to The Bismarck Tribune, fracking is now widely used in parts of North Dakota. It involves the pressurized injection of water and chemical additives into a geologic formation. Environmental concerns center on its potential impact on drinking water and groundwater; the EPA is now conducting a major research study on the issue. Meanwhile, in states such as Michigan (HB 5150) and Ohio (SB 213), bills have been introduced over the past few months to prohibit fracking until research on the environmental risks can be completed.

Waivers abandon parts of No Child Left Behind in favor of new approach

Minnesota and Indiana were among the first 11 U.S. states this fall to formally seek waivers from key provisions of the No Child Left Behind Act.

Their applications were filed seven weeks after the U.S. Department of Education announced it would provide more flexibility under the federal law. For example, states that receive waivers will no longer have to set targets requiring all students to be proficient by 2014 and will be given more discretion over the use of federal education dollars.

In exchange, states must implement federally approved plans for their K-12 education systems that include:

- college- and career-readiness standards and tests;
- evaluation systems for teachers and principals that measure effectiveness based in part on student progress;
- new accountability systems for low-performing schools and schools with persistent student achievement gaps.

According to Education Week, every Midwestern state except Nebraska has indicated that it will apply for an NCLB waiver by the spring deadline.

Indiana legislature will reduce paper trail by relying more on iPads

Like other state legislatures, the Indiana General Assembly uses lots and lots of paper—an estimated 17 tons every session. For a single piece of legislation last year (the state’s budget bill), a total of 133,080 pages were printed out. That is the equivalent of 16 trees.

In 2012, though, Indiana lawmakers hope to use a little less paper under a pilot project that will have them relying more on iPads. According to the Northwest Indiana Times, two legislative committees will go “paperless” next year. Committee reports and documents will be distributed electronically, via iPads. Meanwhile, the state will examine ways to build out the technologies needed to expand the use of computer tablets as lawmakers familiarize themselves with the devices.

An Indiana Legislative Service Agency study found that 18 states have already launched paperless initiatives. In the Minnesota Legislature and Wisconsin House, one or more legislative activities have been converted to a paperless process. The Kansas and Ohio legislatures have also taken steps to reduce the use of paper. The same study estimated that during Indiana’s 2011 session, $550,000 was spent “moving paper.” This total includes actual paper and equipment costs as well as the time that staff devotes to distributing, filing and retrieving paper documents.