



Issues to Watch

These are the nine topics that will shape debate in

By John Buntin, Caroline Cournoyer, Elizabeth Daigneau, Tod Newcombe and Dylan Scott



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state legislatures in 2012.

THIS YEAR, state legislatures will be preoccupied in two important ways: They'll still be digging their way out of the Great Recession, and they'll still be compensating for federal inaction on a number of issues.

This shouldn't come as a surprise, but the partisan gridlock on Capitol Hill has had serious ramifications for states. As of mid-December, the House had passed 326 bills in 2011, and the Senate, just 368. That's the fewest since 1995. Among the perennial issues Congress pushed down the road: a new transportation bill, immigration and tax reform. This leaves states scrambling yet another year to address these critical issues in the absence of the feds.

This inaction comes on top of news that state spending in 2012 still won't be back up to 2008 levels. While spending from state funds declined in 2009 and 2010, overall spending increased because state finances were buoyed by the federal stimulus. Now, "states are likely to face austere budgets for at least the next several years and will continue to make difficult spending decisions," according to a December analysis of state spending by the National Association of State Budget Officers (NASBO). The report blames a topsy-turvy economy, the likelihood of reduced federal aid, costs from the federal health-care reform law and continuing pressure to pay for pensions and benefits for retirees.

In short, this means it's time for state legislators to get creative in tackling the big issues left on their plates. Otherwise, they may face some fed-up voters at the polls this November.

Fracking: Tapping an Energy Source

Hydraulic fracturing—the process of pumping chemicals and other fluids into wells to extract natural gas and oil—is high on the agenda of several state legislatures. This is particularly the case in the Mid-Atlantic region, which sits atop one of the largest natural gas sources in the world: the Marcellus Shale, a rock formation that lies more than a mile beneath the Earth's surface. Until fracking came along, there was no economical way to extract the gas. Now legislators in affected states are looking at fracking as a way to tap into this rich resource. Not surprisingly, some 100 fracking-related bills—many of which surfaced last year—will be open for consideration when this year's legislative sessions begin.

The debate will be, as it was last year, highly contentious. Much of the anti-fracking argument focuses on health and safety concerns. Some worry that fracking will contaminate drinking water, groundwater and air, and cause serious health problems for people living near drilling sites. At some point in 2012, the U.S. Environmental Protection Agency (EPA) will release the initial findings from its study of fracking's environmental and health effects. In the meantime, the EPA released a draft finding of its study in December that suggested the drilling process may cause groundwater pollution. The draft finding could have a chilling effect on state debates this year.

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Health and safety are only part of the debate. An argument in favor of fracking deals with the pursuit of energy independence. Supporters claim that tapping the Marcellus Shale formation would reduce U.S. dependence on foreign oil. In addition, drilling for natural gas there could be a revenue bonanza for affected states. Ohio's Gov. John Kasich, for one, has referred to the formation as "a gift from heaven."

The issue is likely to be a high-profile one in New York and Pennsylvania. In New York, Gov. Andrew Cuomo has been seeking to lift the state's moratorium on fracking. Depending on findings from the state's Department of Environmental Conservation, the process would be allowed on private lands but banned near municipal water sources and on state lands, such as parks and wildlife preserves.

In Pennsylvania, where the state has embraced the industry more than most, heated arguments continue over how to regulate fracking. Last year, Pennsylvania was one of five states to require companies to disclose the chemicals used in fracking, and Jacquelyn Pless, who tracks state fracking legislation for the National Conference of State Legislatures (NCSL), expects more states to push for increased transparency. Pending and new measures to protect water supplies, regulate wells and impose industry taxes are likely to pop up in several states.

Some legislatures have considered an outright ban on fracking. New Jersey Gov. Chris Christie vetoed such a measure in favor of a one-year moratorium until the EPA completes its study. There are similar bills in New York and Ohio.

Voting: New Rules for the Electorate

This is a big year for voters—not just because it's a presidential election year, but also because many will experience changes

in the voting system when they try to cast their ballots. Dozens of bills on altering the voting system are on the agenda in nearly half the legislatures.

The majority of proposals are similar to laws that were passed in 14 states last year, dealing as they do with how and when people can vote. There are voter ID measures, which dictate what identification people need to vote, and bills to eliminate same-day registration, reduce early voting and increase

regulations for voter registration drives.

These are contentious issues that will set off highly partisan debates in statehouses around the country. Democrats see the proposals as attempts to discourage young, minority, elderly and low-income residents from voting. Republicans claim the measures are necessary to combat voter fraud.

The fate of such laws is uncertain. In states with a history of election discrimination—including Alabama, South Carolina and Texas—the laws must be approved by the federal government

before any changes can take effect. The U.S. Justice Department has already stalled Texas' voter ID law, which would consider a gun permit, but not a college ID, an acceptable form of identification.

Lawmakers in several states may also take advantage of this presidential election year to try to reform the Electoral College by turning it into a popular-vote system. At least eight states, including California, which has the most electoral votes, have already agreed to give all their electoral votes to the presidential candidate that gets the most votes nationally. The participating states account for 132 electoral votes. Legislation to join this wave passed New York's and Rhode Island's senates last year. They await further action in 2012.

Immigration: The Issue of Illegals

Bills to curb illegal immigration and the services available to illegal residents will surface in a number of states this year, building on the momentum of high-profile actions taken recently by other states. Laws to mandate the use of E-Verify, the federal database that checks an employee's legal status, will feel a push in several states this year, thanks to a U.S. Supreme Court decision last May that upheld existing E-Verify laws.

That is not the only immigration legislation likely to surface this year. Kansas Secretary of State Kris Kobach, who has made immigration his signature issue, has said that he will press state lawmakers to consider laws similar to those in Alabama and Arizona that, among other mandates, call on police officers to check the immigration status of anyone they suspect of being in the country illegally. Kobach has been active in pushing other states to consider such laws, particularly in Arizona, where he helped create that state's 2010 anti-illegal immigration law. He claims that Kansas legislators will consider such a proposal this year because "there is just so much demand for it from constituents."

How widespread consideration of these laws will be in 2012 is open to debate. A majority of federal courts have not been hospitable to them, and that "has given pause to a large number of state legislatures," reports Muzaffar Chishti, director of the Migration Policy Institute's office at New York University's School of Law. Now that the Supreme Court has agreed to hear challenges to the Arizona law, more states may decide to wait for a ruling.

Another immigration angle that is expected to get a lot of attention this year is whether state universities should grant in-state tuition to illegal immigrants. New York will likely take the matter up. It is widely expected to grant tuition assistance to undocumented students, just as California, Illinois and Maryland did in 2011. Kansas will also look into the issue again—lawmakers there considered repealing in-state tuition for some undocumented students during the 2011 legislative session.

Transportation: Finding the Funding

The last long-term surface transportation bill, which was passed by Congress in 2005, expired two years ago. Since then, Congress has passed eight extensions. Still, federal inaction on a long-term approach has kept states from tackling major projects



Voters may encounter longer lines at the polls if legislatures reduce early voting.

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**Gas tax increases
are on the table in a
number of states.**

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that cannot be launched without funding certainty. While House Transportation and Infrastructure Committee Chairman John Mica says he's certain Congress will pass a long-term transportation bill in 2012, experts on both sides are concerned that it won't meet state needs.

That's because the six-year highway bill likely to pass Congress limits transportation funding to what is brought in by the federal gas tax—about \$35 billion per year. The American Society of Civil Engineers has estimated that an investment of \$1.7 trillion is needed between now and 2020 to rebuild roads, bridges and water infrastructure. In short, it may be up to the states to get creative and find a way to build and repair transportation infrastructure. Whether they will, however, is the trillion-dollar question.

“I think it will be a mixed bag across the states in 2012—as it usually is—with regard to transportation funding,” says Sean Slone, senior transportation policy analyst at The Council of State Governments. That said, he notes that several states “have laid the groundwork for moving forward on infrastructure initiatives.”

One of those states is Washington, where Gov. Christine Gregoire's transportation task force, Connecting Washington, will present recommendations to the Legislature this year about potential revenue sources for transportation projects. An option on the table is a gas tax increase. Other states discussing a gas tax increase include Maryland, Pennsylvania and Michigan, where Gov. Rick Snyder has put forward a plan to restructure the tax as a percentage of the price of fuel rather than a fee per gallon.

Several states are looking beyond the gas tax for funding. New Jersey Gov. Chris Christie wants the Legislature to approve the bor-

rowing of several billion dollars to fund bridge and road projects. Oklahoma Gov. Mary Fallin is asking the Legislature to set aside an extra \$15 million for road and bridge repairs. And Gov. Andrew Cuomo of New York is seeking to create an infrastructure fund—one that is financed in part by public and private pension funds.

Tolling is also on the agenda in several legislatures. Washington state may try to expand its network of toll roads. In November, voters nixed a ballot measure that would have severely limited the use of tolls there. Arizona, Florida and Missouri will also consider measures to increase tolling.

Taxes: Small Change

State revenues are on the comeback trail. Several states are reporting surpluses for the first time since the Great Recession knocked revenue for a deep and extended loop. The increase in revenue, however, isn't due to major tax hikes. To the contrary, for the first time since 2007, states cut taxes more than they increased them last year, resulting in a \$584 million net reduction in new taxes and fees, according to NASBO.

Much of the tax reduction occurred because of expiring tax provisions, such as temporary two-year sales tax increases in California and North Carolina. Those actions are a harbinger of what to expect this year. Todd Haggerty, an NCSL policy analyst, sees the expiration of temporary tax increases as a trend. Other trends he sees developing are efforts to reform or reduce business taxes, renewed interest in tax incentives and credits to prompt a competitive business climate or create jobs, and a focus on find-

ing ways to cover rising Medicaid costs, such as raising health-care provider taxes. While a few states have signaled they will consider tax increases in 2012 (most notably, California and New York), it's quite possible there will be another net decrease in new taxes.

The question of online sales tax collection is likely to surface in state legislatures. Legislators will, of course, be keeping an eye on any steps the U.S. Congress may take to force online-only retailers like Amazon and Overstock to collect sales taxes from all purchasers. If Congress doesn't act, states may try some end-runs around the "nexus" issue that precludes them from forcing online retailers to collect sales taxes in the same way the retailers located within the state do.



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State legislative fights over Internet sales tax collection will continue in 2012.

ing the Supreme Court will strike down the law; if it doesn't, the federal government will step in. But most other states—including Republican-led states suing to overturn the ACA—have accepted federal funding to start planning for exchanges in the interim. Whether planning will lead to implementation remains unclear.

"If enabling legislation is not enacted in the 2012 legislative session, it's unlikely a state will start procurement for the information technology necessary to run the exchanges," says Drobac.

Under the provisions envisioned by the ACA, open enrollment for the exchanges will begin in the fall of 2013. (The exchanges go

live in January 2014.) Health IT vendors say timelines are already tightly compressed, and smaller states are worried that the federal government and big states such as California and New York will monopolize the most capable consultants.

The decision by the U.S. Department of Health and Human Services in mid-December to allow states to define the so-called "essential benefits package," which determines what benefits must be offered to individuals and businesses through the exchanges, leaves them with another challenging task. States now face the tricky question of deciding how generous benefits paid for by the federal government should be.

With so many deadlines looming—from planning and implementation to authorizing IT procurement and defining benefits—2012 will be the year that the legwork for health reform finally happens—or the year the feds step in.

Health: An Uneasy Exchange

This year could be a watershed moment for health care in America: The U.S. Supreme Court will rule on the constitutionality of the Patient Protection and Affordable Care Act (ACA). But while arguments are being heard, states will be preoccupied with a requirement of the law that looms large and near: the establishment of health insurance exchanges.

Under the terms of the ACA, states have the option to create their own state-run exchanges where individuals and businesses can compare and purchase insurance plans, or step aside and allow the federal government to create exchanges for them. It's a fundamental decision, yet so far only about 21 states have passed legislation addressing the issue. That makes the upcoming legislative session "absolutely key," says Krista Drobac, director of the health division of the National Governors Association.

A handful of states—Alaska, Florida, Kansas and Oklahoma—have said they don't want exchanges of any kind. They're hop-

K-12 Reform: Budget Hits

Tight finances and expected changes in Washington are two driving factors that ensure this will be a critical year for K-12 edu-



More than 25 states will seek waivers from key requirements of the No Child Left Behind law.

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education reform. In many state budgets for fiscal 2012, education funding took a hit. At least 23 states enacted “identifiable, deep cuts in pre-kindergarten and/or K-12 spending,” according to a report by the Center on Budget and Policy Priorities. Despite the cuts, states are still aiming to implement reforms, especially now that the Obama administration has initiated a waiver program from key requirements of No Child Left Behind—provided states commit to accountability and other measures set by the administration. Ten states received a head start on those reforms through Race to the Top funding in 2011—reforms that include overhauling teacher evaluations and instituting Common Core standards. More than 25 states are expected to undertake efforts in 2012.

Persistent budget shortfalls make those efforts more challenging. “States are being asked to do more with less,” says Chris Minnich, senior membership director at the Council of Chief State School Officers. “We’re trying to raise the expectations at the same time we’re cutting budgets. It’s going to be a critical year.”

Job Creation: What Works

As 2011 came to a close, the news on the unemployment front was upbeat: The jobless rate was falling. Despite the recent job gains, however, only 2.5 million of the 8.7 million jobs lost since employers began shedding workers in 2008 have been regained. That’s why 2012 will likely be another big year for job creation in state legislatures.

If last year is an indicator, tax incentives as a tool for job creation will be on the table. In 2011, Alabama, Connecticut, Florida and Wisconsin passed job creation bills that included some kind of tax incentive; the year before, at least nine states started new job creation tax credit programs, according to NCSL.

This year, eyes will be on New York and New Jersey, where job creation plans include, but go beyond, tax incentives. New York Gov. Andrew Cuomo’s multifaceted job creation package proposes to legalize casino gambling, create a new infrastructure fund paid for with public and private pensions, give more money to 10 regional economic development councils, and launch a new job training and placement program for inner-city youth.

In New Jersey, Democrats want to emulate a successful Georgia program—one that President Obama has included in his job creation package. The proposed program allows a worker to continue receiving unemployment benefits while receiving on-the-job training with an eligible employer for six weeks. During that time, the employer pays nothing. Rather, the state provides each trainee up to \$100 per week to help defray training-related costs, including transportation, clothing and child care. New Jersey Gov. Chris Christie vetoed legislation similar to this early in 2011. He has his own plan, which asks state officials to scrutinize regulations that may be keeping businesses from thriving in the state. It also calls for infrastructure investments to create jobs and attract businesses.

Pensions: New Outlooks

It’s a familiar statistic: States face a collective pension gap of about \$1.3 trillion between what they’ve promised public workers and what they have set aside, according to the Pew Center on the States. That trillion-dollar number led to some big pension reform efforts in 2011. Most notably, seven states moved new employees into a hybrid plan—one that combines features of a defined-benefit and defined-contribution plan.

Of those states, only one went further than any reform effort has gone before. In November, Rhode Island took a very dramatic step toward fixing its underfunded public pensions systems: It backed away from promises it made to state and municipal workers, in an effort to save \$3 billion. The new law halts cost-of-living adjustments (COLAs), reduces the ability of all employees to earn additional pension benefits, raises the state’s retirement age, and shifts some of the risk of investment losses to state employees and retirees.

Will other states flock to copy Rhode Island? Not so fast. There’s no question unions will challenge its legality in court. Still, Rhode Island’s decision to change its pension promises could mark a major turning point in the politics of public pensions.

New Jersey Gov. Chris Christie’s job creation package calls for scrutinizing regulations that aren’t business-friendly.



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Even if states don’t go as far as Rhode Island, they may rethink their COLA policies. Years ago, the prevailing wisdom was that altering COLA promises would be illegal. Then in 2010, Colorado, Minnesota and South Dakota froze, reduced or eliminated their COLAs. Lower courts upheld the new limits in Colorado and Minnesota (South Dakota still awaits a ruling). In the past two years, 17 states have reduced their automatic COLAs, including Maine, New Jersey, Oklahoma and Washington in 2011. So there may be COLA action in more states this year.

Major pension reform bills are expected in California, New Hampshire and New York. **G**

Email edaigneau@governing.com