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Colorado's Legislative Term Limits — Good Reform or Goofy Idea?*

By

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There's been no shortage of commentary on the likely consequences of term limits. Most fundamentally, term limit promoters wanted an end to careerist politics and what they alleged were associated evils: non-competitive elections, invincible incumbencies that worked against the entry of women and minorities, non-responsive and non-responsible lawmakers, tight legislator-lobbyist ties, self-serving pork barrel politics. Term limits, some said, would open up the cozy closed systems and give us lawmaking by "citizens" rather than "politicians."

Critics worried that term limits would usher in a host of negative and unwanted consequences; the limits would make government worse, not better. Among the predicted negatives were a loss of institutional and policy memory and civility, enfeebled leadership, a shift of power from the legislative branch to the executive and to staffers and lobbyists, growth rather than shrinkage of the pool of political careerists, procedural chaos and a flow of policy mistakes.

So, who was correct? Since the first cohort of Colorado's legislators was term limited in 1998, we've cycled through three post-term limit elections and six legislative sessions. What has happened?

The Research

This work was done with The Joint Term Limits Project, a cooperative endeavor of the National Conference of State Legislatures, the Council of State Governments, the Legislative Leaders Foundation and academic personnel from several universities.

The findings are based upon more than 75 personal interviews and scores of conversations with legislators, former legislators, lobbyists, staffers, members of the media and others. One mail questionnaire produced ad-

ditional perspectives on the consequences of term limits from selected "knowledgebles" who have observed the legislature for a minimum of 10 years. The General Assembly has been observed directly for over two decades, and we examined and used such available public record materials as legislative calendars, journals, status sheets and election records. We followed closely media reporting on the legislature and its members. Colorado adopted legislative term limits in 1990. Lawmakers are limited to eight consecutive years in a single chamber, although they may then serve another eight in the second house or lay out for four years and start again.

Elections

What has occurred or, more pointedly, what has not occurred in the post-term limits electoral arena should be a major disappointment to devotees of the limits. The turnover rate is basically unchanged, incumbents lose at the same low rate as before and many seats are uncontested. After an initial surge, the number of open seats and primary races are about the same as before, close elections are as infrequent as ever, and campaign spending appears to be as high as ever.

The turnover rate in 1995-96 was 34 percent in the House and 26 percent in the Senate. For 2003-04, it was 32 percent in the House and 29 percent in the Senate. The rates in both chambers jumped into the 30's after the 1998 and 2000 elections, but seems to have settled back closer to the old rates.

The number of general election incumbent losses has not changed significantly. In 1994, when Republicans made major gains across the nation, eight incumbents lost. But in 1996, the number was just two; there were none in 1998, four in 2000 and three in 2002.

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Further, incumbents have been infrequently challenged in primaries both before and after term limits. In the three post-limits elections of 1998, 2000 and 2002, there were no such challenges on the Senate side, and just two in 1998 and four each in 2000 and 2002 for House seats. Term limits have done little to increase the vulnerability of incumbents.

Many seats were uncontested both before and after term limits, with the numbers virtually unchanged. Over the past four elections in the House, the numbers were 18 in 1996, 17 in 1998, 21 in 2000 and 20 in 2002. Senate numbers for 1996 through 2002 were, respectively, six, three, two and, most recently, five.

Term limits boosted the number of open seats in both 1998 and 2000. But the number in 2002 was similar to the pre-limit 1996 election, namely, 15 in the House in 1996 and again in 2002. The Senate numbers were four in 1996 and seven in 2002. Paralleling the 1998 and 2000 increase in open seats, the primary numbers have gone up in the House from eight in 1996 to 16 in 1998 and 15 in both 2000 and 2002. Most are in open seats as one would expect. In the Senate, the number of primaries dropped from six in 1996, five in 1998, six in 2000 to just one in 2002. Again, most were in open seats.

What about close elections, another measure of electoral competition? Here too, there's been little change. The num-

ber of contests in the House where the winner received less than 55 percent of the vote was 11 in 1994 and 12 in 1996, and then 14, 15 and 19 respectively in the three post-term limit elections. In the Senate, there were four such contests in 1994 and five in 1996, then none in 1998, eight in 2000 and four in 2002. So, the numbers have changed but they show no great leap in electoral competition.

What is the conclusion? Of necessity, the number of open seats and, along with them the primaries, rose some in the two immediate post-limits elections. But the increase was not dramatic and the old patterns seem to have resumed. And overall legislative turnover, too, remains close to its historic pattern.

Political Ambition

Term limit proponents wanted, most of all, to clip careerism and restore the world of the citizen legislature. Did they? Not in Colorado; indeed, following the pattern seen elsewhere in the country, the pool of the politically ambitious has grown, not shrunk.

Ninety-seven legislators departed the General Assembly ahead of the four election cycles leading up to the 1998 impact of the limits. Of these, 29 percent sought further elective office and 43 percent retired from politics. In the three post-term limits election cycles, 58 legislators were term limited; 53 percent ran for another

office and just 25 percent retired. Thirty-six more left the legislature without being term limited since the 1998 impact, and a whopping 64 percent of these ran for another office with just 14 percent retiring from politics.

The world of political ambition and careerism seems to be growing, not shrinking as our lawmakers, tasting elective office, don't want to go home. The bright side for those who like term limits may be that the growing pool of politicians has the potential to spawn more competition as those who are displaced by the limits go after other elective offices.

Legislative Experience

For better or worse, term limits have depressed the experience level of members of the General Assembly, in the House especially. For term limit supporters, this is surely for the better. But critics say, as do most of the knowledgeable we've interviewed, that there are serious downsides to this shrinkage in legislative experience:

- Fewer members are familiar with the history of policy,
- fewer fully understand the potential ramifications of new policy,
- members operate at an informational disadvantage vis-à-vis the governor and his staff,
- lobbyists and the legislature's own staffers,

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Annual Professional Development Seminar

Burlington, Vermont
September 9-11, 2004

The Legal Services Staff Section Annual Professional Development Seminar is the only national training event designed exclusively for legislative staff who work in the area of legislative legal services. The seminar is designed for senior staff with at least four years of experience providing legal services to state legislatures. Nevertheless, anyone who is interested in the agenda is welcome to attend.

Topics Include:

- Ethics and Politics
- Civil Unions
- Constitutional Aspects of Drafting
- Statutory Interpretation
- Agricultural Laws
- Drafters Toolbox
- Legal Writing
- Legislative Immunity
- Bill Drafting Systems

- Vermont's Council of Censors
- E-mail as a Public Record
- Supreme Court Justice
- Distinguished Scholar

Invited Faculty Include:

- David Marcello, Executive Director, Public Law Center, Tulane University, Louisiana
- Garrison Nelson, Professor, Political Science, University of Vermont
- Jack Stark, retired Assistant Chief Counsel, Legislative Reference Bureau, Wisconsin
- Paul Gilles, Attorney, Tarrant, Marks & Gilles, (former Deputy Sec. of State, Vermont)
- Frank Bryan, Professor, Political Science, University of Vermont
- Gregory Sanford, State Archivist, Vermont
- The Honorable Jeffrey Amestoy, Chief Justice, Supreme Court, Vermont

- Michele Childs, Legislative Counsel, Vermont
- Peter Teachout, Professor of Law, Vermont Law School
- Sandara Levine, Attorney, Conservation Law Foundation, Vermont
- Michael Duane, Assistant Attorney General, Agency of Agriculture, Vermont
- Michael Salerno, Principal Deputy, Legislative Counsel Bureau, California
- Tom Little, Chief Counsel, Student Assistance Corporation, Vermont
- Beth Robinson, Attorney, Langrock, Sperry & Wool L.L.P., Vermont
- Sam Burr, Legislative Counsel, Vermont
- The Honorable Jim Douglas, Governor, Vermont

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- new members are unfamiliar with unwritten legislative norms and customs that are essential to the smooth and civil functioning of the institution, and
- members are personally less familiar with, and thus often less tolerant of, each other.

There is an absence of the long-term veteran, the policy champion who, over a decade or more, masters the substance of a policy area, educates colleagues, and builds support for well crafted problem-solving policy.

One member with experience both before and after the onset of term limits put it this way, capturing what many others expressed in our interviews and conversations: "Longevity produces moderation, and longevity is gone and so is moderation. It's more ideology, less policy understanding. It takes time to learn about the state's business, so for short-time legislators it is easier to be 'sure' of yourself. Members quickly look to the next office and that impacts votes. They pander to their constituency in an effort to move from the House to the Senate. Example—they sign on to bills expecting the behavior to play well in a newly targeted jurisdiction. And with less time to spend together, members are more partisan."

Responses to the mail questionnaire paint the same picture. Eighty-four percent of the respondents asserted that members now have less knowledge about both statewide issues and legislative operations, 70 percent say members now have less support for the institution and 73 percent claim that the governor has more power than before.

A few numbers will illustrate the loss of experience. In 1993, the average years of experience of a House member was 4.2 years as the session began and in 1997 it was 4.18; in 2003 the number was 2.48. In the Senate, the number, including both House and Senate time, was 8.03 in 1993, 8.46 in 1997 and 6.86 in 2003. The disappearance of the long-time veteran is demonstrated by these figures: in 1993, 23 House members had been in the chamber for six years or more and in 1997 it was 18; in 2003 it was just eight. In the 1993 Senate, 15 had combined House and Senate time of 10 years or more, 18 did in 1997 but in 2003 that number was just nine. The old vets who once served as role models and provided valuable behav-

ioral cues are gone.

Demographics

Reformers said the forced exit of careerists would make room for a more diverse membership, for more women and racial and ethnic minorities. That has not happened. From 1993 through 1997 the General Assembly had an average female membership of just over one third. Since term limits, it still averages one third. Similarly, following the three pre-limits elections, the non-white contingent was just less than 10 percent. Since then it has been about 12 percent.

Overall the occupations changed little. Lawyers, people engaged in small businesses and real estate, and administrative types replaced a retired state trooper, an auto salesman, more businessmen and a farmer. The titles changed but the sector of the workforce from which they were drawn did not. Similarly, age changed very little. In the six years before the limits, members averaged 51 years of age. For the six years afterward, it was 52.

Does this matter? It matters only in the sense that, contrary to the expectations of the reformers, the General Assembly is no more and no less diverse after term limits than before.

Leadership

Here is where we see a major impact. Leadership is both less experienced and weaker. The two House speakers before term limits were Chuck Berry, who served for eight years, and Carl "Bev" Bledsoe who served for 10 years. Since 1998, Speakers Russell George, Doug Dean and Lola Spradley have each been two-year Speakers. In the Senate, long term veteran Ray Powers served as president of his chamber for two years, as did Stan Matsunaka and, now, John Andrews. These Senate Presidents were preceded by Tom Norton (six years), Ted Strickland (10 years) and Fred Anderson (seven years). Secondary leadership position turnover hasn't changed much.

Quite apart from their personal qualities and styles, two-year speakers and presidents do not possess the political clout and continuity of leadership of their predecessors. Leadership is continuously contested, the quest for positions beginning just as soon as incumbents are se-

lected. As there are more leadership slots open more often, more member see themselves as the next leaders. One member of leadership put it this way: "Just days after I was elected I heard members of my own party asking, 'who's going to take over in two years?' And the campaign began."

As soon as leaders are picked, they become lame ducks; their power to discipline and sanction for misguided behavior is limited. They're soon gone and their colleagues know it. And, the leaders themselves are without the long-term experience that steeps one deeply into the norms of the institution.

Sixty-two percent of our mail questionnaire respondents saw a diminished willingness of members to follow leadership. Seventy-two percent assert that those seeking leadership posts are less willing to move through an established leadership ladder and 77 percent see members planning leadership quests early in their careers.

Committees

In 1993, House committee chairmen spent a combined 74 years in the legislature; in 2003 the number was 48. The drop in the Senate was from an aggregate of 88 years to 73—clearly not as steep a decline. Colorado has long had a relatively high chairman turnover rate, but that turnover is a bit higher now. In the House it was five out of 10 from 1993 to 1995 and four of 11 from 2001 to 2003. In the Senate it was three of 10 from 1993 to 1995, and 10 of 10 from 2001 to 2003, but with change in party control.

Chairman turnover, thus, has not changed much, but the chairs have less legislative experience. Does it matter? According to interview respondents, and direct observation, it does. Committee chairmen in the pre-term limit days were generally very familiar with the subject matter, the bills, and the interests that came before their committee, and were adept at maintaining committee demeanor and controlling the pace of the work. Some still are, but some are not. There have been episodes of committees becoming chaotic and extremely contentious, and chairs losing control or violating procedural norms. Said one veteran lobbyist, "The civility is gone, chairs are gaveling down

colleagues, there is disrespect for the system."

These views are reinforced by mail questionnaire "knowledgeble" responses; 84 percent see committee behavior as less collegial and courteous and 70 percent say committee members are less knowledgeable about the issues before their committees.

The prime task of committees is to study proposed bills closely, screen out bad bills and perfect others before they go to the floor. Some term limit critics have predicted that with less experienced committees more bad bills would make it to the floor and more would thus be picked apart and die there. That, however, seems not to have occurred. Basically, almost no bills were killed on the chamber floors before term limits and very few are now. For example, in 1990, just 18 of the 547 bills were killed on the floors—nine in each house. In 2001, there were 652 bills. Twelve died on the floor of house of origin and just one in the second chamber. In 2002, with 714 bills, five died on the floor in each chamber.

When bills die in the Colorado legislature, and about half normally do, they most always die in committee. That was true before term limits and it remains the case. So as a measure of the quality of committee work, a bill "death on the floor" count tells us nothing. Still, testimony by knowledgeable and direct observation indicate a post-term limit decline in the quality of the committee work.

Budget Process

Arguably, budgeting is the central, most consequential and most important activity of a legislature. In Colorado, budgeting has historically been a prime base of legislative power within the separation of powers system. Within the legislature, the six member Joint Budget Committee (JBC) has been the center of the budget process. Term limits appear to have strengthened the influence of the JBC staff as well as the committee itself within the legislature, but weakened the legislature's budget power vis-a-vis the executive branch.

The JBC has suffered a steep decline in experience. In 1997, the six members' aggregate years of legislative experience was 57 years, with 28 years in total on the JBC. In 2003, these numbers fell to 27

total legislative years, and just eight on the committee. Budgeting is always complex and difficult, and it was more so during the past couple of deficit years. In this context, the staff, sporting more budgeting experience than the committee members it serves, has gained influence.

Similarly, the legislature itself is less experienced. The budget is made across the street from the capitol and as several interviewees commented, most members "haven't a clue" about the budget. The full legislature seldom makes major alterations to the budget as it comes over from the JBC but now, with the budgetary complexity, with TABOR, with amendment 23, with the deficit, and with a less experienced general membership, the budget is pretty much what the JBC says it is.

Partly because of the term limit impact on the legislature and the JBC and partly because of the political style of the current governor, the executive has gained influence on budget matters. Those interviewed repeatedly claimed that the governor and his budget director are tight with information. Interactions between executive branch administrators and the JBC, its staff and the legislature's standing committees, is watched and controlled by the governor's office. The governor makes his budget preferences known and employs the veto threat and the veto itself to push budget decisions. The governor's vetoes of Long Bill the budget line definitions is a prime example. Further, with Republican majorities in the House and the Senate and on the JBC, the governor employs the party to send his messages and demands. Colorado budgeting has changed in just a few years.

One almost inevitable but surely unintended consequence of the governor's control of the flow of information has been the emergence of what one well-placed insider aptly termed "a black-market in information." Executive branch members, however, still pass on such information with some employment risk.

The legislature has lost influence relative to the governor. Much of this is attributable to the style of the current governor, the stripping of revenue authority stripped away by constitutional amendment, and Republican control of both legislative chambers and the governorship.

Nevertheless, some is attributable to the diminished legislative experience generally, on the JBC and in leadership. The depth of policy knowledge and the continuity in membership and leadership is significantly less now and thus, as an institution, the legislature is less stable and assertive. Additionally, the executive speaks with a single voice and commands the public square almost at will; this is not true for the legislature. In the mail survey, 73 percent of the respondents viewed the governor as stronger since term limits.

Also significant is the need for legislators to be looking toward their post-limit political futures. Many have filled an executive branch position after leaving. And that means, of course, that you don't cross your governor while in the legislature. There appears, thus, to be some reluctance among members to assert the prominence of their institution in legislative-executive contests.

Critics of term limits worried that the legislature would lose power to the lobby corps and to its own staff. Interview testimony and observation suggest that this has, indeed, occurred, but not to the extent that some feared. Seventy-two percent of those surveyed by mail suggested that the lobby is now stronger. But mostly, the lobby corps has just changed. Some of the old-timers who relied for access on their close ties with veteran leaders are now at a disadvantage. Newer, younger, less experienced lobbyists enjoy a more "level playing field."

To some extent ethical standards seem to have taken a beating, as members may believe altered versions of past agreements, events, history. Some lobbyists complain that candidates and members apply excessive pressure for campaign contributions while, conversely, some members complain about excessive lobby pressure and even threats. Indeed, during the 2003 session, House and Senate leadership established a committee of lobbyists to study the perceived problems and make recommendations.

The influence of legislative staff appears to have increased some, but mostly with respect to process. Post-term limit sessions have witnessed a greater need for staff help in explaining rules and proce-

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dures. More and more requests are made for staff help in responding to constituent queries. But true to the decades-old non-partisan tradition, Colorado's staffers have struggled to maintain political and policy neutrality and stick to information and process assistance.

Lobby influence has grown, but not greatly. The governor is stronger and the legislature is weaker although, in 2003 and 2004, the legislature successfully fought back through lawsuits and statutes to preserve its budgetary authority.

Partisanship and Civility

All of our information sources, our interviews, the responses to the mail survey and direct observation suggest heightened partisanship and diminished civility. Interview respondents commented often that, with long legislative tenure, members came to know each other personally, work together, and over time sharp partisan differences softened. Partisanship would decline and civility grow. Term limits clearly make this less likely.

Interview respondents often suggested that term limits have accelerated the inflow of members on the political right. Said one long-time capital observer, "There are two Republican parties now, the moderates and the far right. You can't alienate the far right without risking trouble in the nomination process if you seek further office." And a member commented, "Term limits have increased partisanship as the veterans saw good in compromise. The ideological newcomers don't."

In the mail questionnaire, 78 percent said members were less courteous while not a single knowledgeable observer said cour-

tesy had increased. Similarly, 84 percent saw increased partisanship while just one respondent perceived less.

Public Policy

One of the most basic questions to ask about institutional change is whether public policy is different as a result. This is a difficult question since pre- and post-term limit legislators do not confront identical agendas in identical contexts. But what little data we have suggest that policy content has not been affected by term limits in a major way. The legislative agenda is laced with more social policy measures, but that is not the same as actual new law.

For the final pre-limits session and the first post-limits session we looked at selected interest group support scores to see how the policy orientation of those who were limited, and then their replacements, fit with their respective party caucus policy preferences. The results showed that while the parties clearly differ greatly neither the limited members nor their replacements were out of step with their party caucus colleagues. In short, at least with the 1998 election, term limits did not usher in new members with discernibly different policy orientations.

We also examined the 2001 and 2002 National Federation of Independent Businesses (NFIB) and Environmental Coalition support scores, sorting them by party and length of member tenure. The results, again, showed significant differences by party, but not by tenure. That is, while aggregate Democratic and Republican scores differed greatly, there was little difference within either party as between freshmen members, sophomores,

juniors and the seniors who were entering their final two years.

The Legislative Process

The consensus is that post-limit lawmakers are less knowledgeable about statewide issues and problems. This is the view of many of those interviewed, a perception confirmed by the mail questionnaire. Indeed, a full 84 percent of the respondents saw post-limit legislators as less knowledgeable about both state issues and legislative procedure. A majority, too, felt that the new ones were less apt to follow their party floor leaders and roughly half said members now are less likely to follow parliamentary procedure.

One respondent, a former member, put it this way: "Legislators have more narrow agendas and do not want to learn the broad subject. 'Don't confuse me with the facts, my opinion is already set.' They seem to hunger for power and want a static society. They claim to be like 'our founding father's, but they do not know the history that caused the founding of this country. They do not understand the relationship of issues and consequences of related actions, or the long term impacts."

Summary Observations

Colorado's term limits have done little to advance the aims of their proponents, but have created some of the conditions feared by critics. Careerist politics and political ambition remain. The institution is no more diverse. Elections remain costly and lobbyists and staffers are a bit more influential. Members are less experienced, know less about statewide problems, are more partisan and less

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LSSS Offers Training Conference for Legislative Editors October 7-9

By Wendy Jackson, Wisconsin

In October, LSSS will sponsor a training conference for legislative editors. This seminar, the first of its kind, will create an opportunity for editing staff to meet and to learn from their counterparts in other states. The conference is designed for staff who primarily edit or proofread legislation. The conference will also be of interest to drafters or managers whose duties include editing legislation or supervising editors. The Legislative Reference Bureau, Wisconsin's legislative drafting agency, will host the event in Madison, Wisconsin.

Conference sessions will zero in on editing topics such as writing for clear expression; adhering to in-house style; technical editing and formatting; interacting with drafters; and using computers to assist the editing process. Conference materials will include reference documents, such as a glossary of editing terms; a survey of state drafting agencies showing which personnel perform which editing tasks; and a survey of state agency drafting manuals.

For the conference schedule, registration materials, Madison area information, and contact information, you can visit the Web site at www.legis.state.wi.us/conference.

10,363,732 Immigrants – The Melting Pot At Full Boil

By Julie Hoerner, Colorado

The significance of immigration on states is apparent from the magnitude of aliens in the United States. According to the 2002 Yearbook of Immigration Statistics, an estimated 1,063,732 individuals legally immigrated to the United States in fiscal year 2002 and 27.9 million nonimmigrant aliens were admitted to the United States during this period. These nonimmigrant aliens were admitted for temporary work assignments, students, tourists, and representatives of foreign governments. Thirty-eight percent of all immigrants were born in North America, 21 percent were born in Mexico¹ and 32 percent were born in Asia.² The Urban Institute estimates 9.3 million undocumented immigrants were in the United States as of March 2002.³ A possible explanation of the large number of Mexican immigrants is an increase in the number of undocumented immigrants.⁴ In 2002, the number of refugees arriving in the United States was at the lowest level since fiscal year 1978. Nevertheless, approximately 63,400 applications for asylum were received in 2002, with 58,439 being new cases.⁵ The number of asylum cases increased approximately 4 percent from 2001 to 2002.

Immigration and Governments

Nonimmigrant aliens and undocumented workers represent approximately 5 percent of the labor force in the United States.⁶ Until recently, 65 percent of all immigrants reside in six states: California, New York, Florida, Texas, Illinois and New Jersey.⁷ Recent trends indicate that immigrants are beginning to seek destinations in other states as well. Creating an infrastructure to incorporate immigrants into a state's social fabric is more difficult in areas without a history of working with these populations.

Undocumented aliens are the fastest growing population of aliens in the United States. Even though legal immigration

rates decreased approximately 1 percent from 2001 to 2002,⁸ the large number of illegal immigrants to the United States challenges states to integrate these individuals, either temporarily or permanently, into our country. In order to minimize the financial impact and maximize security, the federal government largely preempted states from giving benefits to immigrants with the welfare reform legislation of 1996. This legislation prohibits a "not qualified immigrant" from receiving federal public benefits unless a specific exemption applies.

A "federal public benefit" includes:

- Grants, contracts, loans, professional licenses or commercial licenses provided to an individual.
- Any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment, or any other similar benefit for which payments are provided to an individual, household or family.

Nevertheless, unless state agencies verify an applicant's immigration status, federal rule barring nonqualified immigrants from federal public benefits will not succeed. To further complicate matters, some federal public benefits are still available to not qualified immigrants. The rules of the U.S. Citizenship and Immigration Services outline the exemptions, which include public benefits for emergency medical care, emergency housing and crisis counseling. Therefore, a state still exercises some control over benefits for legal immigrants.

Private entities are not affected by the federal legislation. A nonprofit charity may not be required to verify an applicant's immigration status nor may a state or local government require a nonprofit entity to make such verification.⁹

"Immigrant" means a person who is lawfully admitted for permanent residence in the United States.

"Refugee" means an alien outside of the United States who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution.

"Asylee" means an alien in the United States who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution.

"Nonimmigrant" means an alien admitted to the United States for a specific purpose and temporary period and not for permanent residence.

"Deportable alien" means an alien who is in and admitted to the United States subject to any grounds of removal specified in federal law.

"Deportable alien" includes an alien who is illegally in the United States.

"Parolee" means an alien appearing to be inadmissible to the inspecting officer, allowed into the United States for urgent humanitarian reasons or when that alien's entry is determined to be for significant public benefit.

1. 2002 Yearbook of Immigration Statistics, United States Department of Homeland Security, Office of Immigration Statistics, October 2003.

2. 2002 Yearbook of Immigration Statistics.

3. Undocumented Immigrants: Facts and Figures, Urban Institute Immigration Studies Program,

Jeffrey S. Passel, Randy Capps, and Michael Fix, January 12, 2004.

4. Immigration Studies, The Integration of Immigrant Families in the United States, Michael Fix, Wendy Zimmermann, and Jeffrey S. Passel, The Urban Institute, July 2001.

5. Fix, Zimmermann and Passel, chapter 5.

6. Passel, Capps, and Fix.

7. 2002 Yearbook of Immigration Statistics.

8. 2002 Yearbook of Immigration Statistics.

9. Verification of Citizenship and Immigration Status Required of All Applicants for Public Benefits, National Conference of State Legislatures.

(Continued from page 5)

civil, the process is less orderly and the institution has lost power to the executive branch. Perhaps, the bright side of term limits is, as a number of interview respondents commented, "at least we got rid of a few bad ones."

One bright spot has been the response of the institution, its staff especially, to the new conditions. Notebooks have been prepared for leaders and committee chairs on relevant constitutional and statutory provisions, internal rules, dates and deadlines and more. Special situations and useful responses to them have been writ-

ten out. New member orientations have been greatly expanded and enriched, complete with practice floor and committee drills. In-session refresher courses have been scheduled, although attendance has been poor.

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Legislative trends in Colorado

In 1998, Colorado enacted a statute that requires an 18-year-old or older applicant to provide either a valid Colorado driver's license or an identification card to receive public assistance benefits or medical assistance.¹⁰ This may eliminate a nonimmigrant or undocumented alien from not receiving public assistance benefits or medical assistance in Colorado.

In 1999, Colorado enacted House Bill 99-1018, requiring the state's Department of Health Care Policy and Financing¹¹ to review options for using Medicaid providers to give prenatal care to undocumented aliens. It also directed the department to seek a federal waiver to allow federal financial participation dollars to be spent on prenatal care for undocumented aliens. In 2000, additional legislation directed the department to provide prenatal care for undocumented women eligible for emergency Medicaid.¹²

Also, in 2000, House Bill 00-1334 was introduced to allow the state Department of Corrections to enter into contracts to house undocumented aliens in foreign prisons. This bill failed on second reading.

In 2002, Colorado required that an immigrant needed to prove lawful presence in the United States to hold a Colorado driver's license even if an illegal immigrant had held a driver's license in another state.¹³ Colorado law prohibits non-immigrant aliens from obtaining a Colorado driver's license.¹⁴

In 2002, the Colorado General Assembly contemplated two competing policy approaches to undocumented immigrants. The first bill, House Bill 02-1448, would have allowed local law enforcement personnel to arrest and detain a person thought to be unlawfully in the United States. Further, the bill required the driver's license to expire on the date it was determined that the detainee unlawfully entered the United States. It failed in the Senate. The second bill, Senate Bill 02-067, would have authorized the Division of Motor Vehicles to issue a driver's license, temporary license, or

identification card to a person with an individual taxpayer identification number issued by the Internal Revenue Service. The bill also eliminated the prohibition against issuing a driver's license, temporary license, or identification card to a person who is not legally in the country. This legislation failed in the Senate committee of reference.

In 2003, Colorado continued to suffer budgetary constraints. As a result, Colorado enacted two measures that limited medical benefits to immigrant populations. The first was Senate Bill 03-176, which repealed Medicaid assistance to legal immigrants.¹⁵ Medicaid to legal immigrants was an optional coverage for the state. A class action lawsuit was filed against the executive director of the Department of Health Care Policy and Financing concerning the implementation of the law. The plaintiffs in this class action lawsuit alleged violations of the equal protection and due process clauses of the 14th amendment of the U.S. Constitution. The state asserted that Senate Bill 03-176 merely eliminated coverage for specific groups of categorically needy individuals for which Medicaid coverage is optional under federal law.

The federal court issued a preliminary injunction staying implementation of the law. The Justice Department intervened and filed a brief in support of the department's position. A three-judge panel from the 10th U.S. Circuit Court lifted the injunction on Jan. 12, 2004, holding that Congress has the authority to allow the states to end Medicaid benefits to certain legal immigrants and Colorado's cut-off of the benefits to save money is constitutional. The department, however, is not implementing the law until the matter is resolved. The case is still on appeal on the merits.

The second measure enacted during 2003 was Senate Bill 03-266 that established the state nursing facility service program for specified legal immigrants who lost eligibility for medical assistance due to the passage of Senate Bill 03-176.¹⁶ This bill authorized the Department of Health Care Policy and Financing to pay a pro-

vider for services given to an eligible person until that person is discharged from a nursing facility. This program repeals on July 1, 2008.

During the 2003 regular session, Senate Bill 03-159 was introduced. The bill would have created a consular driver's licenses for people who present a valid identification card. This legislation failed in committee. Instead, Colorado adopted a bill prohibiting the use of an insecure driver's license or identification card in all state agencies except in connection with enforcing laws or providing services to infants or children.¹⁷ A secure identification document is defined as passport, U.S. government issued document, state issued document and similar types of documents.

Colorado wrestled with two bills concerning immigrants during the 2004 legislative session. The first bill, Senate Bill 04-017, which is pending action by the governor, conformed state law for Colorado to the "Refugee Education Assistance Act of 1980" concerning public benefits. The bill applied to Haitians and Cuban immigrants and other qualified immigrants who have been battered or subjected to extreme cruelty under the Immigration and Nationality Act. The second bill, House Bill 04-1187, would have allowed student immigrants lawfully in the United States to receive in-state tuition for institutions of higher education if they met all other requirements of in-state tuition. House Bill 04-1187 would have also prohibited nonimmigrant aliens from receiving in-state tuition rates for any reason. This bill failed in the House of Representative for lack of consideration of Senate amendments.

Recurring themes:

The continual influx of immigrants and nonimmigrants places demands on state social service programs. It forces states to decide who may drive on its public highways, use generally accepted forms of identification, receive incentives to attend publicly funded institutions of higher education, and receive optional Medicaid benefits.

10. See House Bill 98-1394, §26-4-203 (3) (a.5), Colo. Rev. Stat.

11. (The state department that oversees the state's Medicaid program.)

12. See House Bill 00-1076, §26-4-203 (3) (a.6), (3)

(b), and (3) (c), Colo. Rev. Stat.

13. See Senate Bill 02-112, §§42-2-107 (1) (b) (II) and 42-2-302 (2) (a), Colo. Rev. Stat.

14. See §42-2-107, Colo. Rev. Stat.

15. See §26-4-301 (1) (l), (1) (m), (2), (3), (4), and

(5), Colo. Rev. Stat.

16. See Part 2 of article 15 of title 26, Colo. Rev. Stat.

17. See Part 1 of article 72.1 of title 24, Colo. Rev. Stat., House Bill, 1224.

STATE NEWS



COLORADO Debbie Haskins

Going into the 2004 session, Colorado legislators said that the top priority was to address a budget problem created by two constitutional provisions. One provision, TABOR, limits the state's revenue and requires voter approval of any tax increases. Due to a formula fixed in the constitution, Tax Payers Bill of Rights (TABOR) ends up shrinking the budget each year. When the state's economy was good, this provision caused surplus revenues to be returned to the voters. The other provision, Amendment 23, also passed during good economic times, requires increased spending for K-12, including a 1 percent increase each year. After the economy tanked, the operation of these two provisions resulted in the state having to make massive cuts to balance the budget. Some members have called the impact of these two provisions the "perfect fiscal storm." Others call it a "structural defect." There was no shortage of proposed constitutional amendments to solve the problem, but in the end lawmakers could not find the necessary consensus to refer anything to the voters. There are three options: (1) The governor might call a special session, (2) the General Assembly might call a special session to try again, or (3) outside groups might collect signatures to place measures on the ballot. The fact that outside think tank groups may propose an answer was one factor in the Senate not reaching consensus on a solution. If nothing passes on the ballot, the Joint Budget Committee (JBC) says that lawmakers will have to cut \$254 million from the budget next year. So far, no consensus has been reached on calling a special session. Lawmakers are counting votes to see if they have enough to pass a proposal before calling a special session.

The General Assembly, however, passed many other significant measures. One bill created a college voucher system that will give high school graduates stipends of approximately \$2,400 per student to attend Colorado public universities or \$1,600 to attend private Colorado col-

leges. The bill was drafted to give higher education enterprise status under TABOR, which frees higher education from the TABOR restrictions on raising revenue. Because of budget cuts, higher education now qualifies for enterprise status under TABOR; this means the entity receives no more than 10 percent of its budget from the state. The JBC predicts, however, that the amount of the vouchers will have to be cut if the revenue problems under the Constitution are not fixed. The certified capital program, which gives tax credits to insurance companies that invest in Colorado, was reined in. The legislature passed a bill setting tougher limits on the first \$100 million in tax credits and earmarked the second \$100 million for other programs. Lottery operations received critical audits. So legislators passed legislation providing more oversight on how local governments spend their lottery proceeds and imposing tougher restrictions on lottery employees, including a ban on gifts from vendors. After years of defeating bills to lower the drunk driving blood alcohol level from 0.10 to 0.08, Colorado finally passed it this year. As a result, Colorado will now receive \$50 million in federal transportation funds. Also, a bill to securitize the tobacco settlement moneys failed.

A resolution was introduced to impeach a Denver district judge stemming from a decision in a child custody case involving two lesbian women. The House Judiciary Committee ultimately voted against the impeachment resolution. We appreciated the research assistance from NCSL and the participants on the LSSS listserv.

Other developments of note are the lawsuits involving the General Assembly. The General Assembly appealed the Colorado Supreme Court's decision on redistricting to the U.S. Supreme Court. The court did not grant certiorari. The General Assembly and the governor disputed which branch controlled the federal state budget relief payments. The money was received during the 2003 interim. The governor directed that the funds be placed in a separate account instead of the general fund and then before session decided how to allocate the funds, claim-

ing these funds were merely custodial funds. The General Assembly believed that the funds were not custodial and should have been subject to its appropriation power. They introduced a bill, HB 04-1089, to exclude future federal funds from the definition of custodial funds, thereby subjecting the funds to the General Assembly's power to appropriate. The General Assembly submitted interrogatories to the Colorado Supreme Court regarding the constitutionality of HB 04-1089. The Court declined to answer the first interrogatory about the constitutionality of federal grant money saying these questions must be answered on a case-by-case basis. The Court agreed with the General Assembly in the second interrogatory and held that Congress has afforded a degree of flexibility regarding the allocation of the Jobs Act funds that cannot fairly be described as custodial. Therefore, the money at issue is not custodial and becomes part of the state's general fund subject to legislative appropriation. The Court held that HB 04-1089 may constitutionally exclude such funds from the definition of custodial money. After the ruling, the Senate deleted the portions of the bill about which the Court did not rule. The governor threatened to veto the bill, but he signed the bill on account of the decision.

Another big win for the General Assembly came in a case challenging a bill enacted last session, HB 03-1256, which authorized the Department of Corrections to enter into a lease-purchase agreement to build a high-security prison in Canyon City and authorized the regents of the University of Colorado to enter into lease-purchase agreements to construct academic medical facilities. A prison reform group filed a lawsuit alleging that the bill violated TABOR because the bond issuance was not approved by the voters. The group also challenged whether the bill violated the single subject requirement of the constitution by combining the prison project and the medical facility project. The bill was titled "concerning the authority of the state to enter into lease-purchase agreements,

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and, in connection therewith, authorizing lease-purchase agreements for a high-custody correctional facility and for the university of Colorado health sciences center at Fitzsimmons." The Denver District Court granted the state's motion for summary judgment on the single subject issue, finding that the lease-purchase agreements were a single subject. The court issued a judgment on the pleadings holding that the bill is not subject to the TABOR provisions, and therefore, concluded that HB 03-1256 did not violate the TABOR voting provisions.

We are in the middle of a very long renovation project at the capitol to improve its safety. This summer, they will close the House and Senate chambers and the Old Supreme Court chambers, so that they can install sprinkler pipes throughout the ceilings. Over the next four years, if funding is received from grants from the state historical society, stairways will be built from upper to lower floors on a quadrant basis.

DELAWARE

Rich Dillard

So far, it has been a relatively slow session in terms of bills enacted into law. As of May 20, 2004, only 25 bills had been signed since the latter half of the 142 General Assembly began in January. One bill, repealing an upcoming expansion of the size of a county council, became the first and, so far, only bill vetoed by the Governor this session. Still awaiting possible action in the Senate are House bills lowering the maximum blood alcohol content for driving to .08 and prohibiting discrimination against gays. Still awaiting action in the House are Senate bills expanding whistleblower protection to private employees and allowing professional and occupational licenses to be given to convicted felons if the felony was not substantially related to the practice of that profession or occupation.

Personnel Notes: The nonpartisan Division of Research lost its deputy director in March when Walt Feindt retired after 20 years of working for the General Assembly. The division is still without a director after four years and without one of its two Legislative Attorneys after two years.

FLORIDA

Edith Elizabeth Pollitz

The Florida Legislature adjourned at almost midnight on the last day of the 60-day regular session. Unlike last year, when five special sessions were held and budget-issue wrangling threw that process into a special session, passage of the budget was accomplished on time this year. Florida lawmakers did pass two joint resolutions proposing constitutional amendments that will be voted on by the people in November. One resolution authorizes the Legislature to enact legislation providing for parental notification before the termination of a minor's pregnancy. The other resolution revises the deadline for filing of constitutional amendments proposed by initiative petition. This provision is the result of several initiative proposals that either sound good in practice but are very expensive to actually implement or for which the constitution is arguably not the best location. One was the infamous "pregnant pig" amendment – noted by farmers as incorrect terminology since a pig is a young swine. Maybe it should have been the "pregnant sow" amendment, which, alas, lacks alliteration.

INDIANA

George Angelone

The Indiana General Assembly adjourned sine die on March 4, 2004. This was 10 days earlier than the law requires Indiana's part-time legislature to adjourn. The early adjournment did not result from a lack of issues to consider but because the General Assembly met in November and December when the legislature is usually in recess to discuss property tax issues. The resulting bill, Senate Bill 1, was enacted in record time. It addressed a number of procedural issues, provided new standards for the assessment of rental property, and capped future property tax levies. An amendment to the bill to reduce property taxes for home owners and farmers failed even though the issue was debated throughout the session.

The court decision in Massachusetts concerning same sex marriages became an issue late in the session. Proponents of banning same sex marriages sought to initiate a state constitutional amendment. This effort effectively stopped considera-

tion of other issues pending before the legislature.

The state fiscal condition has not improved sufficiently to fully fund the budget. Cash reserves will be significantly lower than in past years. The tight fiscal situation was one of the arguments for opposing a governor's initiative to provide voluntary grants to expand full-day kindergarten programs and preschool programs. Lawmakers could not work out a permanent source of funding for this initiative.

For the first time in Indiana history, the president of the Senate is a woman. By law, the lieutenant governor serves as its president. Although there were a few awkward moments when the boilerplate forms referred to her as Mr. President, the Senate had no difficulty in adjusting to this historic change.

Senator Charles "Bud" Meeks died after the session. Former House member Dennis Kruse was appointed to serve the remainder of his term. Senator Meek's brother, Robert Meeks, continues to serve in the Senate as its Budget Subcommittee chairman.

Not too surprisingly, the first interim study committee to meet this summer will be the Property Tax Replacement Commission. Meetings began on April 27. The commission has the task of outlining options for eliminating the use of property taxes as a source of revenue. The commission's goal is to find an alternative way to raise \$5.4 Billion annually. Other study committees are not likely to meet until July.

The legislative budget committees are currently attempting to determine the impact of the recent decision in *Azstar Indiana Gaming Corporation v. Indiana Department of State Revenue* (Ind.Tax, 2004) 2004 WL 835965. In this case, the Indiana Tax Court determined that Indiana's riverboat wagering tax is not a state tax "based on or measured by income" for purposes of an add-back provision in Indiana's adjusted gross income tax law. As a result, wagering tax payments cannot be deducted in determining taxable adjusted gross income. One industry analyst believes that this is the first case in any state deciding the issue against the gaming industry. If upheld on appeal, the

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Indiana Department of State Revenue estimates that as much as \$142 million in back taxes will be owed by Aztar and other riverboat companies. The decision may bring in an additional \$40 Million annually.

KENTUCKY

Ann Zimmer

The 2004 regular session of the Kentucky General Assembly adjourned on April 13, 2004. Just as in the 2002 session, the General Assembly did not pass an executive branch budget, although it did pass

budgets for the judicial and legislative branches.

There has been some discussion about the possibility of holding a special session before the end of the fiscal year to act on the budget question, but one has not yet

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2004 NCSL Legal Services Annual Meeting

Salt Lake City Utah

July 19-23, 2004

LEGAL SERVICES SPONSORED SESSIONS:

MONDAY JULY 19, 2004

5:30 pm-7:00 pm

Legal Services Reception

TUESDAY JULY 20, 2004

1:00 pm-5:00 pm

A Focus on Legislative Staff: Retaining the Best and Brightest Legislative Staff
Co-sponsored by all 10 Staff Sections.

Good legislative staffs are worth their weight in gold. With tight budgets, short timelines, partisan conflicts and term limits, staff play a critical role. This two-part session explores how to keep outstanding employees in the midst of competition, reduced funding and an aging workforce.

WEDNESDAY JULY 21, 2004

1:15 pm-3:00 pm

Concurrent Session: State-Tribal Relations: Cross Jurisdictional Issues and Intergovernmental Cooperation

Cross-jurisdictional issues between states and tribes are relevant to many policy areas including the state and tribal judicial systems, environmental protection, and taxation and revenue sharing. This session will identify models for fostering communication between state and tribal governments and discuss possible methods of collaboration involving a variety of cross-jurisdictional issues. A specific focus will be given to the development of cooperative agreements between the state and tribal court systems and law enforcement agencies.

Moderators:

- Senator Lana Oleen, KS, co-chair of the State Tribal Relations Project Advisory Council
- Chairman Ron Allen (Jamestown S'Klallam Tribe), co-chair of the State Tribal Relations Project Advisory Council

Panelists:

- John Dossett, NCAI
- Representative John McCoy, WA
Pamela Ray, Legislative Staff Attorney, NM
- Andrea Wilkins, NCSL & member of NCAI Staff

3:15 pm-5:00 pm

Dilemmas That Go Bump in the Night: Ethical Decision Making for Public Life

Cosponsored by the Center for Ethics in Government, NCSL Research & Committee Staff Section and Legal Services Staff Section

Thinking of ethics as simply a set of rules ignores the gray areas that so often confront public officials. In this session, Legislators and staff will examine the values embodied in legislative, statutory and model codes of ethics and explore how their own value systems affect their interpretations of ethics rules in making public decisions.

Facilitators:

- Peggy Kerns, Director, Center for Ethics in Government
- Bruce Feustel, J.D., Senior Fellow, NCSL

Speakers:

- Phillip Boyle, Professor, School of Government, University of North Carolina at Chapel Hill, North Carolina
- Alfred "Butch" Speer, J.D., Chief Clerk and General Counsel, House of Representatives, Louisiana

THURSDAY JULY 22, 2004

8:30 am-10:30 am

Concurrent Session: Separation of Powers in the 21st Century

The power struggle among courts, governors and legislatures continues. Governors assault legislative budgetary powers. Courts tell legislatures how to fund education and draw their district lines. Legislatures tell courts they are meddling in lawmaking. Defining separation of powers is as old as the Constitution, and as new as this year's legislative sessions. Find out what's happening now.

10:45 am-12:15 pm

Supreme Court Update

Co-sponsored by the Legal Services Staff Section and the Research and Committee Staff Section

This year's session of the U.S. Supreme Court included several decisions that have broad implications for state and local governments and for the public policy they enact. This session will review those cases and their potential meaning for the states.

Faculty:

- Richard Ruda, Chief Counsel, State and Local Legal Center, Washington, D.C.

12:30 pm-2:00 pm

Legal Services Luncheon and Business Meeting

Sponsored by Lexis-Nexis

All legislative lawyers and other staff employed in legal services are welcome to this lunch, which features the election of new LSSS officers and presentation of the annual LSSS Staff Achievement Award.

been scheduled. The governor intends to implement a spending plan to run state government after July 1.

After the 2002 regular session ended without a budget, the governor implemented a spending plan for the 2003 fiscal year to provide for the continued financing of state government. The state treasurer then filed a declaratory judgment action seeking court approval for the expenditure of state funds under the governor's spending plan. Before the case was decided, it was rendered moot when the General Assembly met again in regular session in January of 2003 and passed a budget that will expire on June 30, 2004. If a budget is not enacted before the end of this fiscal year, there will probably be litigation.

Only one proposal to amend the Kentucky Constitution will be on the ballot in November. Senate Bill 245 proposes that the constitution require that a valid marriage may only be between one man and one woman. The bill also invalidates any legal status identical to or substantially similar to marriage. Kentucky law, KRS 402.020, already prohibits marriage between members of the same sex.

Another proposed amendment to the constitution was introduced but, although seriously considered by both houses, did not pass. The purpose of this proposed amendment, House Bill 615, was to clarify sections of the Kentucky Constitution regarding the authority of the legislative branch and the courts.

The proposed constitutional amendment included amendments to Sections 109, 230 and 43 of the Kentucky Constitution to provide that the authority to appropriate public funds lies solely with the General Assembly, to reiterate that only the General Assembly may pass laws, and to clearly state that the General Assembly may not be sued regarding bills it passes.

The proposed amendment to Section 109 specified that courts have the power to determine if acts of the General Assembly are in compliance with the Kentucky Constitution and the U.S. Constitution, but do not have the power to order substitution of an alternative law for any law found unconstitutional. The proposed amendment to this section also specified that the appropriation powers of the General Assembly shall remain inviolate.

The proposed amendment to Section 230 specified that no money drawn from the state treasury shall be expended except in pursuance of expenditures authorized by the General Assembly.

The proposed amendment to Section 43 specified that the proper parties to be sued when challenging the constitutionality, validity or application of an act of the General Assembly are the Attorney General and those charged with administering the law at issue. Previously, Kentucky courts, unlike the courts of many other states, have required the General Assembly and its agencies to appear in court to defend the constitutionality of legislation.

LOUISIANA Clifford Williams

The Louisiana Legislature convened its regular session on March 29, 2004, with health care, jobs and economic development being the more important issues to address and with females holding the pro tempore positions in both houses for the first time. These milestones followed the election of the state's first female governor in November 2003. Due to a change in our constitution, relative to regular and fiscal sessions, the Legislature convened a regular session this year following a regular session in 2003. For reasons unknown, however, the number of introduced bills was not as high as it was in 2003. The House members have filed 1,712 bills, over 300 short of last year's total, while Senators have introduced 873 senate bills, over 200 short of last year's total.

The governor's package includes legislation on ethics, campaign finance, economic development and health care. There are also a number of issues being addressed this year without statewide implications. These issues include river pilots, prescriptive authority, ticket scalping, cloning and self-help. The issue, however, that may draw the most attention is same sex marriages. There are two constitutional amendments, one in the House and one in the Senate, that would prohibit same sex marriages. The two amendments have crossed the aisle and await action in the opposite chamber. Also, of particular interest to legislators, there are two proposals that would affect their terms of office. One, a Senate bill,

is a constitutional amendment to repeal term limits, and the other, a House bill, places our statewide and legislative elections in line with the presidential elections. Passage of the latter would require all statewide elected officials and legislators to serve an extra year in this term. The House proposal, at this writing, is sitting in Senate committee, while the Senate bill did not receive the required votes on the Senate floor. It may be reconsidered later in the session.

MAINE Margaret Reinsch

The Maine Legislature passed legislation giving domestic partners certain rights, putting them on substantially equal footing as spouses for the purposes of intestate succession; Probate Court appointments of personal representatives, guardians and conservators; and the disposition of the remains of their deceased partner, including funeral arrangements. An Act To Promote the Financial Security of Maine's Families and Children, LD 1579, was introduced in 2003 and carried over to 2004 by the Joint Standing Committee on Judiciary. After much work by interested parties, the Judiciary Committee split three ways in reporting out the bill, two "ought to pass as amended" reports and an "ought not to pass" report (six members). Six members plus the Penobscot Indian representative supported one version of the ought to pass report, one member supported the other version, and six members supported the ought not to pass version. Although the original bill directed the establishment of a registry for domestic partners, neither retained the proposal.

Several floor amendments were proposed, attempting to refine language and deal with potential clouds on titles to real estate. The final version that was enacted by the Legislature and signed by the governor on April 28, 2004, contains a registry maintained by the vital records office of the Department of Human Services. The law sets requirements to be eligible to register as domestic partners, and addresses termination of partnerships. A domestic partner qualifies for an intestate share of the deceased partner's estate only if the partners had registered as a domes-

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tic partnership and the partnership had not been terminated prior to the partner's death. The domestic partner law is Public Law 2003, chapter 672.

The Maine Legislature passed the Uniform Trust Code. See the following link for the Maine Family Law Advisory Commission's report to the Joint Standing Committee on the Judiciary: <http://www.mainebar.org/images/FLAC%20Report%20on%20UPA%2012-31-031.pdf>

MARYLAND

Sherry Little

The 2004 session of the General Assembly of Maryland ended at midnight on Monday, April 12. Out of 2,482 bills introduced, 706 passed. The next step is consideration by the governor. The governor has held four bill signings with one more scheduled for May 26. In conjunction with the last signing, the governor also announces the bills that he has vetoed. Most veto decisions are made on the basis of a particular bill duplicating another bill the governor has signed or because a bill lacks legal sufficiency in the judgment of the Office of the Attorney General. Relatively few bills are vetoed for policy reasons.

Vetoed bills are returned to the house of origin immediately after that house has organized at the next regular or special session of the General Assembly. When a new General Assembly is elected and sworn, however, bills vetoed from the previous session are not returned. The General Assembly may override the governor's veto with a vote of 3/5 of the members of each house.

For the first time since 1989, the 2004 General Assembly voted to override gubernatorial vetoes. There were five bills that covered several areas. Three of them related to Baltimore City, while two companion bills establish minimum energy efficiency standards for certain new products sold in Maryland. The new standards, with varying implementation dates, specifically apply to torchere lighting fixtures, unit heaters, certain types of low-voltage dry-type distribution transformers, ceiling fans and ceiling fan light kits, traffic signal modules, illuminated exit signs, commercial refrigeration cabinets excluding walk in refrigerators or freezers, large packaged air conditioning

equipment, and commercial clothes washers. The governor had contended that the legislation would dramatically increase the costs of products for various businesses in Maryland which would then be passed on to consumers and that Maryland would risk losing businesses to neighboring states.

One of the most prominent issues this session and last was concern over funding the 2002 Bridge to Excellence in Public Schools Act. The act essentially reworked the state's education funding formulas to add an estimated \$1.3 billion in state aid annually by fiscal 2008, with average increases in aid during the six-year phase-in period of nearly 10% per year. A large share of state aid is unrestricted, allowing school systems to customize programs to their needs.

Because of the large increases required under the Bridge to Excellence Act and an unsure budget outlook, the 2002 legislation also contained a provision that required the General Assembly to revisit the state's fiscal condition in 2004. The provision, which was later termed the "trigger," required the General Assembly to pass a joint resolution by the 50th day of the 2004 session in order to proceed with full implementation of the act. Although the issue has never been litigated in the state, the Office of the Attorney General opined, however, that the provision might be an unconstitutional legislative veto. According to the Attorney General, the provision placed the state at risk of a lawsuit on constitutional grounds. The Attorney General advised that either passing or not passing the resolution may result in lawsuits challenging the validity of the provision and that, in either case, the status of education funding under the Bridge to Excellence Act would remain in question. Therefore, the General Assembly passed emergency legislation, which became law without the governor's signature, to repeal the trigger, thus maintaining the funding formulas. The ongoing formulas will remain a most important issue without new revenue streams from the commercial operation of video lottery terminals or from increased taxes, neither of which was agreed to during this session.

MASSACHUSETTS

Louis Rizoli

On Nov. 18, 2003, the Supreme Judicial Court in the case of *Goodridge v Department of Public Health* (440 mass. 301) declared that under the Massachusetts Constitution statutes may not bar same-sex couples from the protection, benefits and obligations of civil marriage. The court stayed entry of judgment for 180 days to permit the legislature to take such action as it deemed appropriate in light of the opinion. The legislature took no action and as of May 17, 2004, same-sex couples are allowed to marry.

The Massachusetts legislature in joint session considered several proposals to amend the Massachusetts Constitution and finally adopted the following:

"It being the public policy of this commonwealth to protect the unique relationship of marriage, only the union of one man and one woman shall be valid or recognized as a marriage in the commonwealth of Massachusetts. Two persons of the same sex shall have the right to form a civil union if they otherwise meet the requirements set forth by law for marriage. Civil unions for same sex persons shall provide entirely the same benefits, protections, rights, privileges and obligations that are afforded to persons married under the law of the commonwealth. All laws applicable to marriage shall also apply to civil unions. This Article is self-executing, but the General Court may enact laws not inconsistent with anything herein contained to carry out the purpose of this Article."

In order to become part of the constitution this amendment will require an affirmative vote of the next legislature and approval of the people in the form of a statewide ballot question in November 2006.

MINNESOTA

Karen Lenertz

The 2004 regular legislative session ended early Sunday morning on May 16. During the session, the legislature reduced the driving alcohol limit from .10 to .08. The Minnesota Department of Education was authorized to adopt aca-

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democratic standards for science and social studies. The legislature also passed the Uniform Limited Partnership Act. The House of Representatives addressed the issue of same sex marriages by passing a bill calling for a vote on a constitutional amendment to ban same sex marriages. This issue never reached the floor of the Senate for a vote.

Governor Tim Pawlenty announced a program allowing state employees and their dependents to purchase prescription medicines from Canada over the Internet. State employees who use the web site would be able to obtain their medicines with no out-of-pocket expense. Minnesota is the first state in the nation and the largest public employer in the country to make this option available. The governor also acted to balance the state budget without action by the Legislature.

NORTH CAROLINA

Bill Gilkeson

For a month or so this spring, North Carolina had what a state litigator called the rare "perfect moment" – a time when no legal challenge was pending to the state's redistricting plans. During the 1990s cycle, there was no such period of cloudless blue sky from the plans' enactment in 1991 until a decision of the U.S. Supreme Court in early 2001. In other words, the legal challenges to the 1990s plans did not end until all the elections under those plans had already been held and the drawing of the next decade's plans was under way. The blue-sky moment has now passed. The county commissioners of Pender County, on the coast near Wilmington, have sued challenging the division of their county in the state House plan.

Quick background: In the 1980s and 1990s, challenges to redistricting plans involved issues of federal law – Voting Rights Act and racial gerrymandering. The principal fight this decade has been under a provision of the state Constitution prohibiting the splitting of counties in drawing General Assembly districts. The state Supreme Court revived that Whole County Provision, long dormant under federal edict, and prescribed a method for harmonizing it with the Voting Rights Act and other federal law. The plaintiffs in the lawsuit that triggered the court's

action were Republican leaders, challenging state House and Senate plans drawn by the Democratic-controlled legislature. The state Supreme Court allowed the 2002 elections to be held under interim plans drawn by a lower court that had rejected remedial plans drawn by the legislature itself. The elections resulted in a Democratic Senate and a tied House. A splintered House Republican caucus led to a coalition of all the Democrats and almost half the Republicans, which installed co-speakers – Democratic Speaker Jim Black and Republican Speaker Richard Morgan. The Co-Speakers and their chief lieutenants were able to cooperate well enough to enact a budget, a new redistricting plan, and a procedure for handling redistricting litigation that placed it in a three-judge panel in Raleigh, the state capital. The Republican plaintiffs quickly challenged the new plans under a continuation of their old lawsuit. They also challenged the new venue law as unconstitutional. At length, the new plans were approved under the Voting Rights Act. Then, the state Supreme Court upheld the three-judge panel venue procedure and pronounced the old lawsuit closed and an inappropriate vehicle for challenging the new plans. The sky above turned blue.

As of May 25, the Pender County lawsuit, which affects only a small portion of one of the two redistricting plans, is the only challenge that has been filed. The General Assembly has convened in what many of its members hope will be a very short session. Candidates are preparing for the state's unusual July 20 primary. The redistricting uncertainty required postponing the usual early May primary. The primary will feature a six-candidate contest for the Republican nomination for governor, including two of the one-time redistricting plaintiffs running against each other, and several Republican primary fights between the supporters of Republican Speaker Morgan and his enemies who consider the co-speakership deal apostasy.

MISSOURI

Russ Hembree

The Second Regular Session of the 92 Missouri General Assembly ended with the tabling of bills on May 14. An improving state budget picture resulted in

timely completion of the state budget by the House and Senate. Successful legislation included the following: a proposed constitutional amendment prohibiting same-sex marriage; an overhaul of the child abuse and foster care system; property tax relief for senior citizens and the disabled through a credit program; the creation of a prescription drug repository program to accept and dispense donated prescription drugs to eligible state residents; and enactment of the Missouri Uniform Trust Code establishing provisions for trust creation, modification, termination and administration. Sine die adjournment occurred May 30, with the veto session scheduled to begin September 15.

TEXAS

Mark Brown

The legislature convened in the fourth called session on April 20, 2004, primarily to consider changes to the state's system of public school finance, education reform and property tax relief. Numerous new measures to produce revenue for the public schools and, consequently, provide property tax relief for the taxpayers of the state drew attention. Included among those measures were a raise in the state sales tax, an expansion of the base for the state sales tax, changes to the franchise tax, a raise in the cigarette tax, imposition of a state property tax, imposition of a tax on certain snack foods and authorization of video lottery machines at horse racing and dog racing tracks and on Indian lands. Attempts to build consensus on the issues created a heavy drafting and research workload for the staff of the Texas Legislative Council. In the end, the Legislature did not come to a consensus. On May 17, 2004, each house of the legislature adjourned sine die without enacting legislation.

A court challenge to the school finance system is expected to be heard in late summer. A 5th called session is possible before, during or after the litigation. It is also possible that the issues will be held until the legislature convenes a regular session in January, 2005.

UTAH

Gay Taylor

Utah is looking forward to hosting NCSL at the annual meeting here in Salt Lake City on July 19-23, 2004. In addition to the wonderful, substantive course offerings, Utah has planned some really terrific social events to showcase Utah! We have the old Capitol building on display along with the two new buildings where the Legislature and executive branch have just been relocated. We will have wonderful food available here at the Capitol, followed by an exclusive performance by the Mormon Tabernacle Choir!

The closing social will feature some of your favorite 2002 Olympic athletes who competed here in Salt Lake City to win a gold, silver or bronze medal. The Olympic Speed Skating Oval is a beautiful facility where we will have first rate entertainment, food and fun. On behalf of the staff and Legislature, we hope many of you will join us. This has been a huge investment of time, but we are excited about the results and the opportunity of hosting each of you! If you are able to come to the annual meeting this year, we believe you will be really thrilled with what you learn and with the camaraderie and entertainment we have planned for you!

By way of news, the Utah Capitol Building is undergoing major renovation. As a result, all the occupants of the building must vacate it by the end of July 2004. The governor and all other executive branch officials along with the Legislature and the staff are being relocated to two new buildings, immediately north of the state Capitol.

The executive branch is in the East Building and the Legislature is in the West Building. Everyone will stay in their new location during the four or more years that the renovation takes place. The Senate and House have approximately the same square footage for their chambers, but public viewing areas have been dramatically reduced, from accommodating several hundred people, to several dozen people. It will be interesting to watch the public and lobbyists respond to these changes during the 2005 annual general session.

The Senate and House leadership have

insisted in their long range planning that the old state Capitol Building be available for NCSL annual meeting participants to see before the major renovation and reconstruction begins. So at the annual meeting, you will be among the last people to see the old unrenovated state Capitol. We hope to see you all here in Utah in July!

VIRGINIA

Mary Spain

The General Assembly grappled with revenue and budget matters throughout an extended regular 2004 session followed by a special session. Money issues forced an unusual extension of the regular 60-day session and the lengthy special session that ran from March 17 to May 7. The current biennial budget funds state operations until July 1, 2004, when a new budget is required.

Governor Mark Warner submitted his proposed budget in December accompanied by tax and revenue increases in the \$2 billion range. Republicans, who control the Senate and House of Delegates, split on the issue of raising taxes. House Republicans adopted a "no tax increase" stance and argued that improving state revenue collections could fund needed budget increases. Senate Republicans endorsed tax increases in the \$4 billion range. They argued that the commonwealth ought to fund improvements in education, mental health programs, transportation and other state programs. In addition, they argued that revenue increases were required to fund state operations at a responsible level and to demonstrate sound fiscal policies designed to ward off a potential lowering of the state's triple-A bond rating.

Near the end of the special session, 17 House Republicans deserted the Republican caucus position and joined House Democrats to vote for revenue and tax increases in the \$2 billion range. Senate Democrats and most Senate Republicans voted to support the increases. Once the revenue stream was defined, both houses approved the 2004-2006 budget.

The revenue and budget debate dominated the regular and special sessions that otherwise passed 1,041 bills. The governor has approved 1,030 bills, vetoed seven, and is currently reviewing the four

bills passed during the special session. Among some of the more significant measures passed were several bills to stiffen penalties for driving under the influence, make killing a fetus a class 2 felony, modify Virginia's stringent "21-day" rule and give more leeway for convicted felons to appeal convictions based on new evidence, and extend until Dec. 31, 2010, the rate caps currently in place for incumbent electric utilities.

WASHINGTON

Jeffrey Mitchell

The 2004 regular legislative session concluded its 60-day run on March 11, with no ensuing special session. Three issues received substantial attention this year: primary elections, charter schools, and an array of fiscal matters.

In 2000, the U.S. Supreme Court ruled that California's crossover primary unconstitutionally violated the parties' right to pick a candidate. Based on that decision, the Ninth Circuit of Appeals declared Washington's primary unconstitutional. On Feb. 23, 2004, the U.S. Supreme Court refused to hear Washington state's appeal of the Ninth Circuit's ruling, effectively ending Washington state's popular blanket primary. Used for 70 years, this system allowed voters to hopscotch down a ballot picking favorite candidates regardless of party and without party registration. The Legislature, in a game of legal and political chess, adopted a two-tiered bill, ESB 6453, to replace the state's primary. Lawmakers favored a "top 2" system that most closely resembled Washington's invalidated blanket primary. Under this system, all voters receive the same ballot with a list of the candidates. As voters move down the ballot, they can vote for their favorite candidates, regardless of party affiliation and without party registration. The two candidates for each position receiving the most votes, regardless of party, advance to the November general election.

The top 2 system, however, was not embraced by all. Governor Locke advocated a rival plan, known as the "Montana" system, citing voter disenfranchisement and the legal uncertainty of the top 2 system due to its similarity to the defunct blanket primary. Under the "Montana" system,

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voters would likely receive four ballots pertaining to Republican, Democrat, Libertarian and nonpartisan races. A person votes on only one of the three partisan ballots and the nonpartisan ballot. No record is kept as to which partisan ballot a voter uses.

Faced with these uncertainties, lawmakers adopted the top 2 primary, but also included a contingent Montana alternative if the top 2 system is invalidated. With a couple strokes of the pen, however, governor Locke vetoed 57 sections of the legislation, leaving only the Montana option in its place.

On a different front, Washington became the 42nd state to adopt charter schools. Lawmakers debated this issue for almost a decade. The legislation, E2SHB 2295, authorizes the creation of 45 charter schools over the next six years. Under the stated legislative purpose, charter schools serving mainly poor or minority students will be given priority. Declared to be common schools for state constitutional purposes, charter schools will be funded by public money, nondiscriminatory, eligible for state and federal grants, and subject to the same or greater performance standards as other public schools. These schools, however, provide educators with substantially more autonomy and flexibility. The schools may have longer hours, extended school calendars, and different curricula than other public schools. The legislation takes effect June 10, 2004.

In February, during the midst of the legislative session, the eagerly awaited economic forecast data was announced. The Economic and Revenue Forecast Council, in their quarterly revenue forecast, estimated general fund revenue to be \$76 million more than originally anticipated. Even though the amount is small in comparison to a \$23 billion budget, the estimate allowed legislators to side-step the difficult task of either further cutting the budget, incurring debt or raising taxes.

In other fiscal news, despite the lean economic times, lawmakers extended high technology and research and development tax incentives, ESHB 2546, set to expire this year and provided tax relief to aluminum smelters, 2SSB 6304. In 2003, lawmakers approved a massive aerospace tax incentive bill, HB 2294, designed to entice Boeing company into siting a manufacturing facility in Washington for the production of its new 7E7 airplane. On Dec. 19, 2003, governor Locke and Boeing formally signed a memorandum of agreement that Washington would be the site for the manufacturing facility, thereby entitling Boeing to an expected \$3.2 billion tax break.

WEST VIRGINIA

Mark McOwen

The 76th Legislature's 2nd regular session concluded March 21 with passage of the budget bill. The difficulties of formulating the budget in the face of rising costs and low revenue growth again kept many members focused almost exclusively on balancing the budget. Legislators declined to enact the tobacco tax increase that the governor had included in his revenue estimates.

Nevertheless, other major legislation was considered as well. A total of 280 bills were enacted. The "Pharmaceutical Availability and Affordability Act," HB4084, created a cost management council that is intended to reduce and control the cost of prescription drugs charged by manufacturers in this state. HB4004 created a fraud unit within the Office of the Insurance Commissioner. After years considering the issue, a bill, HB4022, regulating the operation of all-terrain vehicles was enacted. Other legislation of note included bills limiting nurses' overtime, SB251; reducing the maximum blood alcohol content to .08 percent for drunk driving prosecution, SB166; expanding the collection of DNA

samples from convicted felons, HB4156; authorizing municipalities to impose occupational, sales and uses taxes in limited circumstances, SB701; complying with the federal No Child Left Behind act, HB4001; allowing members of the state police to participate in political activities, SB208; establishing an "Angel Investor" tax credit, HB4047; and providing a state tax amnesty period, SB148.

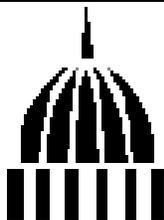
The Legislature meets monthly to study various topics during the interim period between regular sessions. The interim also brings the primary and general elections during which all 100 House of Delegates seats and half, 17, of the Senate seats are at stake. The 1st Regular Session of the 77th Legislature will convene Jan. 12, 2005.

To monitor legislative activity, please visit the West Virginia Legislature's web site at <http://www.legis.state.wv.us/> For toll-free access, dial 1-877-56LEGIS.

WISCONSIN

Steve Miller

In a lawsuit filed by legislative leaders, the Wisconsin Supreme Court held that the governor exceeded his authority by executing certain Indian gambling contracts. Those contracts added several casino games that are prohibited by the Wisconsin Constitution. Also, the contracts had no expiration date, and waived the state's sovereign immunity. The governor had negotiated the contracts in secret last year. In a 4-3 decision, the Court held that the contracts violated the state's 1993 constitutional amendment on gambling, and exceeded the governor's authority under state statutes that delegated the governor's negotiating authority. As a result, the state may face a budget shortfall of about \$206 million. Subsequently, the Legislature passed a bill that requires legislative ratification of the compacts, but the governor vetoed it.



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