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Does Your Workspace Need an Amendment?

By Kelly Lynn Anders, *The Organized Lawyer* (Carolina Academic Press, 2009)

The legal profession is busy and demanding—especially for overworked legislative attorneys. During the legislative session, it can be very easy to become overwhelmed with all of the competing projects and responsibilities. January was National Organization Month, but it’s never too late to think about what it will take to organize a workspace.

More Work, Less Space

Working in the field of law requires the management of an enormous amount of information, a skill seldom addressed in law school. We’re tuned in, online, hooked up, and essentially accessible 24 hours a day—and challenges with information overload promise only to increase. However, unlike other professionals, lawyers cannot simply choose one method of communication or information storage over all others because the law is practiced in all forms due to tradition and necessity. As a result, records must be kept in print, electronically, and in various forms of the two.

During the last decade, the amount of space with which we have to work has decreased. In many workplaces, offices are smaller, cubicles are the norm, and, like other professions, the legal profession lacks the stability it once enjoyed. So, not only is there more information to manage, but also there’s less space in which to do it, and because of job movement, that information is passed on in various forms of disarray from one person to the next. How does one prioritize competing interests and maintain a workspace that inspires confidence from clients and admiration from colleagues? How can legislative attorneys stay on top of the game?

Sadly, many of us are dropping the ball. Regularly, attorneys are sanctioned for misdeeds many of which can be traced back to disorganization. Often, the sanctions are for actions that are inexcusable but not malicious. Mistakes like commingling funds, failing to produce records to opposing counsel, failing to file in a timely

manner, being inaccessible to clients, and being seemingly ill-prepared to represent clients during hearings are all examples of how bad things can get when one is disorganized. Just the thought of all of the responsibilities we need to handle can be overwhelming. How does one handle everything and remain organized?

Many attorneys rely on their assistants or colleagues. But nothing replaces the confidence of knowing where things are and having a comfortable command of one’s surroundings. Not only is it essential for you as the attorney, but also it helps colleagues, assistants, and, most importantly, clients. Even though they come to you under stress from their own problems, they do notice the order (or disorder) of your office—and they make judgments about your competency from what they see.

Setting the Right Tone

No one expects to see a space that is entirely clutter-free, but most people feel more comfortable in an office that offers a clean chair, a small space to lean or set down personal items, and surroundings that demonstrate control over one’s workload. When a client comes to you for help, he or she wants to feel like you can handle it. How can a client be expected to trust you with life-impacting decisions when you don’t appear to have control of your own affairs? That may sound harsh, but perceptions matter, especially in the legal profession.

A well-organized space provides a sense of control and order, and there’s nothing like coming into your office and having a good idea of where everything is so that all you have to do is focus on the job at hand. It feels good when colleagues and clients come into your office and seem impressed by how nice it looks. It feels great when you don’t have to shove items aside to offer someone a seat in your office. These are the feelings that will keep you working to ensure your space remains organized.

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Setting the right tone also increases clients' confidence that they're working with attorneys with whom they can relate and who know what they're doing. A lawyer's reputation is, possibly, his or her most valuable asset. Your workspace is part of your reputation. In fact, it often makes the first impression. Securing the confidence of your clients is much easier to do when you're not explaining away a messy office. In contrast to misconceptions, some clients may not be impressed that you are "too busy" to clean your workspace; in fact, some may assume that you are either disorganized or too busy to handle another case and take their business elsewhere.

Office Layout Tips:

- Determine which pieces of furniture are the most useful. Do they serve as functional pieces, or merely as storage for items that you have not seen in months or years?
- Consider a layout that enables you to view the entry into your workspace while seated at your desk.
- Maximize storage options by using furniture with open and closed storage features, and consider options for vertical storage, such as bookshelves or an armoire.
- Spend at least one hour each week weeding and sorting materials, and spend five minutes each day straightening your desk before you leave. It may not seem like you are accomplishing much at first, but you will begin to see progress quickly if you keep at it.
- Consult with decision-makers in your firm or company before making any drastic changes.
- Locate images of office layouts and furniture styles you like that can guide you as you make changes to tailor your space to your needs and organizational type. Remember, it is possible to have a space that has a style that you like that also effectively meshes with the way you live and work among your things.

Considering Organizational Styles

Many books offer valuable tips and tools for creative, functional spaces, but they fail to address how different people have different ways of looking at their things. I believe we all have a particular organizational style that impacts how we view our things, live with them, and keep them organized—or disorganized. What works for some does not work for others. For example, some people need open storage, while others need closed storage. Some would benefit from canceling their subscriptions to periodicals, while others can keep them under control. These are just a few examples of how our particular organizational style influences our surroundings and can be used to our benefit in developing and maintaining an organized workspace.

How Are Lawyers Different?

Lawyers tend to wrestle with challenges privately. As the "go to" people for the problems others face, many lawyers tend to keep their own dilemmas to themselves because they are accus-

tomed to having the answers for others. Feeling required to have all the answers begins in law school. We all remember the terrible shame that resulted from being called on in class when we were unprepared and the huge embarrassment we felt when we did not know the answer to the question. We spent hours reading and preparing for classes so that we would not be caught unaware again. A lack of organization is a problem that can require the same exploration and problem solving as a case we might study. For some of us, organizing may perhaps cause even greater frustration because we assume it should be easier to organize space than to understand the law: we incorrectly think organizing involves only cleaning.

Potential Obstacles

Are there potential obstacles or rules that exist that could impact the decisions you make to alter your space? Is there furniture permanently affixed to the floor? Are there built-in bookshelves or cabinets that you must work around? Where are the jacks for your computer and telephone? If you're working in an office, does every wall have a plug? If you're working in a cubicle, can anything be moved? How tall are the walls? Are you permitted to hang anything on the walls in your office or cubicle? What is the policy for bringing in items from home? Do you have an office decorating budget? What is the general feel of the décor in common areas, and how much can you realistically stray from that without a few words of opposition from the powers that be?

Organization is a Process

Like the law, organization has many layers and nuances, and it impacts us all a little differently. We know what it looks like, but it takes time, honesty, and effort to achieve. Similarly, lawyers know how to define the law and what an effective law entails, but they also realize that these same laws took a lot of time and effort to get on the books, and they will continue to be reevaluated and fine-tuned over time. Like good organizational skills, the creation and practice of law require a process. When combined, law and organization make better lawyers and happier clients and result in fewer complaints of malpractice or other violations of the Code of Professional Responsibility.

Organization has visual and conceptual elements, and it is not enough to simply "know where everything is." There are many people who use this notion as an excuse for not doing what it takes to develop a system that looks as great as it supposedly works. The perceptions of clients and colleagues matter. It is not enough to *be* organized. You must also *appear to be* organized to receive the most benefits from this process. Good organization matters because it helps you get your work done more efficiently in a space that makes you feel more at peace and in control, which directly impact your performance, client satisfaction, and reputation as a legal professional.

Kelly Lynn Anders is the Associate Dean for Student Affairs at Washburn University School of Law; a former policy specialist with NCSL. In her spare time, she enjoys interior design and consults with attorneys and professionals to develop creative, functional, and organized workspaces. Contact Kelly by visiting www.theorganizedlawyer.com

Message from Gary Van Landingham Staff Chair, NCSL

Our states and the nation are facing unprecedented challenges. Legislators and legislative staff must 'do more with less' while staying informed about best practices and creative solutions. Today, more than ever, it is vital for you to take advantage of all resources and programs to help you perform your job. The National Conference of State Legislatures is your organization and here to provide you with the tools you need.

Through a variety of legislative staff sections, or networks, NCSL makes it easy for you to connect with other legislative staff serving in similar roles. These staff sections provide you with a wealth of opportunities to exchange ideas and learn from colleagues across the country. Each section offers a national listserv that helps you get information quickly from staff around the nation and offers you professional development opportunities that target key issues facing your specific role.

NCSL also offers a wide range of important tools and resources that are available to you 24/7 through its website, www.ncsl.org. From the Member Services page, you can review all of the benefits available to you as a member of NCSL. Check out recorded sessions from various conferences and meetings you may have missed, or register for upcoming webinars and conference calls on critical topics, such as the national economic stimulus program.

I encourage you to get involved with your legislative staff section, and plan to take part in a professional development seminar or e-learning opportunity this year. Through networking and continued professional development, you provide even greater value to your legislature and in turn to its constituents. We would love to hear from you on what types of programs or resources would be most beneficial to you. If you have any questions or suggestions, feel free to contact me at vanlandingham.gary@oppaga.fl.gov

PHILADELPHIA NCSL 2009 LEGISLATIVE SUMMIT

Today as a nation we are experiencing tremendous change and uncertainty. Now, more than ever, state legislatures and leaders are challenged to provide solutions and strategic vision for America. The **NCSL Legislative Summit** in Philadelphia is the only place where state lawmakers, legislative staff and national policy experts from across the country converge to share ideas, best practices and strategies. It's essential for the best minds and strongest leaders to come together to debate solutions to the challenges facing states. Attend the Summit and **be part of the genius**.

A MEETING OF THE MINDS

Philadelphia has been hosting historic meetings since 1776. Since the moment the states came together to ratify the Declaration of Independence, America has been strengthened from ideas and innovations conceived in state legislatures.

The Legislative Summit provides more than **150 informative sessions** and presents nationally renowned speakers on issues that matter. It is where Republicans and Democrats from across the country come together to work on the nation's toughest issues, and where legislative staff gather to sharpen their skills and make the institution strong - **a true meeting of the minds**.

BE AT THE CENTER OF IT ALL

Famous for **cheesesteaks** and the **Liberty Bell**, America's 'original' capital is rich with history and creativity. Founded by William Penn in 1682, today Philadelphia is the country's sixth-largest city, a collage of traditions, cultures and more than 150 neighborhoods. Only 100 miles from New York City and 130 miles from Washington D.C., Philadelphia is less than a four-hour drive for 40% of the nation's population.

For more information see <http://www.ncsl.org/summit/index.htm>

Just steps from the Convention Center you'll discover the nation's oldest, continuously operating farmers market in Reading Terminal Market. Stroll anywhere in the city and you'll admire more than 2,700 murals adorning buildings, bridges and parks as part of our Mural Arts Project (MAP). Explore America's most historic square mile including Independence Hall, Congress Hall and Franklin Court. This is a city where history is artfully woven into every aspect of the present, **the cradle of American ideals**.



Make plans to attend the **35th annual Legislative Summit** this summer. We hope you will bring your family to take part in the educational guest programs. Philadelphia and the surrounding counties offer a wide array of activities for pre- and post-event stays, from the Amish Country to Valley Forge, food tours, art museums and more.

For the convenience of all NCSL attendees, the Philadelphia Convention and Visitors Bureau will host a concierge desk during the meeting hours at the Convention Center.

PHILADELPHIA

NCSL 2009 LEGISLATIVE SUMMIT

Be at Liberty to Meet

Join more than 7,000 legislators, legislative staffers, business representatives, government officials, union and foundation representatives, media and faculty for a memorable week!

The opening general session will be Tuesday morning. Another key event is Thursday's business meeting, which provides legislative delegates the opportunity to direct NCSL's federal lobbying efforts for the following year.

You will have an opportunity to network with other attendees on Tuesday evening at the National Constitution Center. Wednesday evening offers a preview for our 2010 meeting with "A Taste of Kentucky," followed by states' night, a chance for delegates from each state to get together. Plan to stay through Friday, July 24, for the final sessions and the meeting's closing event that evening.

For more information see <http://www.ncsl.org/summit/index.htm>

Top 5 Reasons to Attend

- You are a legislator or staffer looking for innovative ideas to deal with the most difficult and timely issues in your state.
- You want to sharpen your skills to become even more effective in your legislative role.
- You want to influence Congress on federal legislation that affects your state.
- You want to hear how your peers in other states are solving critical problems.
- You want to network with Republican and Democratic colleagues from across the nation.

Be Among the First at NCSL's Thirty-Fifth Summit

New this year, registration for the Legislative Summit will be required in order to secure housing arrangements at one of the NCSL conference hotels. **Registration and Housing** are now open. Register by **June 19** for advance rate savings!

Legislative Staff Management Institute

The Premier Legislative Staff Training Program in the Nation!

Effective legislatures are essential to democratic governance. USC and the Center for California Studies at California State University, Sacramento (CSUS) offers a world-class program reflecting the quality of the National Conference of State Legislatures' long-standing leadership in offering the highest level of excellence and professionalism in supporting legislatures throughout the country. The LSMI program developed by USC and CSUS focuses on practical application of concepts and tools that legislative staff can use to meet the increasingly complex policy and management demands characterizing state legislatures throughout the country.

This program is intended for both senior-level legislative staff as well as staffers on their way to such positions from throughout the country. Acceptance into the program is competitive as the program size is limited.

Cost

\$2,250 per participant includes a seven-night stay at the four-star Sheraton Grand Hotel Sacramento; catered meals, field trips, materials, and eight days of high level faculty. Participants pay significantly less than the actual costs because of generous contributions from the NCSL Foundation, plus the Morris Smith and Union Pacific Foundation, USC, and Sacramento State.

Introduction

The USC School of Policy, Planning, and Development and the CSUS Center for California Studies are proud to cosponsor this world-class, management and leadership skills development program that reflects NCSL's longstanding tradition of offering the highest level of excellence and professionalism in legislature support from throughout the country.

The program is delivered by outstanding faculty and trainers with extensive professional experience and research-based knowledge

on effective management processes, leadership practices, and the legislative institution from throughout the country. The curriculum design and delivery emphasizes learning by doing, with practical application of skills for effective communication, team building, negotiation, legislative staff and enduring professional relationships connected by core values.

Program Design

The LSMI Program developed by USC and CCS focuses on practical application of concepts and tools that legislative staff can use to meet the increasingly complex policy and management demands that confront American state legislatures throughout the country. The curriculum has five major components:

- **Interactive seminars** with experience-based learning for eight days;
- **Distance learning** prior to and after the program through the Internet;
- **Legislative content** specific to current issues and staff;
- **Management processes** for leadership and personal growth; and
- **Group activities** outside of the conference room.

STATE NEWS



COLORADO Debbie Haskins

Colorado has an active initiative process but that doesn't necessarily mean that the measures all pass. Titles were set for the ballot for 14 initiatives for the 2008 general election. Of those 14 initiatives, 4 were withdrawn before the election. Of the 10 remaining, 8 were rejected by the voters and only 2 were adopted - Amendments #50 and #54. Amendment #50 allowed the 3 mountain towns that have limited gaming to ask their citizens to vote on increasing the hours of operation of the casinos, to add roulette and craps, and to raise the bid limits for limited gaming from \$5 to \$100. Increased revenue from these changes will go to classroom instruction and financial aid for students attending community colleges and for local government impacts caused by limited gaming. The other measure that passed was Amendment #54, which prohibits a holder of a sole source government contract and the holder's immediate family members from making political campaign contributions. Litigation has already been filed challenging the constitutionality of Amendment #54. The General Assembly referred 4 measures to the voters, including one to reform the initiative process (rejected) and one to decrease the age for serving in the legislature to 21 (rejected). The voters did pass two measures to eliminate obsolete provisions in the state constitution.

The Colorado Supreme Court recently ruled in *Mesa County Bd of County Commissioners v. State of Colorado* on a school finance issue involving the state constitutional provision called Tabor (Article X, §20). In 2007, the General Assembly enacted S.B. 07-199, which provided that a school district that had already obtained voter approval to retain and spend revenues in excess of the property tax revenue limitation imposed under Article X, §20 did not have to reduce its mill levy, thereby allowing the district to generate the maximum amount of property tax revenue it could generate from its current mill levy under Article X, §20. This was commonly referred to as a property tax mill levy freeze. The Mesa County Board of Commissioners, a business owner, and local taxpayers sued the state alleging that the bill violated the state constitution because it does not require prior voter approval to retain and spend the revenues in excess of the property tax limits imposed under Article X, §20 and that this constituted a change in tax policy or a weakening of a statutory limit requiring voter approval.

The Denver District Court ruled that the additional revenue should have been approved in advance by the voters and issued an injunction. The judge did not order a tax refund, however, because she questioned whether she had that authority. The Governor appealed the decision to the Colorado

Supreme Court. In December 2008, the Colorado Department of Education asked the Supreme Court to rule in the case so that school districts could meet a December 15 deadline for school districts to set their mill levies. The Colorado Supreme Court lifted the injunction in December 2008, to "preserve the status quo as it existed under [the 2007 law] until the court issues its final decision" on the education finance law. This allowed the school districts to set their mill levies for the 2008-09 budget year. The Colorado Supreme Court finally issued its decision on March 16, 2009, reversing the Denver District Court decision and upholding the constitutionality of S.B. 07-199.

Like other states, our budget situation is grim. How to deal with balancing the budget is dominating our session.

Our multi-year life safety project to improve the fire safety of the State Capitol building has finally ended. We lost a small portion of the office because a new stairwell was extended, built from the second floor to the basement where our offices are located. The new stairwell is not used much by the public and it offers us a quick way up to the House and Senate chambers - we joke that it is our "private" stairwell.

DELAWARE Rich Dillard

As predicted in the last issue, a Bill [SB 7] restricting the use of eminent domain was re-introduced at the beginning of the 145th General Assembly. It passed the Senate 19 yes, 1 not voting and 1 absent in January and on April 1 (no fooling) was released from Committee in the House and passed [41-0] the following day. Now it's on to the new Governor for a second try (the previous Governor having vetoed it).

The Delaware Code on-line [<http://delcode.delaware.gov>] now has a great new feature which will increase in usefulness as the years progress. The Laws of Delaware citations at the end of a Code section have always allowed someone to find the individual Bills which created and changed that Code section, but now the citations since 1999 have become active links to those Bills. Congrats go to Jeff Hague, our Registrar of Regulations, for this improvement.

Revolving Door Notes: 2 former House Caucus Attorneys who left for fulltime positions elsewhere in government have returned to the roost. Former House Republican Caucus Attorney Ali Stark retired last December from a non-partisan Legislative Attorney position and has returned as a House Republican Caucus Attorney. Former House Democratic Caucus Attorney Bill Bush was legal counsel to now former

Governor Minner and has returned as a House Democratic Caucus Attorney. The kicker is that after 24 years of House Republicans being in charge, the Democrats took over last November, so the former Majority Caucus Attorney is now a Minority Caucus Attorney, and vice versa.

FLORIDA

Edith Elizabeth Pollitz

In a scenario repeated in state legislatures across the country, the Florida Legislature is struggling to meet the needs of the people with woefully inadequate resources. The popular refrain is that “everything is on the table,” regarding where to make the cuts to balance the budget. Tallahassee is a government town (capital city and home of two state universities), and the workforce here is very nervous regarding how cuts may affect state employees. There is talk of a 5% cut in salaries, but it remains to be seen what will actually happen. The deletion of approximately 2,000 state positions is also being considered. Local newspaper reports indicate that Florida’s per capita dollars spent for state employees is last in the nation (that’s been the party line for several years now), an argument that would suggest putting employees further in the hole might not be the best move.

Lizards may fall from trees in Florida (no kidding), but money does not, especially with you folks in the other 49 states not taking as many beach vacations in these hard times (come on down—Mickey misses you and your dollars). So, it appears there will be a lot of belt-tightening across the board. At this point in the session, the halfway point, discussion regarding increasing taxation or deleting tax exemptions does not seem to be taking a clear path, if indeed any path. This one is probably going to have to go right up to the end (and likely a special session or two) to work itself out.

On the technical front, the House of Representatives has been using Leagis for bill drafting for years. Senate Leagis became operational for drafting a couple of years ago, and other functions are being folded into the system in stages. The design stage for some of the peripheral activities—bill tracking and laws and statutes production—is going on at present.

IDAHO

Katharine Gerrity

The First Regular Session of the Sixtieth Idaho Legislature convened on January 12, 2009, and continues in session as of this date. Like every other state, Idaho is struggling with the allocation of limited financial resources.

Idaho’s Joint Finance and Appropriation Committee, the committee in charge of setting state agency budgets, is expected to conclude its initial budget setting within the week. The Committee has voted to cut all state agency budgets by varying amounts. The cuts, however, all include a 5% reduction in personnel costs for FY 2010, with 3% of that figure to be a one-time across-the-board salary reduction for all state em-

ployees, with the remaining 2% reduction to be covered by vacancy savings, unpaid furloughs or, as a last resort, lay-offs. The Committee has also voted an unprecedented budget cut of over 7% for schools. Some of the school budget cuts will be softened by the receipt of federal stimulus money.

The Legislature has also been trying to resolve funding concerns relating to Idaho’s roads. Federal stimulus money will also be available to address some of these needs. Other matters of interest that continue to work their way through the process include reform of Idaho’s liquor laws, day-care licensing and invasive species funding, which is particularly directed at keeping quagga and zebra mussels out of Idaho.

The Legislature, once again, is meeting in temporary quarters while the renovation of the Idaho State Capitol is completed. The Legislature intends to return to the Statehouse for the Second Regular Session of the Sixtieth Idaho Legislature in January 2010.

ILLINOIS

Rebecca Johnson

Following the arrest of Illinois Governor Rod Blagojevich on federal corruption charges, the Illinois House of Representatives voted to impeach Blagojevich. In January, the Illinois Senate voted unanimously to remove Governor Blagojevich from office. Pursuant to the Illinois Constitution, Lieutenant Governor Patrick Quinn was sworn in as the 41st Governor of Illinois.

In response to charges of corruption in State government, the Joint Committee on Government Reform was established. The Committee consists of 16 legislators from our General Assembly and will focus on four topics: open government, outside influences, campaign reform, and procurement issues.

Governor Quinn and the General Assembly are confronted with a host of challenges concerning Illinois’ growing budget deficit. The budget deficit has been reported by the Commission on Government Forecasting and Accountability, a legislative agency, to be as severe as \$12.4 billion. In order to close the deficit, Governor Quinn proposed a 50% increase in the individual and corporate income tax rates and pension reforms for new State employees. The suggested pension reforms include adjusting the retirement age for new employees and increasing employee contributions.

KANSAS

Mary Torrence

Like other states, the budget has been the foremost item of business for the Kansas Legislature this session. There’s been discussion of furloughs but to date we have not been directed to implement either furloughs or salary cuts.

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Restoration of the Capitol continues, in spite of the tough economic times. It has been a daunting task to find offices and committee rooms for the Legislature while the Capitol is torn up. The upside is that staff members are getting more exercise walking to committee meetings in other state buildings.

Two years ago the Legislature created Revisor Fellow positions within the Revisor's Office. The purpose of the positions is to interest law students and recent law graduates in legislative agency work. The positions are full-time, salaried positions with health insurance benefits. While the fellows have been in school, however, they have worked part time. The program has been successful. We have had four fellows become assistant revisors, two of whom subsequently left the office. We currently have two capable fellows, one who is waiting for bar exam results and another who will graduate from law school in December.

The computer project that will give us an integrated legislative computer system is now in the build stage. The bill drafting system will be implemented first. We look forward to being able to use the drafting system in the 2011 session.

LOUISIANA **Clifford Williams**

The "fiscal" session begins on April 27th and it is expected to be a rough session, considering that the state is facing huge deficits in revenue collections. The governor has already ordered mid-year budget cuts and is anticipating deep cuts in next fiscal year's budget. Though we have enjoyed huge surpluses since the Katrina and Rita year, no surplus money can be used to fill the gaps in the revenue collections. Surplus monies cannot be used for recurring expenses. As always, higher education and health care are expected to receive the deepest cuts. This is caused by the fact that so much of the revenue collected is deposited into protected funds, thus leaving higher education and health care to shoulder most of the cuts. There is talk coming from the governor's office and from legislators that legislation will be introduced to remedy that problem. Most of the legislation will be aimed at increasing the percentage by which the state can dip into protected funds when the state is experiencing high deficits in revenue collections. The governor has indicated that he will not seek increases in taxes, but that has not stopped legislators from prefling or thinking about prefling increases in cigarette taxes, alcohol taxes, and gasoline taxes.

This fiscal session will also include legislation to change our "Megafund" provisions. The Megafund was established a few years ago in order to provide the governor's office and the state's economic development department with instant access to funds to provide incentives to attract new industry. Projects have to meet certain criteria in order for the fund to be tapped. Just two weeks ago, the governor proposed tapping the fund for \$50 million to assist a private company in the

acquisition of a poultry plant that the owners were going to close. An agreement was ironed out between the state, the seller and the buyer in attempt to save some 1000+ jobs in north Louisiana. However, this project does not meet the criteria for tapping into the fund. Thus, the Megafund provisions must be amended this session to authorize the use of the monies for such a project. The administration will encounter some small resistance from the legislature, but will probably prevail.

Another expected fight between the governor and the legislature will concern the \$94 million in stimulus money for expanded unemployment benefits. At the time of this writing, the governor has refused the monies, indicating that such will have an adverse affect on business taxes once the stimulus monies are exhausted. Some legislators have indicated that they will file a concurrent resolution to accept the monies, but the governor still has the power to veto the changes in state law that will be required in order to receive the stimulus funds.

MARYLAND **Sherry Little**

The State of Maryland will have a much tighter death penalty law when Governor Martin O'Malley signs the recently passed Senate Bill 279 into law. The legislation originally repealed the death penalty and all related provisions, but as amended restricts the death penalty to cases in which the State presents the court or jury with biological evidence or DNA evidence that links the defendant with the act of murder; a videotaped, voluntary interrogation and confession of the defendant to the murder; or a video recording that conclusively links the defendant to the murder. The legislation also prohibits a defendant from being sentenced to death if the State relies solely on evidence provided by eyewitnesses in its case. If the State has already properly filed a notice of intent to seek a death sentence in a case that does not qualify for the death penalty under the bill, that notice must be considered withdrawn. In such instance, the State must also be considered to have properly filed a notice to seek a sentence of life imprisonment without the possibility of parole.

There are five death penalty cases currently pending in the State. Since Maryland reinstated the death penalty in 1978, 56 persons have been sentenced to death and five have been executed, the last one in 2005. The State has executed 314 people since 1638.

Initially, many supporters of the death penalty repeal were hopeful that the 2009 session would result in passage of repeal legislation, despite the failure of similar bills in earlier years. Several factors were in place. Governor O'Malley had placed the repeal among his top priorities and engaged both legislators and the public. Additionally, a de facto moratorium on executions has existed since December 2006, when

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the Maryland Court of Appeals ruled in *Evans v. State*, 396 Md. 256 (2006) that lethal injection regulations had not been properly adopted. Even though the Governor directed that regulations be developed following the April 2008 Supreme Court decision in *Baze v. Rees*, 128 S. Ct. 1520 (2008) upholding the constitutionality of lethal injection, to date, new regulations on lethal injection procedures have not been issued, and legislation exempting the protocols from the regulatory process of the State's Administrative Procedure Act has not passed.

Another factor was the December 2008 recommendation of the Maryland Commission on Capital Punishment, on a 13 to 9 vote, to abolish capital punishment in Maryland. The Commission was established by law (Chapters 430 and 431 of 2008) to study all aspects of capital punishment as currently and historically administered in the State. Its membership reflected the broad diversity of views on capital punishment and the racial, ethnic, gender, and geographic diversity of the State, and former U.S. Attorney General Benjamin Civiletti served as chair.

The Commission focused on the ability of government to administer the system fairly and in a way that minimizes the risk of executing innocent persons, rather than the morality of state-sanctioned killing. It found that racial and geographic disparities exist in how the death penalty is applied and that death penalty cases are more costly than nondeath penalty cases and take an unnecessary toll on the survivors of murder victims. The Commission also found no persuasive evidence that the death penalty deters homicide in Maryland and that the unavailability or contamination of DNA evidence opens the real possibility of wrongly executing an innocent person.

The Commission's minority report supported retaining the death penalty, citing that Maryland is more judicious in its application of the death penalty compared to other states and that the chance of executing an innocent person in Maryland has been reduced as far as is humanly possible by the State's extensive statutory scheme before the death penalty may be imposed, extensive review process, post-conviction DNA reforms, and advances in technology. It also recommended that if the death penalty is repealed, it should at least be retained for cases involving murder of correctional officers.

Against this background, Governor O'Malley and others testified before a closely divided Senate committee in support of the repeal. The proposal emerged from the Senate committee with an unfavorable report. However, at the request of the Governor, the President of the Senate permitted the use of a procedural move that was last used 30 years ago to reinstate the death penalty. Senators narrowly approved motions to substitute the bill for the unfavorable committee report and bring the bill to the floor. The action created the opportunity for senators to offer amendments to the bill and to hold a floor debate on the death penalty issue and the merits of the bill before putting it to a final recorded vote. The Senate

eventually passed a compromise bill that retains the death penalty with added restrictions that give a greater degree of certainty that an innocent person will not be put to death. The Senate bill was then sent to the House for consideration, with a caveat from the President that the Senate would not reconsider the measure if it were amended.

Despite his opposition to the death penalty, the Governor testified at the House committee hearing in favor of [SB 279](#) as an achievable measure that makes execution of an innocent person much less likely. Subsequently, the House committee sent the Senate bill to the full House without amendments. Floor debate followed, but the bill was approved unamended and, after approval by the governor, will become a part of Maryland law.

MISSOURI Russ Hembree

The First Regular Session of the Ninety-Fifth Missouri General Assembly got underway January 7, 2009, with a focus on budgetary matters, including use of federal stimulus money. The first Truly Agreed bill of the session created two separate funds within the state treasury to receive and retain funds provided under the American Recovery and Reinvestment Act of 2009. An economic development bill expanding the quality jobs program has passed the House and awaits action in the Senate, with that body considering a limitation on most state tax credit programs through a cap on fiscal year allocations.

Other bills under consideration include more stringent regulation of preneed funeral contracts, prohibiting drivers from sending text messages while operating motor vehicles, requiring health carriers to provide coverage for autism spectrum disorders, and allowing the Department of Revenue to appoint motor vehicle dealers to serve as agents for the purpose of collecting and remitting motor vehicle sales and use tax.

Appropriation bills are required to be Truly Agreed by 6 p.m. on May 8, with the tabling of all bills due by 6 p.m. on May 15.

NEW HAMPSHIRE Paul Lindstrom

The First Circuit vacated the federal court order striking down New Hampshire's prescription information law that was reported in the last issue. The case involves a 2006 statute prohibiting the transfer or use of patient-identifiable and prescriber-identifiable prescription information for commercial purposes. The District Court found that the statute violated the First Amendment rights of the data mining companies that brought the suit. The First Circuit held that the statute regulated conduct, not speech, but limited its holding to

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the data mining companies. The court noted that the issue of whether the statute restricted speech rights of doctors or “detailers” was not properly before the court. However, the court analyzed the commercial speech implications of the statute under the *Central Hudson* test and found that it was an appropriate restriction on commercial speech. The court specifically noted that New Hampshire had greater leeway under *Central Hudson* because no state had previously enacted a similar law; the New Hampshire legislature was therefore permitted greater authority to speculate on the benefits of the legislation. The plaintiffs are asking the Supreme Court to review the decision.

NORTH CAROLINA **William R. Gilkeson**

Once again, North Carolina has been the subject of a major U.S. Supreme Court decision about redistricting. In its March 9 decision in *Bartlett v. Strickland*, 129 S.Ct 1231, the Court upheld a decision of the North Carolina Supreme Court.

The State court had to decide whether the General Assembly had violated the State Constitution when it split Pender County (near Wilmington) to create a State House district. The State's defense was that it had to split the county in order to create an effective African-American district. It said the minority district was required by federal law, i.e., Section 2 of the Voting Rights Act. The Pender County commissioners, who brought the suit, argued that the minority district that was created was only 39% black in voting age population, and that Section 2 requires a minority district only if it can be drawn compactly with more than 50%. The State Supreme Court was called upon to set a standard for how federal law should be interpreted if used as a defense for deviating from State law. In its 2007 decision, the State Supreme Court said Section 2 of the Voting Rights Act did not require the creation of a minority district unless one could be drawn in which the minority group was more than 50% of the voting age population of U.S. citizens.

On the State's appeal to the U.S. Supreme Court, the Justices voted 5 to 4 to uphold the State Supreme Court interpretation of Section 2, setting a more-than-50% threshold for Section 2 minority districts. Justice David Souter wrote a strongly worded dissent. Justice Ruth Ginsburg joined him, adding a short dissent of her own in which she invited Congress to get involved, clarifying what it meant in Section 2 and perhaps overturning the Supreme Court's decision.

As a result of the *Bartlett v. Strickland* decision, the General Assembly will have to fix the splitting of Pender County, which means doing at least a little bit of redistricting in 2009, a year before the 2010 Census.

In other news, a new permanent director was appointed for the largest legal staff office of the General Assembly, the Research Division. The new director is Walker Reagan, who has been an attorney with the Division since the early 1990s.

His predecessor, Terry Sullivan, retired in 2008 after serving since the 1970s.

OREGON **Ted Reutlinger**

The 75th Oregon Legislative Assembly convened in January to face an \$855 million deficit in the state budget for the current biennium ending June 30, 2009, and a projected deficit in the range of \$3.8 billion for the biennium beginning July 1, 2009. The Legislative Assembly quickly passed a \$176 million job stimulus package authorizing the issuance of bonds for immediate capital construction projects and then rebalanced the budget for the current biennium by using a combination of state agency budget cuts, federal stimulus funds and fund transfers. The Legislative Assembly continues its work on budget reductions for the next biennium and expects to adjourn by June 30, 2009.

The Legislative Assembly is also considering a switch from regular biennial legislative sessions of six months or more in odd-numbered years to annual legislative sessions. The change would require a constitutional amendment approved by the people. We are working on the complicated details of making this change and would appreciate hearing any advice or recommendations from states that may have recently made a similar change.

In other news, the Legislative Assembly passed a law that bans the manufacture, distribution or sale of handheld novelty cigarette lighters. The law defines a novelty cigarette lighter to be a lighter with a shape that resembles or imitates an object other than a cigarette lighter, has audio or visual effects or has other features that would reasonably be expected to make the lighter attractive to a child.

The Legislative Assembly also added a \$15 fee on deeds and mortgage records filed with county clerks. Money raised by the fees are dedicated to affordable housing.

A Senate committee passed a bill refining provisions of a major government ethics law revision enacted in 2007. The House passed a bill allowing electronic voter registration and approving an interstate compact for an agreement among the states to elect the President by national popular vote. The Legislative Assembly is also considering modifications to the state's initiative petition system.

The Legislative Assembly is reviewing Oregon's “Bottle Bill” and may increase the container deposit to 10 cents and include sports drinks, tea and juice containers. Climate change is another subject of legislative focus, with various proposals to address the reduction of greenhouse gas emissions under consideration.

The Legislative Assembly is considering bills addressing prevailing wages in enterprise zones, mortgage loan origina-

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tor licensing through the Nationwide Mortgage Licensing System and Registry and the exemption of voice over internet protocol services from state-level regulation. The Senate passed a bill giving the attorney general more enforcement authority involving debt collectors.

The House passed bills imposing more stringent reporting requirements regarding sexual conduct by a school employee directed toward a student, directing school districts to set policies regarding bullying and exempting employee areas of schools from nutrition standards for food and beverages sold in schools. The Senate passed a bill requiring the fingerprinting of all public school employees or contractors. Committees from both chambers are considering measures that promote additional instruction in physical education, foreign languages, finance and Oregon studies.

PENNSYLVANIA **Stacey Connors**

The Pennsylvania Legislature needs to make significant policy decisions regarding Pennsylvania's pension systems in the near future. It is anticipated that there will be a significant forthcoming spike in employer (taxpayer) contributions to both public pensions systems (the State Employees Retirement System and the Public School Employees Retirement System), due in part to poor returns in the early part of this decade. In response, Senator Patrick Browne (R-Lehigh) has introduced legislation that would move Pennsylvania from a defined benefit (DB) pension plan to a defined contribution (DC) retirement plan, similar to a 401(k) or 403(b) plan. The proposed defined contribution retirement plan would be provided to all public employees hired on or after the effective date of the legislation, including state employees, public school employees and municipal employees. Without significant changes in the design of Pennsylvania's pension system, including a switch to a defined contribution system, the costs associated with the pension system in the long-run will be unaffordable to Pennsylvania taxpayers. A switch to a defined contribution plan would benefit Pennsylvania taxpayers by eliminating future pension crises, retiree benefits will become predictable and sustainable, costs will be easily defined, and future liabilities will be fully funded.

Pennsylvania faces a significant budget deficit this budget cycle, which ends June 30. The general fund budget for Fiscal Year 2009-10 unveiled by Governor Rendell in February includes a \$1.26 billion (4.6 percent) increase in spending. The Governor, projecting a \$2.3 billion shortfall, proposed additional revenues from a 10 cent-per-pack increase in Pennsylvania's cigarette tax, to a proposed total of \$1.45 per-pack; a new tax on cigars and smokeless tobacco; a new tax on extraction from the state's Marcellus Shale natural gas reserves; a proposal to use \$250 million from the Rainy Day Fund in Fiscal Year 2008-09 and \$375 million in Fiscal Year 2009-10; revenues generated from video poker machines in establishments holding liquor licenses; and anticipation of \$2.4 billion in federal relief funding.

Senator Mike Brubaker (R-Lancaster) has introduced legislation that would provide transparency and oversight of all federal stimulus dollars spent in Pennsylvania. This legislation would create a bipartisan nine-member commission to provide oversight and accountability for all funds distributed to Pennsylvania through the federal stimulus funding. The Pennsylvania Commission on Stimulus Accountability will be required to track, monitor and report on all monies received from the federal government as part of the stimulus package. In addition to monitoring all grant programs and state contracts issued as part of the stimulus package, the commission will be asked to make recommendations to enhance the Commonwealth's ability to create jobs and identify ways to prevent waste and fraud. The commission will be made up of four members of the governor's cabinet, one member appointed by each of the four legislative caucuses, and a member of the general public appointed by the governor. The body will be required to meet at least twice a month through Fiscal Year 2009-10 and submit all reports and meeting transcripts to the Senate and House Appropriations Committees.

VIRGINIA **Mary Spain**

The 2009 General Assembly met for 46 days from January 14 to February 28. The major issue facing legislators was how to adjust the budget for the 2008 -- 2010 biennium that had been adopted in 2008 and how to cover the shortfall in the projected revenues on which that budget had been based. In February 2009, Governor Timothy M. Kaine reported that the shortfall had grown to \$3.7 billion because of falling revenue collections through January.

On the last day of the session, the House and Senate approved the conference report on the budget that balanced the budget for the 2008 -- 2010 biennium by a combination of cuts in spending and the appropriation of approximately \$ 1 billion in federal stimulus funds used mainly to fund state Medicaid obligations. The budget as passed on February 28 will be reviewed by the Governor. He may suggest amendments or veto certain items by March 30.

The General Assembly will reconvene April 8 to act on the Governor's vetoes and amendments to the budget bill and any other bills that he returns with vetoes or amendments.

In addition to the budget, the General Assembly considered more than 2,500 other bills and resolutions and passed more than 1,400 measures, including 734 joint resolutions and 886 bills. Only the bills are returned to the Governor for his review.

Among the more significant bills passed were measures:

- to prohibit smoking in all indoor restaurants and bar and lounge areas in Virginia;
- to prohibit text messaging while driving;
- to allow a person with a concealed handgun permit to carry a concealed handgun in a restaurant or club and prohibit that person from drinking alcoholic beverages at the same time;
- to enhance economic development incentives;
- to prohibit payday lenders from extending unsecured credit under an open-end loan plan; and
- to amend certain motor vehicle license law provisions to comply with federal REAL ID Act requirements.

Among the more significant measures killed were proposals:

- to provide for changes in the process to restore civil rights to convicted felons who have completed service of sentence;
- to provide for an independent redistricting commission;
- to require background checks on prospective gun purchasers at gun shows; and
- to make failure to wear a seat belt a primary traffic offense.

WEST VIRGINIA

Mark McOwen

The Governor convened the 79th Legislature into its first regular session and its work began February 11, 2009. As of the deadline for this report, the 60 day session will conclude in 11 days. The Governor has now unofficially advised the Legislature that he intends to cut the expenditures proposed in the budget he submitted in February by almost 5%, but the Legislature has not yet received details, that realm wherein lieth the devil. Meanwhile the Legislature also wrestles with various topics such as maximizing receipts of anticipated "stimulus" funding, carbon sequestration, high powered transmission lines, unemployment compensation funding, revising the annual school calendar, alternative and renewable energy, required restaurant calorie posting, funding for increasing public employee health care costs, expansion of gaming operations, higher education funding, pensions for paid police and firefighters and LOSAPS for volunteer firefighters, gasoline taxes, salvia divinorum, bear hunting, timber taxes, autism, college for veterans, limiting cell phone use while driving, authorizing the Governor to furlough public employees, and many other diverse subjects. Usually the session is extended for a week to complete the budget following the conclusion of the 60 day period for enacting general law legislation. To monitor legislative activity, please visit the West Virginia Legislature's website at <http://www.legis.state.wv.us/>. For toll-free access, dial 1-877-56LEGIS.

WYOMING

Dave Gruver

The Wyoming Legislature concluded its general session on March 5, the thirty-seventh day of the session. The Wyoming Constitution limits the Legislature to sixty days each term, which is normally divided into a forty day general and twenty day budget session.

For the session there were 334 House Bills and Resolutions introduced and 152 Senate Files and Resolutions. Two hundred eleven bills became law. Four enrolled acts were vetoed and one partially vetoed. No issues completely dominated the session, but the Legislature did continue to move forward on the issue of carbon capture and sequestration, passing three bills addressing the general issue (HB 57 - Ownership of pore space-dominance of mineral estate; HB 58 - Responsibilities of injectors and pore space owners; and HB 80 - Sequestration site unitization). Energy issues were addressed by other bills as well, including a bill to conduct a Western states energy and environment symposium (HB 295).

While Wyoming appears to be in better financial shape than most states, declining mineral revenues did affect the session and were cause for the Governor to request a special meeting of the State's Consensus Revenue Estimating Group (a compilation of Legislative and Executive branch financial and mineral experts formed to provide a single, shared estimate of revenue projections). That Group's revised revenue projections will likely affect the need for budget adjustments by the Governor or the Legislature.

The work of the interim is underway, with Committee meetings already being held in March. All approved Committee study topics can be found on the Legislature's website: <http://legisweb.state.wy.us/>. Session information, statutes, general information concerning the Legislature and individual legislators, budget and fiscal information and Legislative Service Office information, including position openings, can be found on the website.

One item that might be of interest to legislative staffers is our attempt to address archaic and obsolete laws through a title by title review, without undertaking a recodification of each title. With Committee work increasing each year and with greater focus on defined substantive issues and less on general revisions, the Legislature and Legislative Service Office is undertaking a new approach to "clean-up" the statutes via a select Committee and intensive staff input. If anyone has suggestions on pitfalls to avoid or ways to make the process work smoothly, we would appreciate the input.

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