Centralized Administrative Law Judge Panels
BY BOB BOERNER, NCSL

Each day in the United States far more hearings are held in front of agency judges than there are court trials. These administrative hearings deal with a variety of subjects, including citizen claims for workers' compensation, Social Security or welfare benefits. Administrative law judges hear cases, find the facts, and apply the law, just like in a trial, but these proceedings are referred to as "adjudications" or "adjudicatory proceedings" or "hearings." The administrative law judge opinions are only proposed, and agency heads are free to substitute their judgment for that of the administrative law judge on questions of fact or law.

Approximately half the states perform hearings by administrative law judges who are employed by the state agency. However, 25 states and the cities of Chicago, New York, and Washington, D.C. currently have adopted state central panels.

In a central panel system, a single state agency employs administrative law judges to hear administrative cases for several state agencies instead of asking each agency to employ its own judges to hear cases. The system is intended to provide a fair and impartial hearing by judges who are independent of the agencies that are parties to the cases and to avoid an apparent conflict of interest.

Alaska, Illinois, New York and Pennsylvania are considering adopting a central panel system. California was the first state to create a central panel, in 1945. Each state has provided for different functions for the panels, and almost all of them are located in the executive branch of government. Most have jurisdiction over occupational licensing cases, and a majority of them hear employee discipline cases. Colorado's panel presides over workers' compensation cases. South Dakota is the only state to adopt a central panel system and subsequently abandon it. However, the state has since re-adopted the system.

Advantages and Disadvantages of Central Panel Systems

The Fairness Argument Proponents of a central hearing panel argue that, where the hearing officer is an employee of the agency, the agency is allowed to act as a police officer, prosecutor and judge, with the hearing process a mere rubber stamp for the agency staff's decisions.

The Appearance of Fairness Argument Proponents argue that, even if the use of the agency employees as hearing officers does not result in actual unfairness, the use of those employees results in apparent unfairness with loss of public trust in the process.

The Efficiency Argument Proponents reason that the central hearing panel will allow for standardization of services and quality control features that would be difficult to implement in an agency with only one or two hearing officers.

The Uniform Procedures and Standards Argument Proponents argue that the central hearing panel will produce more uniform procedures and standards for hearings especially in those states where the panel has authority to adopt rules for the conduct of the hearings.

The Professionalism Argument Proponents reason that many state central hearing panels have adopted a code of ethics and that this code will produce fairer and more consistent adjudication if central hearing panels are subject to a code of ethics.

The Expertise Argument Opponents of central hearing panels reason that the agencies are

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highly dependent on the specialized knowledge of hearing officers, especially in specific issue areas of the law related to that agency.

The Cost Argument Opponents argue that, even taking into account any savings that may be realized through increased efficiency, any proposal to create an independent central hearing panel will involve substantial expense. For example, in 1997, it was estimated that the cost for Oregon to create the Office of Administrative Hearings would be approximately $1.6 million.

Closing Thoughts

In 2001, the Kansas Legislative Division of Post Audit conducted a review of the advantages and disadvantages of centralized administrative hearings. The office issued a report that offers four considerations for the Kansas Legislature to determine if centralized hearings are to be expanded in the state. Below are useful observations for other states to consider when establishing a central administrative law judge panel system.

How to fund a centralized panel: Examples include: 1) agencies paying an hourly fee for services; 2) agencies paying a percent of the office's budget based on the percent of workload; and 3) the office receiving a direct appropriation from the legislature.

What role the agency head should have in review: The National Association of Administrative Law Judges offers a model code.

What standards for hearing officers should be put in place: The National Association of Administrative Law Judges offers a model code.

Selected References


The Drafting Critique

By: Jery Payne, Colorado

"The hardest thing in the world to understand is the federal income tax." --Albert Einstein.

If thousands of students can be taught the principles of tax law every year, why did Einstein have such difficulty understanding tax law? Are tax principles more difficult than quantum physics and calculus? I believe the difficulty lies in communication.

Although Jack Stark\(^1\) is correct on the point of "shall" versus "must," he proves too much. A drafter should use the term "shall" instead of "must" because the drafter is writing an imperative. "Shall" includes the definition of "a command"—"you shall not steal." The definition of "must" does not contain this idea. When writing a statute, one is usually commanding; therefore, "shall" is more appropriate than "must." In addition, supplanting "shall" with "must" does not increase elegance or aid in understanding.

Although the plain language movement may propose unwise practices, it makes a point that drafters ought to consider: Too much drafting is simply poor writing.

I disagree with those who assert a dilemma between clarity and accuracy. Logic teaches that factual dilemmas are almost always illusory. In addition, Stark's assertion assumes that attorneys, advocates, and drafters are nearly perfect writers and that additional words and phrases as a rule increase accuracy; this is not my experience.

Actually, the verbiage added in the spirit of accuracy frequently makes the draft less accurate. Consider the following excerpt from a statute: "Any person ... who is found to have violated any provision of this article ..." What does the phrase "who is found" add to the rule? Did the drafter intend to exempt people who are not discovered? "Wow, it is only illegal if I am caught!" Here is language written by a state bar association: "Every declaration instrument ... shall be governed by the provisions of this article, except to the extent the terms of such instrument are inconsistent with the provisions of this article." Read literally, this language exempts instruments that are inconsistent with the law. Why even have the law?

Elegance is not the enemy of concise writing.

Under common law, battery was defined as intentionally causing harmful or offensive contact with another person. For several hundred years, this elegant definition worked admirably. In my opinion, a skillful drafter should reduce this rule to "A person who intentionally causes harmful or offensive contact with another person shall be liable for compensatory and punitive damages." If a term, "person," for example, appears to be ambiguous, then the drafter should define it in a separate section; this allows for an

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1. See "Shall or Must?", The Legislative Lawyer XVII no. 1:5.
elegant rule and as much accuracy as is possible.

In my experience, I am likely to receive a draft such as the following from an attorney:

Any harmful contact, including, but not limited to, punching, kicking, shoving, biting, shooting, stabbing, wrestling, or other harmful acts, or offensive contact, including, but not limited to, sexually explicit, gender explicit, demeaning, degrading, or other offensive acts, shall not be caused by any person or business entity, or any agent thereof, whether said agent is an employee, independent contractor, or other type of agent, who has any intention to cause there to be any said contact with any other person or any object which is closely appurtenant thereto, and such resulting contact causes any said harm or offense. Any person or business entity, or any agent thereof, who violates said prohibition shall be liable, upon a finding of a violation to cause there to be any said contact which is closely appurtenant thereto, and such resulting contact causes any said harm or offense. Any person or business entity, or any agent thereof, who violates said prohibition on any such harmful or offensive contact shall be liable, upon a finding of a court of competent jurisdiction, for any compensatory damages arising from such acts and any punitive damages as the court may impose.

Is the cumbersome draft more perspicuous?

The more words used express an idea, the more difficult understanding becomes. Each word must be kept in active memory at the same time for understanding to merge; this is true of attorneys and judges as well as ordinary people. At a certain point, the mind is overloaded and the language becomes almost incomprehensible.

Professor George Gopen of Duke University, who teaches about writing in the legislative environment, reminds us of a fundamental truth: "any unit of discourse is subject to infinite interpretation." The implication of this is that the more words added, the more opportunities exist for misinterpretation. Therefore, the attempt to make a rule perfectly accurate by adding more words is itself a fool's errand. A certain level of accuracy is essential, but total accuracy is illusory. One cannot write enough words to deliver the reader from all ambiguity. The art of writing is finding the optimum number of words to convey as much accuracy as possible and communicate such accuracy to the reader.

Drafting statutes is an art, and a drafter cannot always reduce a complex issue into a simple sentence or two. The conclusion that a drafter should sacrifice clarity on the altar of accuracy troubles me. Accuracy is an impossible god to master. Nevertheless, ordinary people are expected to comply with statutes; ordinary people are fined, prohibited from plying a trade or driving, and imprisoned based upon statutes. Ordinary people cannot always and frequently do not hire an attorney before making decisions.

Ethics asks that we make the statutes as clear as reasonably possible so that people can be fairly put on notice of their duties. This means elegant writing.

The goal of drafting is to communicate a rule. Failure to effectively communicate is a failure of the drafter's primary purpose.

![](http://www.state.co.us/gov_dir/leg_dir/olls/HTML/legislative_drafting_manual.htm)

2. See page 0-15 of the preface to Colorado's drafting manual, which can be found at: http://www.state.co.us/gov_dir/leg_dir/olls/HTML/legislative_drafting_manual.htm.

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## Professional Development for Legal Services Staff

By: Brian Weber, NCSL

NCSL offers several upcoming programs and services that provide professional development and continuing legal education for legislative lawyers and staff engaged in legal services.

NCSL Annual Meeting. This summer, NCSL convenes its Annual Meeting in San Francisco July 21 to 25. In addition to the dozens of sessions on key public policy topics, the meeting will offer more than 14 hours of CLE-approved programming. The Legal Services Staff Section will sponsor the following sessions:

Developing a Legislative Lawyer's Code of Ethics. This interactive workshop will offer ethics CLE and is designed to develop a new code of professional conduct applicable to the unique role of legislative lawyers.

Homeland Security and Civil Liberties. This session will examine how the U.S. Patriot Act, state homeland security laws and related anti-terrorism activities can be successfully implemented while also maintaining the integrity of America's traditional civil liberties.

Supreme Court Update. 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.

Also, don't miss the Legal Services Staff Section Reception at the Thirsty Bear next to the convention center on July 21.

It will be a great opportunity to meet colleagues from other states in a fun and informal atmosphere. Of course, the staff section also will host a luncheon for all legal services staff on Thursday, July 24, where it will elect new LSSS executive committee officers and present its 2003 Legal Services Staff Achievement Award.

NCSL is obtaining pre-accreditation of all Annual Meeting CLE programming for all 40 MCLE states. A $100 CLE fee will allow you to submit your CLE with minimal paperwork and with assurance that it will be accepted in your state. See the NCSL Annual Meeting Program at www.ncsl.org for details on CLE offerings at San Francisco.

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STAFF PROFILE
Doug Brown
Director, Colorado Office of Legislative Legal Services

Professionalism. Integrity. Trustworthy. Competent. These are the words most repeated by legislators of the Colorado General Assembly in describing Doug Brown during the presentation of a tribute on the last day of our regular session. On September 30, 2003, Doug will retire, thereby bringing to a close more than 30 years of service to the Colorado General Assembly. Doug started with the office in 1972 as a staff attorney and was appointed director of the office in 1980.

Doug has made significant contributions to the Colorado General Assembly in his 23 years as director. He has implemented numerous innovations in improving the work of the legislature. He was the project director for a study of Colorado legislative agency computer requirements, which led to the creation of a network system that allows access to bill information by the legislature and by the public. He has worked with legislative leadership to respond to legislative management issues, such as implementing a 120-day limit on the length of sessions, improving orientation for new members, and adjusting to the effects of term limits. Doug is recognized throughout the country as an expert on term limits. In all of his efforts, Doug is tireless in working with and communicating well with other legislative service agencies. He was instrumental in forming a Legislative Management Team—comprised of the staff directors of the legislative service agencies and the chief clerks of the House and Senate—that meets regularly to address legislative management issues. Doug supervises an office consisting of 49 employees, 24 of whom are attorneys. Doug has always encouraged professional development of staff and participation of staff in NCSL activities.

On the last day of the session, Doug was honored by a tribute presented by the House and the Senate. It reads in part: "Under the guidance provided by Doug during his twenty-three years as Director, the Office of Legislative Legal Services consistently provided high-quality legislative drafting, legal counsel and research, and staff assistance, all of which enable the General Assembly to make sound and informed decisions regarding public policy in Colorado. The institutional knowledge he amassed during his employment with the Office also allowed Doug to assist the General Assembly in promoting, preserving, and defining the integrity of the legislative process."

Doug has also been very active over the years in NCSL. He served on the NCSL Executive Committee from 1986 to 1988. He was staff vice-chair of the Legislative Management Committee in 1985, chair of the Task Force on Statutory Retrieval from 1986 to 1987, chair of the Task Force on Access to Legislative Data Bases from 1987 to 1989, staff chair of the Task Force on Information Policy from 1990 to 1992, and staff chair of the Legislative Management Committee in 1995. He also has participated in many meetings and discussions through NCSL for staff directors of legislative staff offices and has served as a mentor to and sounding board for many other staff directors throughout the country.

Doug graduated from the University of Denver in 1967 and received his law degree from Northwestern University School of Law in Chicago in 1970. In 1988 he was a Gates Foundation Fellow at the John F. Kennedy School at Harvard University. In 1989 he was a Henry Toll Fellow with the Council of State Governments in Lexington, Kentucky.

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Job Announcement
Director of the Colorado Office of Legislative Legal Services

The Colorado General Assembly seeks an experienced leader for the position of director of the Office of Legislative Legal Services (OLLS). OLLS is the nonpartisan legislative service agency that provides legal counsel and legislative bill drafting services to the Colorado legislature.

The director, who must be a licensed attorney, is responsible for managing the 50-person OLLS staff, including 25 attorneys; setting the vision for the OLLS; providing assistance and legal advice to the legislative leadership, legislators, the Committee on Legal Services, and the General Assembly as a whole; coordinating litigation involving the General Assembly; overseeing the publication of the Colorado Revised Statutes and the review of administrative rules; and performing any other duties assigned by the Committee on Legal Services or the legislative leadership.

For a detailed description of the position and additional information about the OLLS, visit www.state.co.us/gov_dir/leg_dir/ollss/HTML/employment_opportunities.htm or contact Debbie Haskins at (303) 866-2045. Interested parties should submit a resume to:

Debbie Haskins, Senior Attorney
Office of Legislative Legal Services
State Capitol Building, Room 091
Denver, CO 80203

All applications must be received by 5:00 p.m., July 15, 2003.
COLORADO
Debbie Haskins

Addressing Colorado's budget situation was a major focus of the 2003 legislative session. Due to the weak economy and a significant revenue shortfall, the General Assembly had to cut $370 million from the FY 02-03 budget before tackling the FY 03-04 budget. The Joint Budget Committee held an historic joint session to help legislators understand the magnitude of the budget situation and then introduced two rounds of budget reduction bills to make those cuts out of the 02-03 budget. The General Assembly also cut $700 million from the 03-04 budget.

Despite several attempts to reform the state's no-fault auto insurance laws that were set to expire July 1, the bills died and Colorado will go to a tort-based system. Under the tort system, the at-fault driver's insurance company pays the medical claims and disputes will be resolved in court. Another bill passed that required drivers to have auto insurance. A big issue was whether insurance rates will go down or whether costs will simply be shifted to the health care system.

Another bill that was passed allows insurance companies to offer employers with 50 or fewer employees the choice to buy a no-frills policy that does not include the mandated policies for things such as mammograms, prostrate screening, mental health treatment, and substance abuse treatment.

After 10 years of trying to pass concealed handgun laws, the General Assembly passed two bills this year on this subject. One bill requires counties to issue concealed handgun permits to citizens who are at least 21 years of age and who pass a criminal background check and take a handgun training course. The concealed handgun bill specifies where concealed handguns may and may not be carried with the permit and clarifies that local governments do not have authority to limit carrying of concealed handguns by persons with permits. A second bill eliminated local gun laws that restrict the sale, ownership, or possession of guns that are not restricted under state or federal law. This will probably not include all local gun laws (media interpretation notwithstanding). The second bill allows local governments to prohibit open carrying of firearms in specified places, so long as they post it. Denver, which has enacted strict gun control laws, is expected to challenge the legality of the bill.

In response to a severe multi-year drought (although we did improve our snow pack this year—come out and take a raft trip!), the General Assembly also passed a bill that would allow the voters to approve a financing mechanism for up to $2 billion for water conservation and storage projects. A school voucher bill was also passed. It too has spawned litigation over the constitutionality of the legislation.

In addition to the advanced programming and excellent faculty, the seminar will feature an afternoon at the Colorado State Capitol and a session held at the Old Supreme Court Room. Denver weather is terrific in September; for baseball fans, the Colorado Rockies professional baseball club will be in town at beautiful Coors Field. Participants will stay at the downtown Embassy Suites, which is central to the amenities of Denver's "Lodo" nightlife and entertainment district. For more information about this seminar, visit the NCSL Web site or contact Brian Weberg at NCSL at brian.weberg@ncsl.org or at (303) 364-7700.

The session ended with a very tense last few days when the Republicans introduced a congressional redistricting bill in the last three days of the session. During the 2002 session when the Democrats were the majority party in the Senate and the Republicans controlled the House, the General Assembly failed to reach agreement on redistricting. The lines were then drawn by the Denver district court. The new district added as the result of the census was extremely competitive, with a vote difference of 120 votes at the 2002 general election. The Republicans argued that the General Assembly has a constitutional requirement to redraw the state's congressional districts. Democrats took several steps to try to delay the passage of the bill, asking for the entire bill to be read at length, calling for roll call votes, etc. The bill was actually divided amongst several staff members and read simultaneously. The redistricting bill passed and was signed by the governor.

A Democratic senator and constituent filed an action in Denver district court (Keller v. Davidson) against the secretary of state and the General Assembly. The suit claims the bill is unconstitutional on the grounds that the General Assembly did not have authority to adopt a redistricting plan because the plan had already been drawn by the court and approved by the Colorado Supreme Court, as well as asserting a number of procedural claims about how the bill was enacted. The governor has since
been added as a defendant in this action. A second action (Salazar v. Davidson) was also filed by the state attorney general, a Democrat, against the secretary of state asking the court to invoke original jurisdiction to prevent enforcement of the bill. This action involves many of the same claims as the Keller v. Davidson case. The Colorado Supreme Court agreed to take this action and added an invitation to the governor, the General Assembly, and other interested parties to file briefs. Congressman Udall has moved to intervene. Meanwhile, the secretary of state is proceeding to have the attorney general disqualified on the grounds that he did not have the authority to file an action against the secretary of state, who would normally be represented by him. The court granted a motion by the secretary of state's attorneys requiring the attorney general to justify why he is suing the secretary of state instead of defending her. The General Assembly has retained counsel to defend the institutional interests of the General Assembly in both cases.

We also had a rough year with respect to lobbyist to lobbyist and lobbyist to lobbyist relations. After some episodes involving lobbyist conduct, the speaker and the president appointed a 10-member committee of veteran contract and volunteer lobbyists to examine lobbyist practices. They were supposed to report by April 15. When it became apparent that the recommendations of the lobbyist task force missed the issues the legislative leadership really wanted addressed, the task force was told to go back to the drawing board and start over. The task force was extended and they were asked to report in the fall to coincide with the interim committee reporting deadlines. Our office is assisting as staff to the task force.

DELAWARE

Rich Dillard

As predicted last issue, the almost-absolute ban on smoking in indoor public places was revisited this spring. The House passed a bill allowing smoking in some taverns and part of the slot machine areas at the race tracks, but the bill was defeated in the Senate.

Substantially fewer bills have been introduced or considered by the General Assembly this session (354 bills had been introduced by the House and Senate as of 5/1/03 in the 141st and 245 introduced as of 5/1/03 in the 142nd). This is presumed to be due to the preoccupation with budget shortfalls and proposed revenue enhancements.

It is year three without a director of the Division of Research in Legislative Hall, and the division lost 50 percent of its staff attorneys when Tom Shiel's retired this spring after more than 30 years with the division.

FLORIDA

Edith Elizabeth Pollitz

Florida's annual regular session adjourned sine die May 2. A number of bills passed, including an enormous cleanup bill that conformed the Florida Statutes to changes in the cabinet and department structure mandated by the constitution. The bill, more than 2,400 pages in length, is the new record-setter, topping last year's education rewrite that was more than 1,800 pages. The wonders that can be done with computers!

Despite turning out 315 general bills and a host of local bills, the Senate and House were not able to come to agreement on the budget. They are back in special session now to accomplish that requirement, and the call has been expanded to cover a few other key issues. Meanwhile, it's unknown how many, if any, other special sessions may be called throughout the summer to deal with other issues that remain contentious.

GEORGIA

Cynthia C. Thompson

On May 6, 2003, the Georgia Supreme Court heard the appeal of a lower court ruling in a constitutional dispute between Republican Gov. Sonny Perdue and Democratic Attorney General Thurbert Baker over who is the chief law officer for the state and the independence of the office of the attorney general. Both legal briefs argue that the state constitution and state law expressly give them such authority over legal matters. AG Baker notes that the constitution created his office to be independent. Governor Perdue argues that the governor may "direct" the attorney general to pursue legal matters and is the state's chief executive officer.

The dispute began in January when newly elected Governor Perdue ordered AG Baker to drop a pending Georgia appeal to the U.S. Supreme Court regarding redistricting. A federal three-judge panel had rejected a Democrat-drawn map of state Senate districts. State attorneys argued the appeal before the high court at the end of April, and a ruling is expected before the term ends in July. The main issue in the appeal is how much states can reduce the percentages of minority voters before depriving them of their rights under the 1965 Voting Rights Act. Governor Perdue wanted the appeal dropped. The partisan power shifts that could occur if the U.S. Supreme Court ruled in Georgia's favor are significant. If the justices sided with the state, a Georgia Senate redistricting map preferred by Democrats would replace the one in effect now that enabled the GOP to take control of the chamber for the first time after four senators switched parties following the November 5 election. Republicans took a 30–26 majority in the Senate. AG Baker refused to drop the appeal on the grounds that the case was significant to other states as well as to Georgia. Governor Perdue then filed his suit in Fulton County Superior Court in Atlanta. This is a case of extraordinary interest because it is the first time a governor has filed an action seeking an order directing the attorney general to obey the governor's demands.

The 2003 legislative session that began on January 13, 2003, finally ended on April 25, 2003, after prolonged budget negotiations resulting from the state's severe economic slump. In addition, another state flag was hastily designed and adopted in a measure that includes an advisory referendum to allow voters to express their preference for the new flag or the flag adopted in 2001 under Governor Barnes, who received the Kennedy Profile in Courage Award.

Of legislative note, the "Georgia Indigent Defense Act" creates a statewide system to provide criminal defense services to indigent people. The act provides for transition from the abolition of the Indigent Defense Council to the Public Defender Standards Council and its creation, membership, duties, and responsibilities. The act provides for the appointment and methodology of appointment of a circuit public defender for each judicial
The 2003 Regular Session of the Fifty-Seventh Idaho Legislature convened in early January and then proceeded to make history, setting a record 118-day session. Members, faced with extensive revenue shortfalls and a faltering economy, struggled to find ways to meet their obligation to balance the state budget. Ultimately, in addition to cuts in agency appropriations, temporary increases were made to the state sales tax and the tax on cigarettes.

Members made necessary revisions to the state's death penalty statute in light of a recent U.S. Supreme Court ruling requiring juries to determine whether the death penalty should be imposed in first-degree murder cases. The law also establishes a mandatory minimum of life imprisonment in first-degree murder cases if any statutory aggravating factor is found. In a separate measure, courts are prohibited from imposing the death penalty upon those determined by the court to be mentally retarded.

Based on a law passed this year, Idaho will phase in additional protections against identity theft by limiting the amount of information that will be allowed to be printed on credit card transaction receipts. Merchants will not be permitted to print more than the last five digits of a customer's credit card number or expiration date on receipts.

On the natural resources front, members revised Idaho's water law to clarify the scope of the "local public interest" doctrine in water rights applications, transfers and water supply bank transactions. The doctrine has been the source of conflict for some time, and various transactions have been delayed by protests made pursuant to the doctrine based on a broad range of social, economic and environmental policy issues. The new law clarifies and limits the criteria to be considered in association with the determinations. A law was also passed that authorizes specific state agencies to coordinate an orderly transition from federal management of gray wolves to state management under the Idaho Wolf Conservation Management Plan, including participation in activities regarding nuisance wolves, discussion of wolf recovery programs and cooperation with state and federal entities and federally recognized Indian tribes regarding wolf conflicts in Idaho.

In other action, the Legislature passed a tort reform bill that reduces the cap on noneconomic damages to $250,000 and imposes limits on punitive damages. A bill also passed that will require labor organizations that engage in political activities to keep a segregated fund for political contributions. The law specifies that contributions to the fund must be voluntary and made directly by the donor. Payroll withholding of such funds is now prohibited. A separate bill was passed that reaffirms the authority of labor organizations to engage in lobbying and voter registration activities as regular membership activities.

The second part of Senate Bill 213, codified as KRS 7.119, addresses a separation of powers issue and sets out a new legislative policy relating to records of the legislative branch. The bill specifies numerous legislative records that shall be available to the public. These include, among others, introduced bills and amendments, Senate and House journals, roll call votes, final reports of committees, documents showing salary and expenses of the General Assembly and its employees and contracts and receipts and work orders for repairs or renovations to legislative offices or facilities.

The bill also provides that requests for documents that are not enumerated in the statute shall be made to the director of the legislature's service agency. Decisions of the director may be appealed to the Legislative Research Commission, consisting of the bipartisan Senate and House leadership, and thereafter to the Circuit Court. Under prior law, appeals of decisions of the Legislative Research Commission denying requests for records were made first to the attorney general and thereafter to the circuit court. The new law removes the attorney general from any role in reviewing records of the General Assembly, thus amending law that was in conflict with the strict separation of powers provisions of the state constitution.

The second bill, Senate Bill 219, addresses a problem that the General Assembly has experienced during the last 15 years when parties to litigation have named the General Assembly, its agencies or its members in declaratory judg-
ment actions, asking that legislators be required to appear in court to defend the constitutionality of legislation passed by the General Assembly. The new statute specifically refers to Section 43 of the Kentucky Constitution relating to the rights of members of the General Assembly to be privileged from arrest and questioning during their attendance at sessions, and Section 231 of the constitution setting forth the General Assembly's authority to direct the manner in which suits may be brought against the Commonwealth.

SB 219 amends KRS 418.075, the Declaratory Judgment Act, to prohibit legislators and legislative organizations from being made parties, without their consent, to any lawsuit challenging the constitutionality or validity of statutes or regulations. Previously, Kentucky courts, unlike the courts of 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 March 31, 2003, facing perhaps its most daunting challenge in recent memory—how to fund the governor's budget proposal, which heavily favors educational programs and prevents deep cuts in the state's health care spending. A move is afoot in both chambers to make health care spending a higher priority, even if it requires scaling back the governor's proposed education priorities. The House Appropriations Committee has asked the health care agencies to provide alternative budget plans that modify the most difficult cuts, which originally included closing many state facilities for the mentally ill and developmentally disabled. The Legislature also hopes to reduce deep cuts proposed in Medicaid funding for hospitals, nursing homes and prescription drugs.

Uncertain revenue collections further complicate these issues. Monthly collections are sluggish, even after two downward revisions to revenue estimates this year. The state constitution prohibits the passage of new tax measures during this year's regular session, and a special session before the fall elections is considered unlikely.

Also, shortly after convening, the Legislature received word that the suit by the Legislative Black Caucus challenging the redistricting plan enacted in 2001 had been settled and that the plan negotiated would receive expedited approval and clearance from the U.S. Department of Justice. The negotiated plan was introduced, enacted and signed by the governor and forwarded to the Justice Department for approval, which occurred on May 20. The Black Caucus was to meet in the following days after receipt of the Justice Department's approval to decide whether it will proceed into federal court, again alleging the illegal "packing" of black voters in the drawing of the districts in East Baton Rouge Parish.

MARYLAND
Sherry Little

The Maryland General Assembly considered just fewer than 2,000 bills and passed 629 during the 2003 session. Of those, 476 bills will become law, most of which take effect on October 1. Measured against recent past sessions, the numbers in each category—introduced, passed, and enacted—were down about 200 to 300 bills. The lower 2003 numbers reflect, in part, the state's fiscal environment and the fact that there were 47 new delegates out of 141 and 12 new senators out of 47.

Successful 2003 laws will support prescription drug coverage for senior citizens and low-income adults, as well as improve health coverage for employees of small businesses, medically uninsured adults and indigent adults. Other laws address uncompensated health care costs for trauma centers and doctors and stiffen penalties for child abuse. There will be a prohibition on driving for 12 hours after being arrested for drunk driving and even tougher consequences for repeat offenders. The governor also signed legislation to provide insurance for public assets of nonprofit health insurance plans such as CareFirst (BlueCrossBlueShield).

The 2003 budgetary debate was framed by challenging fiscal conditions. When the session began, the state faced a current year deficit in excess of $400 million and a fiscal 2004 shortfall of $1.2 billion. General Fund projections were revised further downward during March. Consideration of installing slot machines at Maryland's racetracks to capture a new revenue stream did not pass, nor did proposals to increase personal taxes on sales or income.

Balancing the budget involved a combination of actions including reductions in state programs and personnel costs, contingent reductions, additional revenue steps such as one-time transfers and changes in the law. The changes relate to enhanced tax compliance, corporate filing fees, graduated withholding, vital record fees, comptroller vehicle identification cards and the Heritage Structure Tax Credit. An additional measure changed state corporate income taxation to close loopholes and prevent tax avoidance techniques and added a 10% corporate income tax surcharge for three years, as well as a 2% insurance premium tax on HMOs and Medicaid managed care organizations.

Within this matrix, the General Assembly balanced and enacted a $22.4 billion state operating budget for fiscal 2004, an increase of $18.5 million (0.1%). The 2003 capital budget totaled $2.4 billion, including a $1.4 billion transportation program. Maryland continues to maintain its triple-A bond rating from all major rating agencies, reflecting favorably on the state's financial management and policies.

Although the overall General Fund budget shows little growth, the state will provide more than $3.3 billion in primary and secondary education aid. This represents a $206 million (6.6%) increase. The increase comes from the second year of the implementation of the Bridge to Excellence in Public School Act, which substantially increases funding for public primary and secondary education over a six year period starting in fiscal 2003. If the Act continues, local school systems will receive an additional $1.3 billion more than what the State would have provided without the Bridge Act. However, during the 2004 session the Legislature must affirm that the additional aid is within the state's resources or the increases from fiscal 2005 to fiscal 2008 will be scaled back considerably.
The veto of the legislation containing the provisions to close corporate loopholes and add a temporary corporate surcharge, as well as an insurance premium tax on HMOs, eliminated $135.6 million from the 2004 budget. Those funds may be replaced by making additional reductions in state programs, personnel and services.

MINNESOTA
Karen Lenertz

The Minnesota Legislature completed its regular 2003 session May 19. The Legislature considered and passed and the governor signed into law, among other legislation, carrying concealed pistols, a woman's right to know regarding abortion and state academic standards.

Before enactment of the Minnesota Citizens Personal Protection Act of 2003, permission to carry a pistol was discretionary and based on a person's demonstration of an occupation or personal safety hazard. Under the Personal Protection Act, a county sheriff must issue a permit to a person unless the person is disqualified under specific listed criteria.

The Woman's Right to Know Act requires that a woman must be informed about pregnancy, childbirth and abortion at least 24 hours before an abortion is performed. An abortion may not be performed in the state without the voluntary and informed consent to an abortion by the woman.

The profile of learning portion of the state graduation rule was repealed and replaced with required core academic content standards in language arts; mathematics; science; social studies, including history geography, economics, government and citizenship; and the arts. State-constructed tests composed of multiple choice and constructed response questions are to be aligned with the state academic standards.

Following the regular session, the Legislature immediately went into special session on May 20. The outstanding issue is the $4.5 billion budget deficit.

MISSOURI
Russ Hembree

The first Republican majority in the Missouri General Assembly in more than half a century, along with a Democratic governor and declining state revenues, resulted in a contentious but ultimately productive session ending with the tabling of bills on May 16. Successful legislation included the following: toughening of penalties for inferior nursing homes, with background checks for more employees and reduced state inspections for good homes; requiring a 24-hour waiting period for women seeking abortion; requiring sheriffs to issue permits to eligible people to carry concealed weapons; restoring caps on noneconomic damages in medical malpractice suits; and reforming the foster care system by opening court proceedings, speeding up hearings and penalizing negligent foster care workers. Bills that failed include changes to eligibility for workers’ compensation benefits, requiring more stringent analysis of state environmental regulations, placing gaming revenue into a classroom trust fund for distribution on a per-pupil basis and increasing the time in which police are allowed to detain a suspect without charging him or her with a crime.

The governor has threatened to veto several of the bills passed, and disputes with legislative leadership over budget and revenue matters may lead to a special session. Sine die adjournment occurs May 30, with veto session scheduled to begin September 10.

NEBRASKA
Scott Harrison

In Gourley v. Nebraska Methodist Health Sys., 265 Neb. 918 (2003), the Nebraska Supreme Court upheld the medical malpractice damage limit of $1,250,000. The plaintiffs challenged the constitutionality of the law based on equal protection and other grounds.

The Legislature has advanced to final reading a proposed constitutional amendment to repeal legislative term limits enacted by initiative. The proposal will probably remain on final reading and not be voted on by the Legislature for submission to the registered voters until the 2004 session.

The bill drafting office has contracted with a Florida company for development of a portion of a new bill drafting system. The company, legislative computer staff and bill drafting staff have been working on the development since January. Testing by the bill drafters will be done in the weeks following adjournment of the current session. The portion being developed is the word processing part; additional parts of the system and connections with other legislative applications will be done by legislative computer staff during the next year. The bill drafting office will begin using the new system in the 2005 session.

NORTH CAROLINA
Bill Gilkeson

Two speakers. Some call it "gridlock." Some call it "Madisonian check and balance." But whatever you call it, the North Carolina House of Representatives appeared to achieve the ultimate state of it this January when they convened their 2003 Session. They had 60 Democratic members and 60 Republican members.

Other states (Florida, Indiana, Washington) have experienced a dead tie in partisan makeup of a chamber, but the experience was new for North Carolina. It was not supposed to happen. All 120 members of the House are elected for two-year terms at the same time. The initial results on election day 2002 indicated a 60-60 tie, but then three days later a vote-count glitch was discovered with the result that House Democratic Leader Phil Baddour narrowly lost his seat, leaving the Republicans ahead 61-59. But the week for the session convened in January, Rep. Michael Decker, one of the most conservative Republicans, switched his party affiliation to Democratic, so it was back to 60-60.

Since the mid-1990s the House has been the scene of a succession of cliffhangers, when Republicans gained approximate parity with Democrats there. Every election for Speaker has involved the Democratic and Republican caucus nominees doing what one observer called "groping across the aisle" for defectors from the other party. By 2003 a rift inside the Republican House caucus had eclipsed any equivalent factionalism among the Democrats. The Republican caucus nominated a candidate for Speaker, but the nominee got only 36
votes and one member of the caucus began telling the media that it was his "calling" to prevent that nominee, Rep. Leo Daughtry, from getting anywhere near the Speaker's chair. The day before the session convened, Daughtry withdrew his candidacy, and a more nearly unified Republican caucus nominated Rep. George Holmes. Still, Holmes appeared to be too close to Daughtry to satisfy some Republicans.

When the session convened, the initial vote was 60 (all the Democrats) for Rep. Jim Black, who had been Speaker since 1999, 55 for Holmes, and five holdout Republicans for Rep. Richard Morgan. Over the next week, four subsequent ballots came out exactly the same way. A single changed vote or absence could change the outcome. One Democratic member cut short his recuperation from brain surgery to be present and voting. One morning during the stalemate, Republicans conducted a filibuster on whether the previous day's minutes should be approved until a late-arriving member could get to his seat.

At the end of a week, one of the Democratic leaders introduced House Resolution 2, calling for two Speakers, Black and Morgan. Here is a link to HR 2: http://www.ncleg.net/html2003/bills/CurrentVersion/house/hbil0002.full.html.

The state constitution says without elaboration: "The House of Representatives shall elect its Speaker and other officers." There are other references to "the Speaker." Just in case the constitution means there can be only one speaker at a time, HR 2 was drafted so that there would be only one speaker on any given day. Democrat Black was to be speaker on the day the resolution was adopted, Republican Morgan the next day, and so they would alternate for every calendar day until December 31, 2004. The resolution called for each committee to have an equal number of Republican and Democratic members, the Republican members to be nominated by the Republican speaker and the Democratic members by the Democratic speaker. The committee chairs and co-chairs would be jointly appointed by both speakers.

The resolution, which had actually been in the works for some time, passed by a vote of 89 to 31, with all Democrats and 29 Republicans voting for it.

The session then proceeded with its business. Some commentators noted that the House has actually operated more smoothly and with less partisan acrimony than in recent years. The phenomenon of House bills co-sponsored by a Democrat and a Republican has been curiosity in the still Democratic-run Senate. But two big tests for this harmony remain: The passage of a budget in hard economic times, and a possible redrawing of legislative districts to satisfy a court decision.

PENNSYLVANIA
Stacey Connors Mosca

The Pennsylvania General Assembly passed the 2003-04 state budget in historic fashion this year. The budget was presented by the governor on March 4. The House of Representatives passed the budget on March 6, and the Senate passed it on March 12. Governor Rendell signed the budget into law, exercising his line-item veto authority to eliminate or reduce certain appropriations contained in the bill, on March 20. Work will resume in June on the outstanding portions of the budget. The passage of legislation that provides state money for basic education, Pennsylvania's state-related universities, medical schools, cultural organizations and other institutions across the state needs to be passed by the June 30 end-of-fiscal-year deadline. However, because the General Assembly enacted the governor's recommended general fund budget in March, state services and most programs will continue regardless of any delay in enacting a final package.

In addition, legislation was recently unveiled that would change the way Pennsylvania's lieutenant governors are elected and, when necessary, succeed. The need for the change came in 2001, when then-Governor Tom Ridge accepted President Bush's request that he become federal homeland security director. As former Lieutenant Governor Mark Schweiker advanced to the governorship, Senator Jubelirer—as president pro tempore of the Senate—temporarily became lieutenant governor. The legislation introduced would amend the state constitution to establish clear rules for the selection of a new lieutenant governor in the event that a seated lieutenant governor or governor leaves office. In addition, separate legislation would allow Pennsylvania gubernatorial candidates to choose their own running mates.

Pennsylvania, currently facing a crisis in the area of medical malpractice, is seeking to take further steps to address this crisis. Although landmark legislation was enacted in the last legislative session to address this serious problem, more work needs to be done. Legislation has been introduced this session that proposes an amendment to the Pennsylvania constitution to eliminate the existing prohibition against establishing statutory caps on damages. However, amending the state constitution is a process that will take a minimum of two to four years, because the legislation must be adopted by the General Assembly in two consecutive legislative sessions and ultimately approved by the electorate.

WEST VIRGINIA
Mark McOwen

The 76th Legislature's 1st Regular Session concluded in Charleston March 16 with passage of the budget bill. The difficulties of formulating the budget bill under the pressure of rising costs and declining revenue growth kept many members focused on finding acceptable solutions, but other major legislation was considered as well. A bill was passed amending last year's medical malpractice civil justice reform legislation and funding a newly created physician's mutual insurance company from tobacco settlement funds. West Virginia was also one of the first states to enact what was named locally as the "Main Street Fairness Act of 2003", which authorized the state tax commissioner to sign the interstate agreement, known as the Streamlined Sales and Use Tax Agreement, and enacted all substantive changes in West Virginia sales and use tax laws necessary to be in substantial compliance with the Agreement. Among the varied topics of other legislation reaching the governor's desk were bills prohibiting internet sales of cigarettes to minors, establishing an Amber Alert system, continuing the Sales Tax Holiday for another year, increasing the cigarette tax from $.17 to $.55 per pack, authorizing the financing of county and city "Economic Opportu-
The Legislature is considering the state's financial environment and working on the biennial budget bill. The newly elected governor included slightly less policy in his proposal than previous governors had, but his budget bill is still 1,140 pages long. The proposal teems with cuts. The governor proposes to cut 2,800 jobs, including 60 legislative positions.

One of the governor's more interesting ideas would eliminate 27 attorney positions in state government and transfer 69 attorneys from various state agencies to the state Department of Administration under the governor's direct supervision. The proposal would leave one chief counsel in each of 11 major agencies, and would not affect five major agencies or any hearing examiners. The five exemptions are the public defender, the PSC, the University of Wisconsin, the investment board, and the governor's office. The governor served 12 years as the state's attorney general.

Shortly after the regular session began, the governor called a special session to consider a 5 percent cut in the current fiscal year's appropriations. The Legislature responded by enacting a 6 percent cut, which the governor signed into law.

Before the special session ended, the Legislature found itself in extraordinary session as well. Upon learning the details of an expansive gambling compact the governor had negotiated with the Oneida Indian Tribe, the Legislature called itself into extraordinary session and passed a bill requiring legislative oversight of such compacts. The bill was promptly vetoed by the governor, who promptly vetoed it. The Wisconsin Legislature has not overridden a gubernatorial veto in 18 years—but briefly, it appeared that the governor might end. The Senate debated the veto for two days but failed by one vote to override. Next, the Legislature sued the governor over whether the gambling compacts violate the separation of powers provisions of the Wisconsin Constitution, but this lawsuit was removed to federal court, which is expected to preserve the status quo.

The governor has signed a bill that exempts single-sex fitness centers from the state's anti-discrimination laws.
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