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## NCSL

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## A Nonpartisan Approach to Redistricting

BY ED COOK, IA

**B**ecause states are in the process of completing the redistricting process, some may wonder whether there is a better way to perform this task. Although that question would get widely varied answers, one state, Iowa, has adopted and used a unique redistricting approach since 1980 that delegates much of the responsibility for congressional and legislative redistricting to a nonpartisan legislative central staff agency, the Legislative Service Bureau. This article explains Iowa's redistricting process and discusses the effects of the process.

### The History of Iowa's Process

Redistricting in Iowa, as well as the rest of the nation, forever changed in 1962 when the U.S. Supreme Court ruled that a challenge to a redistricting plan could be brought and resolved in court.<sup>1</sup> Shortly thereafter, the U.S. Supreme Court ruled that redistricting plans that were not based upon population would be rejected.<sup>2</sup> In 1968, the Iowa Constitution was amended to fulfill the constitutional mandate to draw boundaries based upon population and to provide the basis

and time line for establishing state senatorial and representative districts following the federal decennial census.<sup>3</sup> Article III, section 35, of the Iowa Constitution requires

Iowa has adopted and used a unique redistricting approach since 1980 that delegates much of the responsibility for congressional and legislative redistricting to a nonpartisan legislative central staff agency.

the General Assembly to establish, by September 1 of the year following the decennial census, state legislative districts for both the Senate and House.

Furthermore, if the General Assembly fails to enact legislation establishing Senate and House districts that becomes law by September 15 of that year, the Constitution provides that the Iowa Supreme Court shall establish the districts based on constitutional

requirements. In addition, the Iowa Supreme Court has original jurisdiction over all litigation challenging an apportionment plan enacted into law. The Iowa Constitution further provides that legislative districts be apportioned based on population and be of compact and contiguous territory.<sup>4</sup>

Pursuant to the new constitutional mandates for redistricting adopted in 1968, the Iowa General Assembly adopted legislative plans for use in the 1970s for the Senate and House that featured overall range ratios of 1.13 to 1 in the Senate and 1.14 to 1 in the House.<sup>5</sup>

This apportionment scheme was challenged in court. Eventually, the Iowa Supreme Court struck down the adopted plans and redrew legislative districts for use during the 1970s.<sup>6</sup> The Court rejected the legislative plan because it established too wide a variation in population without valid justification. The legislative districts, as redrawn by the Court, provided an overall range ratio of 1.0005 to 1 for the Senate

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1. *Baker v. Carr*, 369 U.S. 186 (1962).  
 2. *Wesberry v. Sanders*, 376 U.S. 1 (1964);  
*Reynolds v. Sims*, 377 U.S. 533 (1964).  
 3. Iowa Const. Art. III, ' ' 34-36.  
 4. *Ibid.*  
 5. 57 Ia. L.Rev. 1272, 1295 (June 1972).  
 6. *In re Legislative Districting of General*  
 (Continued on page 2)

and 1.0009 to 1 for the House.<sup>7</sup>

Based in part on the protracted litigation that eventually resulted in the Iowa Supreme Court drawing a legislative redistricting plan for the 1970s and the efforts of the Iowa League of Women Voters, the 1980 session of the Iowa General Assembly enacted legislation that established a process for drawing legislative and congressional districts following each decennial census, beginning with the 1980 census.<sup>8</sup> The procedure established by that legislation, codified in Iowa Code chapter 42, remains largely intact today. It gives the Legislative Service Bureau the primary responsibility for drawing proposed congressional and legislative districts, that are, of course, subject to legislative enactment and gubernatorial approval.

Iowa Code chapter 42 establishes the basic timetable and the appropriate standards by which proposed congressional and legislative districts are to be drawn by the Legislative Service Bureau.

#### Timetable for Redistricting

The redistricting timetable in Iowa is triggered by the release of population data to Iowa by the U.S. Census Bureau.<sup>9</sup> Upon receipt of the population data, the Legislative Service Bureau is required to deliver to the General Assembly within approximately 60 days a bill embodying a plan of legislative and congressional redistricting. Once the first redistricting plan is submitted to the General Assembly, three public hearings about the plan are conducted; the commission in charge of conducting the hearings then is required to submit a report concerning the hearings to the General Assembly.<sup>10</sup> Once the report is submitted, the General Assembly is required to bring the redistricting bill to a vote in one of the houses expeditiously, but no

earlier than seven days after the report is submitted.<sup>11</sup> If the bill passes in one house, then the second house is required to take up the bill. Only corrective amendments to the redistricting bill are allowed.<sup>12</sup>

If the first redistricting plan is not approved by a majority in either house, the Legislative Service Bureau is required to submit a second plan. Either the Senate or the House can transmit to the bureau information about why the first plan was not adopted, and the bureau must take into account the reasons when drafting the second plan, as long as the reasons do not conflict with any redistricting standard provided by the Code. The second redistricting plan must be submitted to the General Assembly on the date that is about 90 days after the population data is released, or within 21 days after the first plan is disapproved, whichever is later.<sup>13</sup>

If the second redistricting plan is not approved by a majority in either house, the Legislative Service Bureau must submit a third plan about 120 days after the population data is released, or within 21 days after the first plan is disapproved, whichever is later. Unlike the first two plans, the third plan is subject to amendment.<sup>14</sup>

If no redistricting plan is enacted or if a plan is challenged in court and rendered invalid, the Iowa Supreme Court will likely assume or be given the responsibility for establishing a valid redistricting plan.<sup>15</sup> For state legislative redistricting, Article III, section 35 of the Iowa Constitution specifically directs the Iowa Supreme Court to develop a redistricting plan for the Iowa legislature prior to December 31 of the year following the decennial census if the General Assembly fails to enact an apportionment plan that becomes law by Septem-

ber 15 of that year. Although no similar deadline exists for congressional redistricting, Article III, section 36 of the Iowa Constitution provides that the Iowa Supreme Court has original jurisdiction of all litigation regarding apportionment plans adopted by the General Assembly.

#### Redistricting Standards

Critical to understanding Iowa's process, however, are the applicable standards the Legislative Service Bureau is required to follow in submitting proposed redistricting plans to the legislature. The Iowa Constitution and Iowa Code, chapter 42, establish a hierarchy of objective standards—with the most important being population equality—that provide direction and guidance to the bureau in drawing proposed districts.

*Population.* The primary consideration in drawing new districts is that the population of each district created shall be as nearly equal as practicable. For both congressional and legislative districts, the standards provide that each district should not differ from the ideal population by more than 1 percent.<sup>16</sup>

*Respect for Political Subdivisions.* For both congressional and legislative redistricting, Iowa law provides that, consistent with population equality requirements, district boundaries should coincide with the boundaries of state political subdivisions.<sup>17</sup> For congressional redistricting, the Iowa Constitution specifically provides that no county shall be divided in forming a congressional district.<sup>18</sup> For legislative districts, the Iowa Code provides that the number of counties and cities divided among more than one district in a redistricting plan shall be as small as possible. In addition, when a choice exists to divide political subdivisions, the most populous subdivi-

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Assembly, 193 N.W.2d 784 (Iowa 1972); supplemented 196 N.W.209 (Iowa 1972); amended 199 N.W.2d 614 (Iowa 1972).

7. *In re Legislative Districting*, 196 N.W.2d at 210.

8. 1980 Iowa Acts ch. 1021; codified at Iowa Code ch. 42.

9. Iowa Code ' 42.3(4)(b).

10. Iowa Code ' 42.6(4).

11. Iowa Code ' 42.3(1).

12. *Ibid.*

13. Iowa Code ' 42.3(2).

14. Iowa Code ' 42.3(3).

15. *Grove v. Emison*, 507 U.S. 25 (1993) (Reapportionment is primarily a state issue; federal courts should generally defer consideration of redistricting disputes if the state, through the legislature or courts, is addressing the issue).

16. Iowa Code ' 42.4(1).

17. Iowa Code ' 42.4(2).

18. Iowa Const. Art III, 37.

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sion shall be divided first.<sup>19</sup>

*Contiguity.* Iowa law also provides that congressional and legislative districts shall be composed of convenient contiguous territory. The Iowa Code further states that a district that includes areas that meet only at the points of adjoining corners is not contiguous.<sup>20</sup>

*Compactness.* Iowa law further provides that congressional and legislative districts should be compact. The Code describes compact districts as ". . . those which are square, rectangular, or hexagonal in shape to the extent permitted by natural or political boundaries." The Code provides, however, that this compactness requirement is specifically made subservient to the requirements concerning population equality, respect for political subdivisions, and contiguity. To compare the relative compactness of two or more districts or of two or more alternative redistricting plans, the Iowa Code provides for two fairly elaborate measures of compactness. If the two measurements are in conflict, the Code provides that the first measurement controls.<sup>21</sup>

The first compactness measure tries to determine the relative "squareness" of a district in a redistricting plan by comparing the length of the district with the width of the district. The compactness of a district, based on this measure, is greatest when the length and width of a district are equal.<sup>22</sup>

The second compactness measure concerns the dispersion of population within a district by comparing the district's population center to its geographic center. In essence, a compact district is one in which the population dispersion is as uniform as possible to minimize the difference between the district's population and geographic centers.<sup>23</sup>

*Improper Considerations.* A unique feature of the Iowa process is that political considerations and most other nonpopulation demographic criteria are excluded

from consideration by the Legislative Service Bureau in drawing proposed districts.

Specifically, the Iowa Code provides that districts shall not be drawn to favor any political party, an incumbent legislator or member of Congress, or any other person or group, or for the purpose of augmenting or diluting the voting strength of a language or racial minority group. To ensure compliance with these requirements, the Iowa Code provides that data concerning the addresses of incumbents, the political affiliation of registered voters, previous election results, and demographic data other than population head counts not otherwise required by federal law are not to be considered in establishing districts.<sup>24</sup>

*Interrelationship of Districts.* Iowa law provides that each representative district shall be wholly included within a single senatorial district. Each Senate district contains exactly two house districts. In addition, each Senate and House district shall, as far as possible, be within a single congressional district.<sup>25</sup>

#### Why Iowa's Redistricting Process Works

*Redistricting Philosophy.* The rationale and philosophy behind Iowa's statutorily required redistricting process is that a blind system, from a partisan perspective, will most often result in an acceptable redistricting plan. It is, in essence, a system designed to enact a redistricting plan in an efficient and timely manner without political gridlock and to prevent political gerrymandering.

#### Factors Ensuring Success

*Institutional Acceptance.* Legislative and political leaders accept the process and the fairness of the redistricting plans submitted by the Legislative Service Bureau. The leaders have essentially concluded, since the inception of this process, that they are unwilling to take their chances by having the legislature attempt to amend the third plan submitted

by the bureau or by having the Iowa Supreme Court impose a redistricting plan. An essential element of this acceptance is that a trusted nonpartisan entity, the Legislative Service Bureau, draws proposed plans without any hint of partisan bias. The bureau, a nonpartisan agency of the legislature, has a lengthy tradition of providing expert and objective service to all legislators in drafting bills and amendments, staffing committees, and publishing Iowa's official legal documents. As a result, no lawsuit challenging an enacted plan has been filed since the inception of the process in 1980.

*Objective Criteria.* Iowa's statutory process establishes a hierarchy of objective standards for the Legislative Service Bureau to follow in drawing plans for legislative review. The use of objective criteria is critical to ensuring the acceptance of plans produced by the bureau by eliminating, to the extent possible, the concern that subjective political factors were used to draw plans. Although it will never be a purely objective, computer-driven process, drawing and selecting plans based upon objective measures ensures that the end result from the bureau is accepted as being drawn without political motivations.

*Partisan Considerations Limited but not Eliminated.* Iowa's system severely limits—but does not eliminate—the effects of political considerations in enacting congressional and legislative redistricting plans. The Legislative Service Bureau is prohibited from taking political considerations into account in drawing proposed plans, and the legislature must either accept or reject the first two proposed plans submitted by the bureau without amendment. In addition, the bureau submits only one plan to the legislature at a time, thereby eliminating the ability of the legislature to choose a potentially more "politically acceptable" plan from an array of options. Furthermore, relying on the Iowa Supreme Court to draw both the legislative and congressional plans is unlikely to result

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19. Iowa Code ' 42.4(2).

20. Iowa Code ' 42.4(3).

21. Iowa Code ' 42.4(4).

22. Iowa Code ' 42.4(4)"b".

23. Iowa Code ' 42.4(4)"c".

24. Iowa Code ' 42.4(5).

25. Iowa Code ' 42.4(6).

in a plan with predictable partisan results, since Iowa's judiciary is essentially nonpartisan. However, plans submitted by the Legislative Service Bureau are not imposed on the legislature, and the legislature can enact its own plan, with gubernatorial approval, if all three Legislative Service Bureau plans are rejected. The requirement that the legislature and governor must essentially impose the plan upon their own party members ensures that a politically unacceptable plan can be rejected.

*Unique Iowa Factors.* Several other factors, unique to Iowa and not the redistricting process per se, also are critical to making the system workable. One factor is that Iowa is competitive politically, which means neither party has any assurance that it will control both houses of the legislature and the governor's office during redistricting. In fact, voter registration throughout the state tends to be evenly divided among Republicans, Democrats, and independents. In addition, the demographic profile of Iowa raises no significant federal Voting Rights Act issues at the legislative or congressional level. As a result, use of

politically motivated "traditional redistricting principles" is unnecessary to justify a particular redistricting plan.

#### The Consequence Of Iowa's Process

Probably the most remarkable consequence of Iowa's process is that no lawsuit has challenged a plan enacted pursuant to this process. In 1981, a Republican legislature passed and a Republican governor signed the third plan submitted by the Legislative Service Bureau without amendment. In 1991, a Democratic legislature passed and a Republican governor signed the first plan submitted by the Bureau. In 2001, a Republican legislature passed and a Democratic governor signed the second plan submitted by the Bureau. As a result, in 2001, congressional and legislative redistricting was completed by June 22, 2001, the date of the governor's approval.

Although it is difficult to determine the precise political ramifications of the congressional and legislative redistricting plans enacted pursuant to this process, the number of incumbents paired by the enacted plan give some indication of its

political consequences. By scrupulously avoiding consideration of incumbent addresses, Iowa's process inevitably pairs a large number of members of Congress and state Senators and Representatives. In 1981, two members of Congress, 14 state senators, and 36 state representatives were paired in the enacted redistricting plan. (One of the paired members of Congress moved to an open district and ran for and won that seat.) In 1991, two members of Congress, 20 state senators, and 40 state representatives were paired in the enacted redistricting plan. (The congressional pairing resulted from Iowa's losing a seat in Congress). In 2001, two members of Congress, 25 state senators, and 39 state representatives were paired in the enacted redistricting plan.

Additional information about Iowa's redistricting process, including maps and additional statistics on the congressional and legislative districts enacted this year, is available on the Iowa legislature's Web page at the following Web address: [www.legis.state.ia.us/redist/redist.html](http://www.legis.state.ia.us/redist/redist.html). The author of this article also can be contacted at [ed.cook@legis.state.ia.us](mailto:ed.cook@legis.state.ia.us).

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## Multistate Technology News

BY JIM MCKEE, FL

NCSL is continuing to help states share the costs of developing and maintaining the tools that we all use. Two sessions of the Legislative Document Management Project (Project) were held at NCSL's Annual Meeting this past August in San Antonio. At the first session, *The Future of Legislative Document Creation and Management: Sharing Means Saving*, panelists reviewed the history of NCSL's efforts to develop common ways of describing legislative documents to computers. Then, panelists from Ohio and Texas discussed recent projects in their states, and a systems engineer from Microsoft presented a demonstration using (no surprise) Microsoft products to store and retrieve statutory text for amendment drafting. The Project Steering Committee also met and discussed the status of the models the committee had developed and the use of an ongoing survey by the National Association of Legislative Information Technology concerning what

states are doing with their technology. NCSL will hire an intern to write an in-depth analysis of the survey of the use of technology in legislatures.

Subsequently, the Project has been modified and renamed the National Bill Text and Status Project and a new steering committee has been appointed. The new group is the Special Committee on Information Management, which met during NCSL's Legislative Staff Coordinating Committee meeting in late October. The group determined that it will continue the work of the Project and expand into areas such as a project to gather data on bill status and bill text from all 50 states. The plan is to make this combined information available through NCSL's Web site.

The Project will provide state legislatures with a powerful, on-line tool for one-stop access to obtain bill status and text for all 50 states. The system, which

will be free to all state legislatures, will be designed to complement paid bill-tracking subscription services and, unlike paid services, will be available to all legislators and staff. It will provide key information, including bill numbers, sponsors, title or summary, current status, and history. Information on the site will be updated daily.

Already, five states—Calif., Ky, La, Nev. and Va.—have agreed to participate in the project. For the Project to be fully successful, each state will need to participate. NCSL would like bill drafters and other policy planners and researchers to encourage their legislative leaders and key administrators to support the project. Members of the NCSL committee will be contacting states soon. A system prototype and further information about this project are available at <http://www.ncsl.org/programs/lis/multistate.htm>.

## STATE NEWS



COLORADO: Debbie Haskins

By law, the Committee on Legal Services must periodically issue a request for proposals for a competitive bid for the printing contract to publish the official versions of the Colorado Revised Statutes and the session laws. Since 1963, the state has contracted with a local printer, Bradford Publishing Co. This year there were four bidders, including two large international companies. The printing contract was awarded to Lexis-Nexis, based in Charlottesville. Lexis-Nexis will begin printing the statutes with the 2003 volume.

Last year, a group of management staff in the Office of Legislative Legal Services participated in a supervisory training program called Effective Supervisory Management. This summer, a second group of employees—comprised of assistant team leaders, head legislative assistants, the publications coordinator, and a legislative assistant—participated in the training. As part of their program, this group worked on several products for the office, including an interview packet for hiring legislative assistants, a job description for the head legislative assistant, a skills development checklist for monitoring training of legislative assistants, and a checklist for attorneys to use when revising bills. These products are now being used in the office.

The office offered more than 18 hours of continuing legal education programs, including seven ethics hours (our state requirement). One highlight was a series of panel discussions with legislators regarding ethics.

DELAWARE: Rich Dillard

9/11/01 fallout: The Speaker of the House created a House Committee on Safety and Security Measures and, in addition to funneling those entering Legislative Hall through one entrance and requiring visitors to trade a photo ID for a visitor's badge, legislators and staff will be getting legislative ID cards. Rumor is the lobbyists also want them.

2001 session numbers re-cap: A total of 272 Senate and 352 House bills were introduced, 212 bills were enacted into law and two bills were vetoed. The General Assembly reconvened January 8 for the second half of its 141st session.

FLORIDA: Edith Elizabeth Pollitz

The governor called Special Session B of the legislature in October to deal with the budget shortfall. While in session, the legislature dealt with several issues resulting from September 11, including economic assistance to public airports, expansion of authorized leave of absence for state employees who are certified disaster service volunteers of the American Red Cross for disaster response within the United States (instead of just within the state), and health insurance for those called into active military duty. The legislature passed supplemental appropriations and appropriations implementation bills, but the financial situation required further action.

The governor called the legislature back into session (Special Session C) to deal with the remaining shortfall. That session convened November 27 and adjourned December 6. The appropriations and implementation bills from the latest special session will apparently substitute for those from Session B. In addition to the budget fix, members also dealt with more security measures and several other issues in Session C.

IDAHO: Katharine Gerrity

On August 22, Idaho's first six-member bipartisan citizen redistricting commission completed a plan for redrawing Idaho's election boundaries. Within days of the completion of the redistricting process, the plan was challenged in the Idaho Supreme Court by a group claiming that the plan violated constitutional and legal guarantees, including the assurance of equal representation.

On November 29, the Court voided the plan and ordered the citizens' commission to draft a new plan. The Court held that the plan violated equal protection

because other plans were available that accomplished the same unique objectives and had total population deviations of less than 10 percent. The commission must now draft another plan within a limited time frame. County officials had to redraw local precincts by January 15 and legislators need to know what district they'll be running in before the March filing deadline.

Legislative interim committees and task forces met throughout the summer and fall. These included the Health Insurance Premiums Task Force, the E-Commerce Committee, the Natural Resources Committee, the Electric Utility Restructuring Committee, the Educational Achievement Standards Task Force and the Substance Abuse Oversight Committee.

The Health Insurance Premiums Task Force was formed to study health insurance premiums in general for individuals and small and large businesses, to study small business coverage and to oversee the state's high-risk pool. Since Idaho has a large population of uninsured, the group is analyzing the factors that are driving health care costs.

The E-Commerce Committee met three times during the interim and identified various topics for additional study, including LATA boundary lines, results of various rural tax initiatives authorized by the 2001 legislature, development of broadband infrastructure, and accessibility and privacy issues. The committee, authorized through November of 2002, will plan additional meetings following the next legislative session.

The Natural Resources Committee met throughout the interim to address various issues, including drought period agreements between surface water users and ground water pumpers. The state is conducting mass measurements of ground water levels across the eastern Snake River plane. The last mass measurements were taken in 1980. The committee also has followed the progress of the Office of Species Conservation in its efforts to create a management plan for

the delisting of the grizzly bear in the Yellowstone area. Another oversight group is involved in the delisting of wolves, whose population has grown two to three times that anticipated by the U.S. Fish and Wildlife Service.

The Electric Utility Restructuring Committee met in late November to hear from Idaho's congressional representatives about the status of electric utilities restructuring before the U.S. Congress. The committee also discussed legislation related to power plant siting, minimum reserve margins for electric utilities and the purchase of power by electric utilities from independent power producers, and regional transmission organization and activities of the Federal Energy Regulatory Commission.

The Educational Achievement Standards Task Force had its final meeting on November 16. The task force was created to act as a legislative contact on issues related to educational achievement standards and educational assessments. The Board of Education and the Department of Education have been key participants during the Committee's meetings.

Finally, the Substance Abuse Oversight Committee met for the first time on December 10. The committee is charged with overseeing state-funded substance abuse treatment. The committee will review various issues, including current treatment delivery systems, funding levels for services by agency, information gathering and reporting, and how treatment eligibility is determined in state facilities and in the communities.

Most of the groups with continuing authorization probably will not meet until after the next legislative session, which began in early January 2002. Committee information can be found at the legislative Web site, <http://www2.state.id.us/legislat/legislat.html>.

LOUISIANA: Clifford Williams

Various prosecutors around the state are criticizing the new sentencing provisions for third and fourth offenders of the state's DWI law. They argue that the change means that people convicted for a third or fourth offense face less jail time than those convicted for the first or

second time. The author of Act 1163 of 2001 Regular Session of the legislature indicated that the intent of the legislation is to provide some type of treatment for these offenders, and it is also an effort to trim the state's prison population.

Act No. 1163 amended Louisiana's sentencing provisions to require substance abuse treatment and home incarceration for most third and fourth offenders. For the third offense, a sentence of 30 days' imprisonment is required; thereafter, the remainder of the defendant's sentence is suspended. The defendant is required to undergo evaluation and treatment for substance abuse disorders. After the treatment, the remainder of the defendant's sentence (not less than one nor more than five years) is home incarceration, which includes electronic monitoring, curfews, and home visitation by the Department of Public Safety and Corrections. If the defendant fails to comply with the conditions of home incarceration, the full sentence (with no credit for time spent in a home incarceration program) must be served in prison. The sentence for fourth offenders (not less 10 nor more 30 years) is similar, except that 60 days must be served in jail and, as noted above, offenders previously convicted and sentenced to treatment and home incarceration as third offenders are not eligible for sentences of treatment and home incarceration. Otherwise, the sentence to mandatory treatment is followed by home incarceration on the same conditions as described for third offenders.

MARYLAND: Sherry Little

**Lobbyist Ethics Reform:** The reform of Maryland's Public Ethics Law, as it governs regulated lobbyists, passed during the 2001 session, marking the first time that this law has been significantly altered since it was enacted in 1979. Acting on the recommendations of a commission on lobbyists ethics, the General Assembly required training, electronic filing and on-line availability for public inspection of reports, and tighter reporting rules governing political campaign activity and reports of contributions. The state Ethics Commission's enhanced responsibilities include authorization to impose fines directly and to suspend or revoke a lobbyist's registration for viola-

tions of the law. The law also increases the maximum fine for a misdemeanor conviction from \$1,000 to \$10,000 and extends the statute of limitation for prosecution of a criminal violation from one year to two.

The law also contains a new procedure that requires lobbyists to report invitations to a meal or reception at least five days before the event and to report within 14 days the total cost of the meal or reception, the identity of any contributing sponsor, and the amount of the contribution made by a sponsor. The new procedure requires that the Department of Legislative Services publish weekly the dates and locations of the meals or receptions and the invited legislative units. Publication of this information began in November.

**Security Measures:** As a result of September 11 and an ongoing evaluation of security in the Annapolis complex, the General Assembly changed its procedures. Buildings in the complex now are accessible from the outside by only one entrance, except for the State House, which has two entrances. During the session that began in January, the public will pass through a deterrent device such as a metal detector located at each entrance. The public must allow on-duty security officers to search bags and other personal effects and present photo identification, such as a driver's license, to gain entry. Temporary color-coded badges then are issued for the specific building to be entered. Security personnel also have been assigned to building access points to monitor pedestrian traffic. More security officers also are expected to be assigned to the complex during the 2002 session. Security procedures have been altered for legislators and staff, who now must always wear photo badges; before session they will be required to wear new photo swipe cards. These cards, when passed through decoding machines, will allow entry to designated areas within specific buildings in the complex.

The tragic events of September 11 also prompted the governor, president of the Senate, and the speaker of the House to appoint an Anti-Terrorism Workgroup to reevaluate preparedness to prevent terrorist activity and to respond to the ef-

fects of a terrorist attack or major disaster. The workgroup has focused on three general areas: public health concerns, including preparedness for a major biological or chemical attack; consideration of the effect on victims and members of the National Guard, which resulted in the creation of a Maryland Survivors Scholarship for children of the victims of September 11 to be funded with private money; and various measures to provide reemployment protections, a death benefit and other protections for a National Guard member called to state active duty. Other areas under consideration include emergency communication, insurance, and price gouging.

MINNESOTA: Karen Lenertz

The Minnesota Legislature convened on January 29, 2002, for the 2002 legislative session. Among the issues to be addressed are the budget shortfall, redistricting, and bonding for capital projects.

MISSISSIPPI: Ted Booth

The legislature met in special session on November 1, 2001, to adopt a redistricting plan for the state's congressional delegation, which will be reduced from five to four following the 2000 census. After meeting for a week, the House and Senate could not agree on a plan. There are now two lawsuits, one in the state and the other in federal court, in which plaintiffs pray for judicially developed redistricting plans. The Chancery Court for Hinds County began taking testimony on plans December 14, 2001.

MISSOURI: Russ Hembree

The General Assembly met in mid-September in a special session and passed legislation in three areas: state income tax, pharmaceutical assistance for the elderly, and agricultural livestock marketing. The tax legislation prevents the receipt of the 2001 federal income tax advance check from increasing a taxpayer's state income tax liability.

The pharmaceutical bill sunsets an existing income tax credit for pharmaceutical purchases by income-qualified elderly people and instead created the Missouri Senior Rx Program, to be operational by July 1, 2002, to provide pharmaceutical

assistance for senior citizens. The bill sets a three-year increase in Medicaid income limits and establishes a commission for the program. The commission will solicit requests from private contractors to administer the program and to establish coinsurance, deductibles and enrollment fees at different amounts to control costs. Total annual expenditures for each participant may not exceed \$5,000. The Division of Aging will negotiate with pharmaceutical manufacturers to participate in the program.

Missouri's existing livestock marketing law requires a meat packer who purchases livestock for slaughter to not discriminate in prices paid to sellers; authorizes livestock sellers who were discriminated against by packers to receive treble damages, costs, and reasonable attorney fees; and also authorizes a civil suit by any person injured by a violation of the livestock marketing law. A bill passed during special session repealed those provisions and restated unlawful packer practices consistent with the federal Packers and Stockyards Act.

All bills passed during the special session were signed by the governor. The General Assembly convened in regular session on January 9, 2002.

NEBRASKA: Scott Harrison

The Nebraska Legislature met in special session in late October and early November to consider budget cuts necessitated by the drop in state revenue since the end of the 2001 regular session in May. Approximately \$170 million was trimmed from the biennial budget with more cuts anticipated during the regular session that began January 9.

This year we published an annual supplement and reissued the statute volume containing the Uniform Commercial Code. We reissue the UCC at a longer interval than most volumes of the statutes and we did extensive proofing of the comments. As you might imagine, errors were found, but as a result of this painstaking effort our data should be accurate from now on.

NEW JERSEY: Howard K. Rotblat

New Jersey may have two new acting

governors during a single week in January 2002 until the November election winner, Jim McGreevey (D), is sworn in on January 15. Under the NJ Constitution, acting Governor DiFrancesco has had that job since January 31, 2001, because he has been the Senate president. Article IV of the Constitution provides that legislative terms begin and end at noon on the second Tuesday in January in either two-year (immediately after legislative redistricting) or four-year cycles. On that date—in this case January 8, 2002—the legislature is to organize and elect its respective leaders. When the Senate reorganizes, DiFrancesco, who did not run for re-election as a senator, no longer will be Senate president or acting governor. However, the identity of the next Senate president—who will serve briefly as acting governor—depends on how the newly reelected Senate Democratic leader and the Senate Republican leader in the equally divided Senate work out the sharing of the Senate president position during the week preceding the gubernatorial inauguration. At the time of this writing it appears that state senators Richard Codey (D) and John Bennett (R) as Senate Democratic leader and Senate Republican leader are both going to be Senate president for some part of that week, making both the acting governor during a portion of the week until McGreevey is sworn in on January 15, 2002.

During the remainder of the two-year legislative session, the Senate likely come up with an agreement to alternate presidents and committee co-chairmen, but the issue of which party decides what bills will be voted on has become problematic in power-sharing discussions. Republicans want both sides to be able to block legislation from being considered, while Democrats want both sides to be able to select an equal number of bills to come to the floor for votes.

NORTH CAROLINA: William R. Gilkeson

In the last edition of *The Legislative Lawyer*, we reported that the North Carolina General Assembly had, by Labor Day, set a record for the number of days in its legislative session. After it set that record, the General Assembly

continued to meet. Columbus Day, then Halloween, then Thanksgiving passed, and the General Assembly finally adjourned its session on December 6, the day before Pearl Harbor Day. Governor Mike Easley remarked that as soon as he lit the official Christmas tree, the legislature left town. "Next time I'll light it in August," he said. Once again, talk arose about amending the state constitution to limit the length of legislative sessions. The Senate passed such a bill earlier in the year, and the House was urged to pass the bill before adjournment. However, that did not happen, perhaps for fear that the debate on the bill would create an impasse in the House that would postpone adjournment by another month.

That dilemma gives a clue to the reason for the extraordinary session length. Since the mid-1990s, the Senate has been firmly under the control of a Democratic majority. Currently, the 50 Senators are split 35-15, but the House has been dealt such narrow partisan divisions that deadlock easily sets in. Currently, the 120 House members are divided 62-58 in favor of the Democrats. A group of eight Democrats who often dissent from the more conservative positions of their party leadership have become a swing vote. Their persistence on behalf of their tax and budget policies prolonged the debate on the appropriations bill through the summer.

Eager to use the opportunity of being in control of both houses during redistricting, the Democrats spent the fall trying to pass redistricting plans that would bolster their chances to control the legislature. That was easy to do in the Senate, but a smaller subset of the group of eight dissenters in the House insisted on changing the plans to create more black majority seats. When a redistricting bill would appear on the House calendar, the leadership would look around the chamber to see who was present, and then the bill would be pulled if there weren't enough votes.

At last, the final redistricting plan (the congressional) was enacted on December 5, and the General Assembly adjourned the next day. Preclearance under the Voting Rights Act is still pending, and the legislature postponed the

usual candidate filing period from January to late February and empowered the state Board of Elections, if necessary, to postpone the May primary if new districts are not in place by February 18.

#### NORTH DAKOTA: Jay Buringrud

The North Dakota Legislative Assembly met in special session November 26-30 and adopted a new legislative redistricting plan. The plan reduces the number of senatorial districts from 49 to 47, resulting in a legislature consisting of 47 senators and 94 representatives. Two representatives are elected at large from each senatorial district. Under the new plan, the ideal district population is 13,664, and no district deviates from the ideal by more than 5 percent. The governor signed the bill November 30. The plan took effect December 7, 2001, and will first apply to the June 2002 primary election.

#### PENNSYLVANIA: Stacey Connors Mosca

The attacks of September 11 significantly affected the Commonwealth of Pennsylvania. On October 5, Governor Tom Ridge resigned his office as governor to become the Director of Homeland Security, and former Lieutenant Governor Mark Schweiker was sworn in as governor. In addition, a number of bills have been introduced in the General Assembly in response to September 11, among them legislation that would provide a tuition waiver at community colleges, state-owned and state-related institutions of higher education for children of Pennsylvania residents killed in the September 11 attacks. In addition, the Senate passed legislation that would create the offense of terrorism when a person, with the intent to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination or kidnapping, commits an act that involves a violent act or an act dangerous to human life, including an attempt or conspiracy to commit any such offense. The bill makes the penalty one degree higher than the underlying offense; adds the offense of soliciting or providing support for terrorism and terrorist organizations; establishes the of-

fense of hindering prosecution of terrorism when a person renders criminal assistance to a person who has committed terrorism knowing or believing that such person engaged in conduct constituting terrorism; and creates a civil action for victims and their families to recover damages from the assets of terrorists, terrorist organizations, or people who aided terrorist or terrorist organizations. Hundreds of new state troopers were added to the State Police complement following the passage of legislation that increased the cap on the number of state troopers—originally set at 3,940 in 1972—to 4,310, not including those serving duty on the Pennsylvania Turnpike.

The Senate passed legislation to establish a statewide uniform voter registration system to protect the accuracy and integrity of Pennsylvania's voter registration rolls. The legislation would create the Statewide Uniform Registry of Electors (SURE), an integrated system that would electronically link all county voter registration systems into a single, statewide database. The database would allow election officials to cross-check and update registration information, eliminate discrepancies and protect against fraud. Earlier this year, the legislature passed legislation that authorized creation of such a system.

#### TEXAS: David Hanna

In the redistricting following the release of the 1990 census, Texas saw litigation over district lines—so much so that the redistricting process never really stopped until litigation ended in 1997. Different maps were used to elect members of the legislature in 1992, 1994, 1996 and 1998. The ongoing nature of the process yielded benefits in the preparation for redistricting after the release of the 2000 census. The Texas Legislative Council, a legislative support agency, was able to field a seasoned redistricting staff and to develop a powerful, user-friendly redistricting system that was available to each member of the legislature on a personal computer in the member's office. Although it could not be used to actually draw maps, the council's redistricting Web site proved invaluable in distributing information about redistricting. As it turned out, the successful map drawers



in Texas turned out to be entities other than the legislature.

The legislature is responsible for redrawing four maps—the 150-member house, the 31-member senate, the 15-member state Board of Education, and 32 congressional districts. After the 2000 election, Democrats controlled the House by a 78-72 margin, while Republicans had a 16-15 majority in the Senate. The governor, who is Republican, has veto power over redistricting plans. With this framework, many speculated that it might be difficult for the legislature to enact plans. Failure of the legislature to enact a plan for either of its houses by the end of its regular session following the release of a census results in the convening of the Legislative Redistricting Board (LRB) to enact a plan.

Starting a year before the census was released, House and Senate committees held 11 joint hearings in different parts of the state to obtain public input about redistricting. Those hearings were useful in identifying issues that would be difficult to resolve and in providing certain members with greater knowledge of redistricting issues. They also helped satisfy the state's obligation to obtain preclearance from the federal justice department under Section 5 of the Voting Rights Act.

Lawsuits were filed in both federal and state courts challenging the state's existing congressional plan. Several of the federal suits were dismissed on ripeness grounds because the detailed, block-level census data would not be released until March, 2001. Since the Texas legislature normally meets only from January to the end of May in odd-numbered years, there was no time to waste after the release of the data. The legislature effectively has six to eight weeks to complete legislative redistricting before the session ends and authority is lost to the LRB. Priority in the regular session is usually given to legislative redistricting, since congressional and education board districts can be addressed in a special session of the legislature.

Both houses held additional hearings to gain more public input and began drawing maps. In the Senate, the process quickly bogged down; by rule, a bill

may not be debated on the Senate floor unless two-thirds of all the senators agree to bring it up; no plan was able to overcome this hurdle. The House fared only slightly better. A plan was reported out of committee and adopted by the full House in a close, highly partisan vote. That bill was voted out of the Senate committee as a courtesy to the House, but it ran into the same problem as the Senate bill. Thus, the legislature was unable to enact plans for either house. Even though legislative plans were not adopted, the process consumed so much time that little was left for either congressional or state Board of Education districts. At the end of its regular session, the legislature was unable to pass any of the redistricting measures over which it has primary responsibility.

Consequently, the LRB, consisting of the lieutenant governor (who serves as the president of the Senate), the speaker of the House, the attorney general, the comptroller, and the land commissioner convened to draw legislative districts. The speaker is a Democrat, and the other members are Republicans. The board began its hearings in June and held hearings about once a week. The final House and Senate plans were adopted by a vote of 3 to 2, with the speaker and the lieutenant governor voting against adoption of the plans. Most observers felt that the LRB plans would produce comfortable Republican majorities in both houses. In August, the LRB plans were sent to the U.S. Justice Department for preclearance. The governor declined to call a special session to address either congressional or state Board of Education districts, concluding that the legislature would be unable to agree on a plan and the time would be wasted.

Meanwhile, the process of determining venue for both federal and state lawsuits for congressional and legislative redistricting became active. At the federal level, new lawsuits had been filed on both congressional and legislative districts. The federal venue became clear in July, and a three-judge panel was appointed to hear the case that month. The federal court stated that it would defer to the state courts until October 15 to allow compliance with the U.S. Supreme Court's holding in *Grove v. Emison*.

The state court venue question revolved around competing suits in Travis County (believed to be more favorable to Democrats) and Harris County (believed to be more favorable to Republicans). When it appeared that both trial judges would proceed on the same day in two different cities, the state Supreme Court intervened to referee the venue question; on September 12, it found that venue for the congressional case was proper in the court in which the first case was filed after the end of the regular session—Travis County. Judge Paul Davis was assigned to hear the case, and on October 3 he issued a tentative order adopting a congressional plan. The plan was similar to the one proposed by the lieutenant governor. However, the judge left open the possibility for changes and asked the parties for comments. The Republicans generally supported the plan, while the Democrats sought changes. On October 10, Judge Davis modified his plan to incorporate some of the changes proposed by the Democrats. Democrats now supported the modified plan while Republicans did not. The matter was appealed to the state Supreme Court on an expedited basis, and the court found that Judge Davis's second map was adopted in violation of the state constitution's due process requirements. The court remanded the case to the trial court for further proceedings on October 19. However, since the deadline set by the federal court for state action had passed, Judge Davis held no further proceedings.

Trial in federal court for congressional districts began on October 22. The judges heard the case in Austin to make use of the state's redistricting system to draw a map. The trial was essentially a replay of the trial in state court, with three judges rather than one. On November 14, the court issued a congressional plan. The plan is generally favorable to all existing members of congress, with two new seats in areas that seem to favor Republicans. Democrats, fearing much worse, are generally happy with the plan. Republicans are somewhat disappointed, but happy with the districts for the new seats. The Hispanic plaintiffs are disappointed that the court failed to draw an additional Hispanic district in South Texas as one of the two new districts.

The same federal court also heard challenges to the legislative plans, since the deadline for state court action had passed. Several challenges to the LRB House and Senate plans involving state law could not be heard by the federal court under the Eleventh Amendment to the federal constitution because the state declined to waive sovereignty. The court proceeded with the Senate LRB plan first, since it had received preclearance from the U.S. Justice Department. The challenges involved intentional discrimination, the elimination of minority influence districts, a stricter population equality standard, and requests for another Hispanic seat in south Texas. On November 28, the court upheld the Senate LRB plan.

Challenges to the House LRB plan were complicated by that plan's failure to receive preclearance when the trial began. The court received evidence but indicated it might delay its ruling until after the justice department had ruled on preclearance. The primary challenges were on retrogression of Hispanic voting strength and the elimination of a number of minority influence districts. After the trial ended, the justice department objected to a number of districts in south and west Texas on the basis that those districts were retrogressive of Hispanic voting strength. On November 28, the federal court ordered a House plan that was essentially the LRB plan, with modifications made to the areas to which the justice department had objected. The court also issued an order modifying residency requirements for House and Senate candidates because of the uncertainty surrounding district lines.

Board of Education districts received the least legislative and political attention. When the legislature failed to draw a plan and the governor declined to call a special session, a three-judge federal panel ordered a plan after a trial.

UTAH: Gay Taylor

Because of security concerns, the Utah legislature has been asked to not be at the state capitol during the two-week period of the Olympics. The legislature is holding special interim meetings during the 2 weeks prior to its annual general session to speed its bills through

because the session will be only 45 calendar days this year. The legislature has no flexibility to change the dates. Leadership has encouraged legislators to file no more than five bill requests to limit the number of bills to be considered. It is a unique year for staff because we will try to have bills ready earlier than ever.

VIRGINIA: Mary Spain

Redistricting: Virginia elected a new House of Delegates from realigned districts in November 2001. The Republican-controlled General Assembly completed its redistricting work on state legislative and congressional redistricting plans by July and the plans have been cleared by the Department of Justice under Section 5 of the Voting Rights Act. See Virginia's redistricting Web site at <http://dlsgis.state.va.us>.

The state court hearing of a challenge brought by Democrats to the House and Senate plans denied plaintiffs' request for an injunction and permitted elections for the House to proceed under the new district lines. The court issued its ruling in September after a three-day trial. The Commonwealth awaits the court's ruling on the merits of the challenge. The court focused on racial gerrymandering, potential dilution of minority voting strength, compactness and contiguity. See *West v. Gilmore*, Circuit Court for the City of Salem, Case No.:01-84.

Although Democrats regained the offices of governor and lieutenant governor in the November election, Republicans elected a new attorney general and took control of the House by increasing their share of the 100 House seats from 52 to 64. There will be 22 new delegates in the 2002 House and two new senators elected in 2001 to fill vacancies. The Senate elected in 1999 continues in office until 2003.

Introduction limits and deadlines: Virginia's legislature meets annually for short sessions--usually 60 calendar days each even-numbered year and 46 days each odd-numbered year. It reviews a large number of bills and resolutions in a short period: 2,649 in 2001; 3,173 in 2000; 2,736 in 1999; and 2,944 in 1998. Last year, the legislature allowed each legislator an unlimited number of pre-

filed bills but limited, for the first time, the number of bills a member could introduce during the session—six in the House and 10 in the Senate. In the 2002 session, members can prefile an unlimited number of measures but will be limited to introducing five measures in the House or eight measures in the Senate. This emphasis on prefilings legislation is designed to make better use of the first weeks of the session and achieve a better flow of bills through the committees.

Members were required to file their requests for legislation with the Division of Legislative Services by December 10 to have the measure eligible for prefilings. Requests may be filed after December 10, but those measures will be counted against the members' six- or 10-measure limit. The division received approximately 2,700 requests by the December 10 deadline. It must deliver those bills and resolutions to the requester by December 28. The deadline for requesting corrections or changes was January 4, 2002. The deadline to prefile legislation with the clerk of the House or Senate was 10:00 a.m. on January 9; the new General Assembly convened at noon that day.

2002 Session: A slowing economy and unresolved budget matters from the 2001 session will make budget and revenue matters priority concerns in the 2002 session. The governor announced that he will reduce by \$1 billion the official estimate for the general fund for the current fiscal year. Required spending increases will widen the budget gap for the current fiscal year to more than \$1.3 billion. In addition to addressing current budget needs, the governor, governor-elect, and General Assembly will develop a budget for the coming biennium. Issues demanding attention including spending reductions, the amount of car tax relief, use of the Rainy Day Fund, possible bond issues, and local demands for new revenue options.

WEST VIRGINIA: Mark McOwen

Greetings from Charleston. Your former reporter, Christy Morris, is now Deputy Secretary of West Virginia's Department of Military Affairs and Public Safety. I will try to emulate the thoroughness of her reports.

Staff has joyfully endured six (!) extraordinary sessions this year. Recent extraordinary session enactments include appropriations to provide relief from devastating floods in the state and, ironically, to promote the 2001 World Rafting Championships held on the whitewaters of West Virginia. House and Senate redistricting plans were enacted, certain taxes on coal production were increased to provide additional funds for mine reclamation, and a new Family Court system was established statewide. In response to September 11, tax exemptions were provided for certain members of the National Guard and reserve forces, leave of absence policies for public employees fulfilling military obligations were adjusted, appropriations for increased security at public buildings was provided, and certain activities characterized as terroristic were criminalized. Finally, a bond issuance to fund correctional and state police infrastructure improvements was authorized, and the legislature established state programs to provide malpractice insurance coverage for certain physicians for whom coverage was either unaffordable or unavailable from private carriers.

The members' monthly interim committee work continued throughout the year. Of note were presentations by NCSL's Tracy Schmidt, who addressed West Virginia's responsibilities under the federal Workforce Investment Act, and Jeff Dale, who addressed the effects of Internet purchases on state sales tax revenues and NCSL's efforts to streamline collections of sales taxes nationally to offset anticipated revenue losses.

**Litigation:** Trial began December 13, 2001, in the federal court action challenging the legislative redistricting plans. The state's 26-year-old education finance lawsuit, reopened since 1995, was scheduled for another hearing December 17, 2001, in state circuit court. The court wants to discuss its recently expressed intent to monitor the efforts of the state to adequately fund education during the state Board of Education's implementation of a new statutory performance-based approach to providing a thorough and efficient education. Finally, the legislature is appearing as *amicus curiae* in the mandamus action

brought in state Supreme Court by the attorney general, in which he asserts exclusive authority over all lawyers representing any executive agency or official, even where the direct employment of counsel by the agency or official is specifically authorized by statute.

The second session of the 75th legislature convened January 9, 2002. To monitor legislative activity, visit the West Virginia legislature's Web site at <http://www.legis.state.wv.us/>. For toll-free access, dial 1-877-56LEGIS.

WISCONSIN: Steve Miller

In October, the legislature disbanded its four party-caucus staffs, which employed 64 staffers. This action responded to investigations by the state Elections Board, two district attorneys, and the state Department of Justice into possible campaign law violations by some caucus staff. Common Cause and other plaintiffs have sued to prevent the legislature from paying legal fees for staffers who are facing criminal charges. In January, the legislature began consideration of a request from the governor to reduce the state budget by an additional 3.5 percent. This request would reduce a state budget that already was cut five percent for the current fiscal year.

WYOMING: Karen Ashcraft Byrne

The Legislative Service Office is preparing for the budget session of the 56th legislature, which will convene February 11, 2002. The session, ordinarily about 20 days long, probably will open as a regular session, and then the governor will declare a special session to deal with redistricting and school finance as mandated by the Wyoming Supreme Court. We are rewiring both the Senate and House floors and portions of the Capitol so that legislators will be able to use their laptop computers wireless anywhere in the Capitol.

Wyoming is trying to make research documents more accessible to staff and legislators by storing legislative information in an electronic database. We have been testing a Xerox product called DocuShare that allows users to access electronic and scanned documents from

their computers. We are now in the process of purchasing this software and customizing it to better meet our needs. The information retrieval system will allow legislators and staff to use their computers to look up committee information, bill information, state agency reports and other research documents.

The Joint Interim Labor, Health and Social Services Committee is continuing work toward "one-stop shopping" for individuals who are seeking state assistance for welfare, employment training and placement. It also is sponsoring several bills to alleviate the state's nursing staff shortage by providing financial assistance for people pursuing nursing education, funding for additional nursing educators, authorizing "medication aides" in the state training school, wage subsidies for direct care staff in licensed nursing care facilities and "rebasement" the Medicaid reimbursement rate for nursing care facilities in the state. It is sponsoring a bill for a prescription drug assistance plan that would allow the state to help pay for the costs of prescription drugs.

The Substance Abuse Subcommittee is sponsoring a substance abuse control plan bill that allows a qualifying offender to receive treatment instead of incarceration for substance abuse violations. The bill also allows for operations to be used by the Division of Criminal Investigation under which those under age 21 will be allowed to attempt to purchase alcohol to identify establishments that are violating the law.

The Joint Interim Transportation and Public Highways Committee is sponsoring several bills to allow highway expansion. One bill appropriates \$200 million for this new construction. The Joint Interim Agriculture, Public Lands and Water Resources Committee is sponsoring proposed draft legislation that would assist beginning agriculture producers. The committee also is sponsoring legislation for a seed laboratory.

Other areas of concern for 2002 include election law changes, underused recreational areas and relations with Wyoming Indian tribes.

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