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2009: A state of change

Legislature passes long-fought landmark measures -- gay rights, FOIA

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DOVER -- Even with a gaping \$800 million ditch to fill and a toolbox that seemed to have more Tinkertoys than earthmovers, Delaware lawmakers managed to roll some big old boulders off the state's legislative landscape.

Three had seemed especially immobile over the years -- opening the Legislature's meetings and records to greater public scrutiny, outlawing discrimination on the basis of sexual orientation and eliminating the much-despised Delaware Student Testing Program.

All three passed this year -- not without debate, not without some dragging feet, wringing hands and pointing fingers, but all three passed.

As a result:

- Any member of the public may attend critical budget negotiations and listen to the debates as they occur (instead of as they leak through a closed door), and review legislative documents that previously were not public. The new law removes a legislative exemption in place since 1985.
- Anyone who loses a job, a housing opportunity, an insurance policy, a public contract or a spot in a public facility because of sexual orientation now has legal remedy. For the first time, that kind of discrimination is no longer legal in Delaware.
- Kids and parents who have dreaded the annual ordeal of state testing in public schools can remove the 11-year-old Delaware State Testing Program from the list of things that keep them awake at night. Another test will replace it, but that one -- observers say -- will have more give, more nuance, a faster turnaround for results, and provide a more precise picture of where students are advancing and where they still don't get it.

"The one thing that's common to all three is a sustained push, mostly by constituents but also from advocates and others," said Doug Gramiak, who was chief of staff for former Lt. Gov. John C. Carney Jr. and now is a lobbyist and executive director of Education Voters of Delaware. "The discrimination language, for example -- the Legislature was never let off the hook on that issue. Some issues just go to die. That one wouldn't die. And that's a good example of the community and advocates continuing to work and work and work until they got what they wanted."

The state testing program was the least contentious of the three, mostly because the state's contract with the testing firm was about to expire and because of a broad consensus that the program was inadequate at best, harmful at worst.

"Most realize the old DSTP really was a tool that was appropriate when we first started down this path of standards and testing to track progress, but the science of student assessment has changed dramatically since then," said WSFS Chairman Marvin "Skip" Schoenhals, who chairs the Vision 2015 panel working to make Delaware's public schools "world-class" by 2015. "Anybody who looked at this issue said, 'Yep, we need to go to a much more modern version.'"

Schoenhals said the support of newly elected Gov. Jack Markell and a task force's recommendations

were helpful.

But passage of the other two bills signaled other changes -- including a shift in the balance of power in the Senate Democratic caucus. There, similar efforts had met their demise over the previous decade, victims of a practice known as the "desk-drawer veto." Under that scenario, caucus leaders would assign bills they didn't like to a committee whose chairman would never put them on the agenda, preventing both a debate and a vote.

Writing on the wall

This year was different, although the reasons given vary.

"Things don't change unless the makeup of the General Assembly changes," said House Minority Leader Rep. Richard Cathcart, R-Middletown, who was the House majority leader until the GOP lost its edge in the November elections. "And, this year, there were lots of new faces -- that's a significant difference."

All had heard what Cathcart heard when he knocked on doors throughout his district in the run-up to the 2008 elections.

"Everybody said 'you need to open state government up,' " he said. "And I think people here -- especially in the Senate -- got that message."

The November election put four new faces in the Senate Democratic caucus, giving discussions there a more "progressive" accent, said Sen. Karen Peterson, D-Stanton.

The new members -- Brian Bushweller, Bruce Ennis, Bethany Hall-Long and Mike Katz -- all changed the tone of the conversation, lawmakers said. Three (Bushweller, Hall-Long, and Katz) took seats formerly held by Republicans, and Ennis won a special election for the seat of the more conservative James Vaughn, who died in 2007.

"I think the old guard saw the writing on the wall," said John Flaherty, an open-government lobbyist.

But Senate President Pro Tempore Anthony DeLuca, D-Newark, who was voted into the Senate majority's top slot after the June 23 death of longtime Bridgeville lawmaker Thurman Adams, said reports of a coup in the caucus are just plain wrong.

"The Senate is in an evolution, not a revolution," he said. "The committees are working well together. And that's the big issue -- can we work out the issues that are contentious?"

DeLuca pointed to resolution of the state's historic budget challenge as proof of solid leadership and solid cooperation.

Having a new governor in place -- one who had campaigned hard on all three issues -- didn't hurt. But Cathcart and Rep. Bill Oberle, R-Newark, said Markell's staff needs a "point person" to avoid rookie mistakes that slowed or garbled communication this spring.

"There are always learning curves," Markell said. "I could be in my last year in office, and even if things are going great, you can always improve. We're going to take a hard look at what we can do better. We will listen to people and get their advice."

Whether any old boulders will roll back or become lodged in unpleasant new places is, of course, a matter of speculation. And lawmakers say more remains to be done on these issues, too -- adding more transparency to government, for example.

"We suspended rules left and right, ran bills with no notice, and voted on the Bond Bill with four minutes to look at it," said Rep. Greg Lavelle, R-Sharpely, the morning after the final votes were cast. Lavelle said he regrets now that he voted for a bill he hadn't examined. "Getting into meetings is nice, but that is not the only thing that should matter here. Open government is more than that."

Reports of a coup in the Senate Democratic caucus were tagged to a very public exchange in the

Senate chamber on May 14 when, minutes before a two-week legislative break, Peterson rose and called for the rules to be suspended to allow the Senate to vote on H.B. 1 -- the open-government bill that had passed the House unanimously two months earlier.

Forcing the issue

The bill was not on the agenda, but had been released by a Senate committee the week before. Assurances had been made, DeLuca said, that the bill would reach the floor for a vote.

"That was no big deal, in all honesty," DeLuca said.

But Peterson, who had proposed such legislation since her election in 2002, had heard similar promises before, Flaherty said. She was not persuaded the bill ever would reach the floor.

"I just woke up one day and said, 'It's time,' " she said. "I'll get it done or crash and burn."

She got the votes -- 11 -- to force the issue that day. But after assurances that it would be first on the agenda when lawmakers returned June 2, she agreed to table the bill until then.

It passed June 2 and Markell signed it June 12, ending the General Assembly's 24-year exemption from the Freedom of Information Act and opening the doors of meetings previously closed to the public and press.

"People are tired of waiting for years and years on some of these issues," Peterson said. "They're going to have to let the majority rule."

A similarly subtle strategy brought the anti-discrimination bill to a Senate vote, several lawmakers and political observers said. In that case, though, the mere mention of forcing it to the floor was sufficient.

"It was just a matter of waiting until we had more than enough votes," said Bob Martz, president of the Delaware Liberty Fund, a gay-rights advocacy group. "The hope was that Sen. Adams would just -- knowing the cards were stacked against him -- assign it initially to a favorable committee. When he didn't do that, the petition started in the Senate to force it out and the other option was to suspend the rules. We had enough votes for that."

DeLuca said that issue was more contentious, "but it's been around awhile. Sen. Adams was fine with the way it was handled also."

Both the open-government and the anti-discrimination bills changed primary sponsorships before they moved ahead.

In the House, where Democrats enjoyed majority status for the first time in 24 years, Speaker Robert Gilligan, D-Sherwood Park, assigned top priority to open government, tagging it H.B. 1. Peterson, who had fought an often lonely fight for such bills in the past, said the issue was more important than who got credit.

Gilligan's new clout would only help.

"When you're the minority leader, they don't take you seriously," Gilligan said. "When you're the majority leader, you set the agenda. When the Speaker wants FOIA, FOIA is going to happen. When the speaker wants the anti-discrimination bill, it's going to happen. Maybe because we're sitting where we are helped the Senate to make their move, too."

The anti-discrimination bill, steered for years by Oberle and passed multiple times in the Republican-controlled House, this year morphed into a bill sponsored by Sen. David P. Sokola, D-Newark.

"Maybe it was part of a learning curve, and seeing me survive six elections," Oberle said. "To me, it was always about doing the fair, right thing."

It was not a party-line bill. Sen. Robert Venables, D-Laurel, was among its vocal opponents and worked to amend the bill in ways that would have promoted a traditional understanding of marriage,

given cover to those opposed for religious reasons, and clarified that state government was not endorsing same-sex relationships. All of those amendments failed.

"In all other states where such things pass, it sets a pattern -- and lawfully so -- that follows with teaching in school and gay marriage," Venables said. "It has led to what I think was an overshadowing of the First Amendment and the Constitution. ... It's not that the church has to accept everything that comes along in culture. If we're not careful, we're going to lose our moral compass."

Venables said he, too, sees changes coming in the Democratic Senate caucus. DeLuca is conservative, "but not like Sen. Adams," and other leaders -- Sen. Patricia Blevins and Sen. Margaret Rose Henry -- who are very liberal, he said.

Venables said he and Adams, another longtime opponent of the bill, "were way out of tune. We're too conservative, especially on social issues."

Mostly, Martz said, it was legislation whose time had come.

"New York took 23 years, and Pennsylvania has yet to do it," he said. "It shows how our state has changed. We're going to be more moderate to liberal in our dealing with social issues."
