



Capitol Recap

A comprehensive review of the day's events in the Pennsylvania Capitol

Volume 4 Number 12
January 9, 2015

At 3:06 p.m. on Tuesday, January 6, 2015, the Senate is in recess until Tuesday, January 20, 2015, at 10:00 a.m., unless sooner recalled.

At 3:00 p.m. on Tuesday, January 6, 2015, the House is adjourned until Wednesday, January 14, 2015 at 12:00 p.m. for non-voting session, unless sooner recalled.

UPCOMING SESSION DAYS House

Jan 14 (nv), 20, 21, 26, 27, 28
Feb 2, 3, 4, 9, 10, 11, 23, 24, 25
March 2, 3, 4, 30, 31
April 1, 13, 14, 15, 20, 21, 22
May 4, 5, 6, 11, 12, 13
June 1, 2, 3, 8, 9, 10, 15, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30

Senate

Jan 20, 21, 22, 26, 27, 28
Feb 2, 3, 4, 17, 18, 23, 24, 25
March 2, 3, 4
April 13, 14, 15, 20, 21, 22
May 4, 5, 6, 11, 12, 13
June 1, 2, 3, 8, 9, 10, 15, 16, 17, 18, 22, 23, 24, 25, 26, 29, 30

CONTENTS

AROUND THE ROTUNDA 1

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AROUND THE ROTUNDA

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OPEN RECORDS EXECUTIVE DIRECTOR LEAVES AS NEW E.D. APPOINTED

By Jeff Cox

The first and only executive director of the Pennsylvania Office of Open Records, Terry Mutchler, announced today she will be leaving “the best job I ever had” to join the law firm of Pepper Hamilton LLP where she will spearhead a Transparency Practice in the firm’s Media and Communications Practice Group. Mutchler’s announcement came on the heels of Gov. Tom Corbett’s announcement that he is appointing long-time Senate aide Erik Arneson as the new executive director.

Mutchler commented, “This experience has been the single most satisfying professional experience that I have had to date.” She continued, “The Office of Open Records was something for the Commonwealth that was going to take the Commonwealth from the Dark Ages to the highest levels I believe of transparency.” According to Mutchler, “Pennsylvania has seen “the release of hundreds of thousands of documents that would not otherwise have been released without the Office of Open Records.”

Mutchler praised the staff of the Office of Open Records for their diligence and hard work. She also praised Senators Dominic Pileggi (R-Delaware) and John Blake (D-Lackawanna). Mutchler told reporters, “Senator Pileggi and his staff created one of the finest laws this country has seen.” She went onto say, “Transparency in government affects more than just citizens and media. It affects agencies and corporations which also have a stake in this growing field of work.” Mutchler added, “Pepper has a sterling reputation and is the clear front runner in First Amendment work.”

Arneson, who has served as communications and policy director for former Senate Majority Leader Dominic Pileggi since 2005, was instrumental in the drafting and enactment of Pennsylvania’s Right to Know Law. In making the appointment Gov. Corbett commented, “Erik’s policy, legislative and communications skills are a perfect fit to lead Pennsylvania’s efforts to maintain open and transparent government response to its citizenry.” He thanked Mutchler for “her tireless efforts and dedication to the people of Pennsylvania.” He said, “Through her commitment to government openness and transparency, she helped usher in a new age of government access and we are all better for it.”

Arneson said, “Terry Mutchler has my undying respect and I consider her to be a good friend.” He added, “She has done an absolutely incredible job of establishing this Office, getting it set up and I am particularly thrilled to have her full support going forward.”

Mutchler responded to questions from the news media.

Why not wait until the Wolf Administration takes office?

The timing in the corporate world doesn’t always work that way and it certainly does not work that way for me. We have been on hold since April and this was an opportunity whose moment had come and I had a decision to make. My decision was to step off the platform of the Office of Open Records to a phenomenal firm and continue to do my transparency work from that venue. I am sure there are lots of folks who have thoughts about this but the reality is for me is I have been exploring this over the past several months. In April, when I was not reappointed by Governor Corbett, I hung on for a bit but by July the writing may have been on the wall. So I explored other options and, for me, created another option in conjunction with Pepper Hamilton.

What is the timetable for your departure?

We are going to shoot for a very smooth transition... For me, I will be staying through next week and trying to make that transition as smooth as possible. In my other life, I have my recently released book and I will be doing some of that stuff over the next several weeks as well. I will be joining Pepper the week of the 20th.

What do you know about the appointment of Erik Arneson as your replacement and his ability to do the job?

If the Governor makes an announcement, I will certainly be happy to talk to anybody about that. Having said that I have the highest respect for Erik Arneson and if he is the choice, I think Erik will do a very fine job at the Office of Open Records. I have said this to many of you, that if it wasn't going to be myself I thought it should be the deputy director Nathan Byerly. Having said that, I think there is very small pool of people who can do this work at this level and keep it smooth. If the choice is Erik Arneson, Erik will have my full support.

What was the last word you got about whether you would or would not be reappointed and is the appointment subject to Senate confirmation?

The appointment of the head of the Office of Open Records is not subject to confirmation under the Right to Know Law. It is an appointment by the governor. The last official word I had was that there would be no action taken after November and then my dynamic changed and the administration's dynamic changed. For me, I was at a point absent official word I wanted to make this choice and I made the choice to go to Pepper.

Have you had any conversations with Governor-elect Wolf?

I just had one this morning. I have the highest respect for the Governor. I found him to be very warm and charming and I found him to be a very poised leader for the Commonwealth in the next four years and beyond.

Did he make any argument for you to stay on as executive director?

I think I would have been welcomed but I think I better not speak for the governor-elect. I think he would have been very receptive to that but I am going to let him say his peace on that.

Are you leaving with any disappointments on what was or was not achieved during your tenure?

I am more elated by what we did get done. We built this office from literally a cubicle. It was a phenomenal endeavor. I believe the number one thing that must happen at the Office of Open Records is those regulations and they must be promulgated. We tried every which way and twice on Sundays to get those done. The political realities did not permit that to be. We had those regulations written in 2009 and we have tried different way to get it done. I would have loved to have stood before you today and said we got the regulations done but we did not. The regulations were written but they were not promulgated. I think that is a high priority.

Why are the regulations so important?

The regulations of the Office of Open Records are important in this way. Starting from scratch, what we had to do was to establish a procedure. How does an agency come to the Office of Open Records? What does a citizen expect when he comes to the Office of Open Records? What is procedure when the Office receives an appeal? So all of those things, even though they are now taken for granted because we have them on our website, had to be written and put in place. My goal has always been to have those regulations promulgated through the Independent Regulatory Review Commission so they would have the force of law in that way. We abide by them, the agencies comply with them, but I believe they need to be more than a policy on paper. They need to be regulations. However, I will leave that for the next executive director. That is probably the one thing I wish I could have delivered.

Following Mutchler's announcement, Erik Arneson conducted press availability and responded to questions from the news media.

Would you discuss your role in the 2005 rewrite of the Right to Know Law and the issues that have come up since then?

When Sen. Pileggi became Majority Leader at the end of 2006 one of the first things he did was gather his staff and said he are the issues I am interested in and I am interested in the issues you think we should be pursuing as a caucus. Obviously back then it was at time when the pay raise was a big issue and nobody has been a stronger advocate for open government than Sen. Pileggi. He immediately jumped on the idea of improving the Right to Know Law. I won't go through the whole history but Kathy Eakin and I were the two staff people who drafted it, negotiated it and took it from beginning to finish obviously with his absolute involvement all the way through...I was a big part of that process. Since then I have followed the Office's growth and I have followed their final determinations and court cases and everything. I cannot count the number of conversations I have had with Terry Mutchler and Nathan Byerly about the Office and what they are doing.

Are there any areas in the laws or operations that need to be strengthened?

With the law, I think [Senate Bill 444](#) from the last session had a lot of good components in it. Some that would need further revision and that is something I have been discussing with Sen. Pileggi and with Sen. Blake's office who were very involved in the state-related universities portion of that. There is no question that the law can be and should be improved. There are a lot of procedural issues that the Office really does need additional flexibility on the timing. I think the state-related universities and inmate access to records are two of the biggest issues that revisions in the law should change. In terms of the Office's operations, the people over there are incredibly hardworking and dedicated. They crank out an unbelievable amount of work for a relatively small staff. The cases are getting more complicated. All of the easy decisions have been made and settled so nobody is trying to litigate those any more. Now it gets more and more complicated as people get more sophisticated on both sides; requestors and agencies. I think the fact we have no regulations in place yet is a serious issue. Terry and the staff there have done great work preparing that but we need to get it done now. I also think the Office needs to have a much stronger presence on social media, and the internet. The website is clunky and hard to navigate. It has great information on it but it's not set up in the most user-friendly way. Regulations and the online presence of the Office are two of my focuses at this point.

What do you think your biggest challenge will be?

Not screwing up. I think Terry has set this bar incredibly high...the main challenge is not messing up the great work she has done. I am confident I can do that. The staff over there is amazing. I have had a lot of conversations with the Deputy Director Nathan Byerly and he has agreed to stay on which was very important to me. I don't think we will miss any steps but that is my number one focus if I am going to be completely honest about it.

What do you make of the Senate if you make a Right to Know request of the Senate and they reject you and you make an appeal? They do not seem to follow under the purview of the Office of Open Records. Is that a loophole?

Sure. When we wrote the law in 07 and 08, one of the first things we did was examine the Right to Know laws in the other states. In almost every state that we researched, the executive branch was treated one way, the judiciary was treated a different way and the legislature is treated a different way. I think if the General Assembly wants to make changes there, there are certainly opportunities to do that and some of Senate Bill 444 would have done that. For example, it would have required agencies to provide records in the format requested. I think it is fair for the legislative branch to have a different treatment than the executive branch and the judicial branch but there is always room for improvement.

When were you contacted for this position and what did the governor say to you about what he expects?

I was first asked about a month ago if I would have any interest in being considered in a pool of people they were looking at to take this position. I interviewed with the governor earlier this week for about forty minutes. It was a pretty broad ranging conversation within the open records universe. The regulations were something he was very focused on and wanted to ensure they got in place quickly.

What is the status of the regulations?

They are in use as a policy within the Office at this point is my understanding. They have not been submitted to IRRC. There is currently a discussion going on between the Office of General Counsel, the Governor's Office and the Attorney General's office. They have to approve things, then it goes to IRRC so I am not intimately familiar with the exact status of those conversations but I know everybody is aware of where the regulations stand right now and it now just a matter of pushing

them forward. I am going to review the draft in its entirety. There may be things I would like to see handled differently but I don't know that for a fact but I won't slow that process down very much at all.

With your background working for the Senate what do you say to those who think you would be “too government friendly”?

First, no I won't. Second, Terry Mutchler had the same kind of mixed background as me. I think it is useful for a job like this. I have, for the past 18 years, tried very hard to make as much information available as easily as possible. One of the things I am very proud of is redoing the entire General Assembly website. I hope it is much user friendly today than it was a couple of years ago. I understand the concern there but I don't think it's going to happen, period. I think the best model for someone to head the Office is someone who has had some experience in both venues.

What is your reaction to criticism that this governor has only ten days left and he should have let the next governor make the appointment?

Gov. Corbett has been thinking about this since the beginning of last year. Everybody knew that Terry Mutchler's term was up last spring. Sen. Pileggi wrote a letter strongly supporting Terry Mutchler and we hoped a second term for her would be possible. It turned out not to be possible. He is the governor until noontime on January 20th and it is his prerogative to do this. I am just honored that he chose me. I will be fair. I will be impartial. I have reached out to the Wolf Administration and I look forward to having conversations with them. It is very important to me to have a good working relationship with them because the Office is under the Department of Community and Economic Development (DCED). I will continue to reach out to them.





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Services
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717.236.6984 phone
717.236.5097 fax
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Capitol Recap is a daily report on legislative and executive actions and is compiled and edited by Kimberly Hess. For subscription information, questions or more information contact PLS at mypls@mypls.com or 717-236-6984.

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