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FOR JUSTICE

STILL BROKEN:
NEW YORK STATE
LEGISLATIVE REFORM

2008 Update

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I. INTRODUCTION

“Dysfunctional” is the adjective ascribed to the New York State Legislature by two reports issued by the Brennan Center for Justice: *The New York State Legislative Process: An Evaluation and Blueprint for Reform* released in 2004 and the follow up, *Unfinished Business: New York State Legislative Reform 2006 Update*.

The legislative leadership largely dismissed the findings of the 2004 report. Assembly Speaker Sheldon Silver told the New York Times, “Nothing happens here in Albany, in the Assembly, without the input of the rank-and-file legislators.”¹ Joe Bruno, who recently left the Senate after serving for 14 years as its Majority Leader, called the report “pure nonsense” and equated a more democratic process with that of a Third World country.²

Yet when the Legislature came back into session in early 2005, the Leaders announced rules changes—the first time in a generation—accompanied by self-congratulatory fanfare.³ In press releases that described the reforms’ aspirational effect on the Legislature, the Assembly Speaker and Senate Majority Leader claimed that the new rules would usher in an era of openness, effectiveness, and accountability. The Senate even went so far as to claim that it addressed most of the recommendations made by the Brennan Center.⁴

Unfinished Business: New York State Legislative Reform 2006 Update concluded that the changes on the whole, while a good start, were by no means transformative. The Legislature failed to adopt a comprehensive set of new rules that incorporated the Brennan Center’s recommendations for making the legislative process more robust and democratic. Of the changes that the legislature did adopt, some, quite cynically, codified the status quo in new ways. The continued presence of these rules stifles rigorous deliberation and debate and hobbles the sincere efforts of a number of rank-and-file legislators to represent the best interests of their constituents and the state as a whole.

In 2006 and 2007, most standing committees met infrequently or not at all. There were almost no hearings on major legislation. Not a single major bill was the subject of a detailed committee report. Leadership maintained near total control over what bills reached the floor. And on the floor, there was little substantive debate; every bill brought to the floor for a vote in either chamber passed.

The good news is that, for the first time in years, there is reason to hope that at least one chamber will begin to make the structural changes that could remake the legislature. Come January, majority control of the Senate may shift to the Democrats.⁵ In 2007, likely incoming Senate President Pro Tempore Malcolm Smith introduced new rules in line with our previous recommendations (the one-house resolution failed along a party-line vote). During a Reform Day New York panel last year, Senator Smith reaffirmed his commitment to introducing the same package of rules reform “without question”⁶ if the Democrats regained the majority. He previously stated, “We cannot truly reform the legislative process in Albany until we have successfully reformed the rules that govern the Legislature.”⁷ More recently, Senator Smith told the New York Times that under his leadership, the Senate “would be more transparent, more participatory.” Smith reaffirmed that rules reform under a Democratic majority would include broader latitude for members to put bills on committee agendas or vote them out of committee and onto the floor, abolishment of secretive canvass of agreement votes and restrictions on discharge motions, and the enactment of new rules requiring committee members to be physically present to vote.⁸

At a time when state revenues are shrinking—Governor Paterson forecast a \$47 billion budget deficit over the next four years⁹—it has become all the more important for the legislature to be more creative and effective. The rules changes we recommend are a step toward this goal.

At the opening of 2009 session, both houses will once again have the opportunity to modify their rules. We urge the new Senate Majority to honor its commitment to genuine rules reform. The Assembly, which retains a super-majority in favor of the Democrats, should follow suit.

While the world of legislative rules may seem arcane, our capitol's dysfunction has received unprecedented attention over the period covered in this report thanks in part to the failure of New York City's congestion pricing proposal. For far too long, the leadership has failed to enact the changes necessary to remake the Senate and Assembly. Today, pressure to change the culture of Albany may have finally intersected with a new opportunity for reform.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The quantitative analysis of the Legislature's performance in 2006 and 2007 and qualitative information from interviews with lawmakers reveal that the problems outlined in the original report still plague both chambers. Our analysis of the legislature's performance in 2006 and 2007 shows that the vast majority of problems identified in our previous two reports remain endemic in both chambers:

- In both chambers, but especially in the Assembly, leadership maintained a stranglehold on the flow of legislation at all stages of the legislative process.
- Committee meetings were infrequent in both chambers and sparsely attended in the Senate, where members can vote without being physically present.
- Most standing committees in both chambers failed to hold any hearings on major legislation.
- There were no detailed committee reports attached to major bills in the Senate, and the Assembly rules do not require substantive reports to accompany bills reported out of committee.
- Legislators introduced an extraordinary number of bills in both houses during each session, while only a small percentage received a floor vote.
- 100% of the bills that leadership allowed to reach the floor of either chamber for a vote passed with almost no debate.
- Senate records indicate that many of the bills that received a floor vote lacked critical and required information about their fiscal impact, usually passing the full chamber without any meaningful debate or dissent.
- The use of conference committees to reconcile similar bills in each chamber remained the exceedingly rare exception, rather than the rule.

- Member resources were distributed inequitably in both chambers on the basis of party, loyalty and seniority.
- Much of the legislative process remains opaque; records are difficult to obtain without burdensome “freedom of information” requests, and key records of deliberation—such as “no” votes on procedural motions in the Senate—are not maintained.

It is plain from this and other evidence explored in our latest update that New York’s legislative process remains broken. In January 2009, each chamber will again have the opportunity to change their operating rules and begin to fix this process. Such changes will not require agreement between the chambers or gubernatorial approval. At a minimum, they should meet the following five objectives:

1. **Strengthen standing committees so that debate is robust and rank-and-file members can force a hearing or a vote, even over the objections of the committee chair (Discussed in greater detail on pages 4–12).**
2. **End the leadership stranglehold on bills coming to the floor (Discussed in greater detail on pages 12–16).**
3. **Allow ample opportunity for adequate review of all bills (Discussed in greater detail on pages 17–23).**
4. **Provide all members with sufficient resources and opportunities to fully consider legislation (Discussed in greater detail on pages 24–26).**
5. **With respect to all of the above, make records of the legislative process transparent and easily accessible to the public via the Internet (Discussed in greater detail throughout this report).**

II. DYSFUNCTIONAL STANDING COMMITTEES

In many state legislatures and in the United States Congress, committees function as the locus of legislative activity.¹⁰ In New York, they do not. The Speaker of the Assembly and Senate Majority Leader maintain complete control over the committee process, rendering committees unable to fulfill a primary legislative purpose.

In truth, most standing committees in Albany exist only as a formality; they serve merely as a place to introduce legislation, not as a place to *consider, debate, and remake* legislation. The leadership prevents legislation with which they do not agree from ever achieving momentum through exploration in committee, limiting the need to apply the breaks on legislation that has gained force later in the process.

Ideally, committees should work as follows: a lawmaker identifies an issue and writes legislation in response. Once introduced, the draft bill subject to public hearings and debate in committee. Before legislation reaches the floor, lawmakers explore its merits and shortcomings by hearing expert criticism from committee members and the public and make any necessary revisions.¹¹ In many state legislatures and in Congress, the full chamber can vote to override a bill's referral to a particular committee; in many state legislatures, committees are required or must honor requests to hold a hearing on every bill.¹² This is not the case in Albany—almost all aspects of this ideal process are inadequate or lacking in the New York State Legislature.

The shortcomings of standing committees in New York include:

- Leadership control over committee staff prevents independent committee decision making.
- Committee meetings are infrequent or nonexistent.
- Rank-and-file legislators in both chambers lack the power to compel a hearing on legislation or oversight within a committee's jurisdiction.
- In the Senate, committee members can vote absentee by signed agenda, leading to sparsely attended or nonexistent meetings with no opportunity for debate.
- Committees in both chambers do not draft meaningful reports that explain the purpose or intent of a bill, and rarely publish annual reports of their work as required by the rules.
- Committee work in both chambers is opaque, with little opportunity for public oversight of the foundational work of policymaking.

To address these problems, we propose the following rules changes:

- Standing committee chairs should have exclusive authority and responsibility to hire and fire their staff and control committee budgets.
- At least one-fourth of the membership of a committee should be able to vote to convene a meeting.

- One fourth of the members of a committee should be able to petition for a hearing on a bill or an oversight hearing, and such hearing will be held unless rejected by a majority vote of the committee. All “yes,” “no,” “abstain,” or “absent” votes should be recorded and made available to the public.
- Each committee and sub-committee must hold an oversight hearing on at least one program or state agency within its jurisdiction at least once per year.
- No member’s vote on any matter before committee will be counted unless the member is physically present to cast her vote.
- All bills reported to the floor in both chambers must be accompanied by a substantive committee report showing the committee’s work on the bill.
- Each committee and subcommittee in both houses should submit an annual end-of-term report to the Speaker in the Assembly and Majority Leader in the Senate, detailing the work of the committee, as the Assembly rules currently require.
- All attendance records, meeting agendas, committee votes, and minutes of committee meetings will be recorded and made available to the public on the Internet at least once a month.

QUANTITATIVE ANALYSIS OF COMMITTEE PERFORMANCE

The original 2004 Report used several criteria to determine the robustness of the committee process and the many “steps of life of a bill.” The 2006 report identified no significant improvement and occasional decline on each criterion in the two years after the publication of the first report. Those criteria, which include frequency of meetings, absentee or proxy voting, unanimous votes, and committee reports, once again showed only marginal improvement, stasis, or decline in 2006 and 2007.

PROBLEM: **Leadership Control Over Committee Staff**

As discussed in our previous reports, the Speaker of the Assembly controls all committee personnel, known as “Central Staff.” This control limits deliberative opportunity in the legislative process by depriving committee chairs of the capacity to explore pressing issues or develop legislation without the approval of the leadership.¹³

SOLUTION:

Standing committee chairs should have exclusive authority and responsibility to hire and fire their own staff and control committee budgets.

PROBLEM: **Infrequent Committee Meetings**

As described in our previous report, Senate committee meetings in 2005 were rare: 15 of 31 committees met five or fewer times.¹⁴ In recent years, Senate committees met even less frequently. This problem is measur-

ably worse than in the Assembly, where committees meet somewhat more frequently and members must be physically present to vote.

In 2006, a majority of Senate committees (18 of the 31) met two or fewer times to consider major legislation. In considering major bills, only five committees met monthly on average, and four committees (Cities, Ethics, Racing and Gaming, and Tourism) didn't meet at all. In 2007, 14 of 31 Senate committees met two or fewer times to consider major legislation. Five committees (Commerce, Corporations, Energy and Telecommunications, Insurance, and Ethics) didn't hold any meetings on major bills.

The Senate Ethics Committee, which was noted in the 2006 Report for not meeting at all in 2005 or 2006¹⁵, still hasn't held a meeting—on major legislation or otherwise—during the period covered in this report and in 2008.¹⁶ In fact, the Senate's ethics committee has not met in over a decade, while the Assembly's committee has met infrequently over that same period. Despite this fact, the two ethics committee chairs each earn an extra \$12,500 annually for their titles.¹⁷

Under the Senate rules, the existence of a record of a meeting does not necessarily indicate that committee members convened, but rather that members submitted votes on legislation under consideration. Interviews with Senators suggest that attendance at committee meetings is usually sparse and commonly includes only the chair and the ranking member.¹⁸ One Senate committee chair questioned a member of the minority at the opening of a scheduled meeting, asking, "Why are you here? You're creating work for me."¹⁹

SOLUTION:

At least one-fourth of the membership of a committee should be able to vote to convene a meeting.

PROBLEM: **Inadequate Oversight Hearings**

In 2005, the Assembly moved in the direction of adopting one of the Brennan Center's recommendations to require annual oversight hearings by committees to assess the relevant agency's implementation of programs:

Each standing committee shall, furthermore, devote substantial efforts to the oversight and analysis of the activities, including but not limited to the implementation and administration of programs, of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction.²⁰

With this new rule the Assembly appears to acknowledge the importance of oversight. Unfortunately, it still sometimes falls short. The Assembly Oversight and Analysis Committee, with a very specific mandate, has not held a meeting of its members in years²¹ and recently held its first hearing in 18 months.²² Even while ignoring this explicit duty, the Oversight Committee Chairs collected a stipend of \$12,500 annually.²³

But there has been some progress. Assembly committees have begun to hold annual budget implementation hearings.²⁴ For this, the Assembly deserves some credit. However, there is still room for improvement to ensure that sessions are well attended and not perfunctory.

The Senate has no rule similar to the Assembly’s acknowledging the responsibility of committees to hold oversight hearings. Not surprisingly, the Senate has also failed to hold many oversight hearings. In fact, over the past three years, the *only* oversight pursued by the Senate Committee on Investigations and Government Operations—which has overlapping oversight jurisdiction in the Senate—was the so-called “Troopergate” scandal. The Senate Investigations Committee held several hearings devoted to uncovering facts around Troopergate, which came to light in the summer of 2007.²⁵

SOLUTIONS:

One fourth of the members of a committee should be able to petition for a hearing on a bill or an oversight hearing, and such hearing will be held unless rejected by a majority vote of the committee. All “yes,” “no,” “abstain,” or “absent” votes should be recorded and made available to the public.

Each committee and sub-committee must hold an oversight hearing on at least one program or state agency within its jurisdiction at least once per year.

CASE STUDY I: OVERSIGHT NOWHERE IN SIGHT—HAVA COMPLIANCE

One prominent example of oversight failure involves New York’s noncompliance with the Help America Vote Act of 2002. That federal law required, among other things, that all voting systems in the state produce a permanent paper record that can be audited during a recount; that each polling site have at least one voting machine that is accessible to individuals with disabilities; and that the state construct a statewide computerized voter registration list. New York is the last state in the nation to upgrade from its decades-old mechanical lever voting machines and the state is the farthest behind in HAVA compliance. Significant federal aid is at stake—about \$230 million towards new voting technology remains unspent.²⁶

New York’s violation of HAVA was so egregious that in 2006, the U.S. Department of Justice filed suit against the state. Today, New York’s compliance with many of the requirements of HAVA, including new voting machines that require a paper trail, is still up in the air. The situation was so bad that one point last year the federal judge overseeing the case even threatened to jail state Board of Elections officials for non-compliance.²⁷ “Why is it that New York thinks it can thumb its nose at the federal government?” the judge asked in court.²⁸

While the federal lawsuit came to a head in the end of 2007 and in the first few months of 2008, decisions about our new voting system continue to evolve at a glacial pace. The Board of Elections continues to push deadlines to introduce new voting machines further into the future. A status report issued by the Board of Elections in July stated that it might not meet the latest court-imposed deadline, stating, “Overall, activities and progress toward HAVA compliance are in jeopardy per the project timeline.”²⁹ More recently, the company contracted by the state Board of Elections to test the new voting system lost its federal certification,³⁰ rendering compliance with the court-ordered September 2009 deadline for the implementation of new machines even less likely.

2006

MAR. 1
DoJ files suit against NYS.

JUN. 2
Agreement reached between NYS and DoJ: new voting machines by Sep. '07.

DEC. 18
State Board of Elections (SBoE) will miss machine testing deadline; no new machines by Sep. '07.

2007

JAN. 4
NY Times reveals Feds decertified tester of voting machines contracted by state.

OCT. 3
SBoE then asks for an extension: the '09 elections.

NOV. 5
DoJ says SBoE violated court's Sep. '07 deadline for new machines.

DEC. 20
Court agrees to disabled voter-accessible machines for Sep. '08 primaries, all other HAVA compliance by '09.

2008

FEB. 19
Counties choose new voter-accessible machines.

JUL. 25
SBoE tells court they will miss '09 deadline for new voting machines.

OCT. 29
Feds decertify second tester of voting machines contracted by state.

At least four committees in the state legislature have jurisdiction over election issues, most directly the Election Law Committee in the Assembly and Elections Committee in the Senate, in addition to the oversight committees in both houses. These four committees have been silent on the state's failure to comply with federal election law. None of these committees held a single hearing or public meeting devoted to formulating a plan to move forward on HAVA compliance or to investigate compliance delays.³¹

By contrast, the New York City Council has held a number of hearings related to the State Board's failure to comply with HAVA. Douglas Kellner, co-chair of the state Board of Elections, Assemblyman Keith Wright, then-Chair of the Assembly Election Law Committee, and state Senator Liz Kruger have offered testimony about HAVA compliance at hearings before the New York City Council Government Operations Committee.³² The Committee, chaired by Councilman Simcha Fleder, has regularly scrutinized voting and elections in the period covered in this Report.³³

PROBLEM: Absentee Voting by Signed Agenda

In the 2006 Update, we noted that the Senate changed the language in its rules that allowed proxy voting—without adding an explicit ban on *absentee* voting.

**Rules of the Senate
(2003–2004)**

Rule VII §5. Reports. a. No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection. A member's vote on any matter before the committee may be by proxy. Such a proxy vote shall be made by the member specifying the member's vote on a signed committee agenda delivered to the Committee Chair.

**Rules of the Senate
(Current)**

Rule VII §5. Reports. a. No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection. A member's vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair.

Under the current Senate rules, proxy voting has given way to “voting by signed agenda,” which allows Senators to vote when not present.³⁴ The result of signed-agenda voting is institutionalized absentee voting and increased opacity of attendance records. Senate committee records for meetings concerning major legislation in 2006 show 97.2% total attendance for 86 committee meetings with a single unexcused absence and 37 excused absences. In 2007, Senate records for committee meetings concerning major legislation indicate 97.9% total attendance of 100 meetings with one unexcused absence and 32 excused absences. These artificially high numbers only show the total number of votes cast in committee, without giving any indication of meeting attendance.

SOLUTION:

No member's vote on any matter before committee will be counted unless the member is physically present to cast her vote.

PROBLEM: Lack of Dissent in Committee

The large number of unanimous votes on bills over the past decade is evidence of the role of committee chairs in enacting the will of the leadership. Between 1998 and 2001, major legislation passed committee by a unanimous vote an average of 90% of the time in the Senate. In 2005, 89.8% (i.e., 184 of 205) committee votes were unanimous.

Little has changed in the Senate. In 2006, of 195 committee votes on major legislation, 171 (i.e., 87.6%) were unanimous. In 2007, 220 of 242 (i.e., 90.9%) committee votes on major legislation were unanimous. In 2006, the greatest number of "no" votes recorded on a single major bill in committee was 3 votes against authorizing physical therapy treatment without referral in certain cases. In 2007, a handful of major bills received 4 and 5 "no" votes in the committee of original jurisdiction followed by 7 "no" votes in the Rules Committee.

The total number of "no" votes cast in the Senate remains paltry following 2005 when only 25 "no" votes were cast out of 5,650 votes cast in committee on major legislation. In 2006, of the 3,377 votes cast in committee on major legislation, only 22 were against the legislation, and 14 out of 17 non-unanimous votes in 2006 received only a single "no" vote. In 2007, just 61 "no" votes cast out of 4,471 total committee votes cast on major legislation, and of the 20 non-unanimous votes, 9 received only one dissenting vote.

In the Assembly, the number of unanimous committee votes on major legislation averaged 83% from 1997 to 2001. In 2005, 90.4% of major bills received unanimous committee votes. Unanimity in the Assembly remained high in 2006, but saw some improvement in 2007. Of the 381 committee votes on major legislation in 2006, 344 were unanimous, (i.e., 90.2%). In 2007, 219 of 266 committee votes on major legislation (i.e., 82.3%) were unanimous.

Despite this improvement, the number of "no" votes in Assembly committees amounted to just 76 out of 8,457 total cast in committee on major legislation in 2006 and 144 out of 5,611 votes cast in committee on major legislation in 2007. These numbers reflect little improvement over the total "no" votes reported for 2005, when 100 out of 5,677 total committee votes cast on major legislation were dissenting. The intensity of dissent remains low in the Assembly; about two thirds of non-unanimous committee votes on major legislation in 2006 and two fifths of non-unanimous committee votes on major legislation in 2007 received only one "no" vote.

SOLUTION:

No single rule would cure the problem of lack of dissent. However, if leadership had less than total control over the ultimate fate of every bill, committee deliberation and debate would be more meaningful and more substantive, and dissent would likely follow.

PROBLEM: Insubstantial Committee Reports

Committee reports on legislation should serve as guidance for courts, on which they rely, for the full chamber and the public.³⁶ However, in 2005, the Senate and Assembly did not issue a single substantive committee report on 317 pieces of major legislation signed into law,³⁷ nor did they issue any substantive committee reports on major legislation in 2006 or 2007. While the Senate instituted a new rule in 2005 to require such reports,³⁸ the practical result is simply a list of bills with information that is available elsewhere, such as the bill summary, committee vote on the bill, and whether or not a fiscal note was attached. The Assembly, whose rules do not explicitly require substantive reports reflecting the work of the committee, does not appear to have produced a substantive committee report since 2003 when it issued two, one for a state “no call registry” and another for a study of a striped bass fishery in the Hudson River.³⁹

SOLUTION:

All bills reported to the floor in either chamber must be accompanied by a substantive committee report showing the committee’s work on the bill

Each committee and subcommittee in both houses should submit an annual end-of-term report to the Speaker in the Assembly and Majority Leader in the Senate, detailing the work of the committee, as the Assembly rules currently require.

PROBLEM: Committee Work is Opaque

Well into the Information Age, it remains difficult for the average citizen to discern the work of standing committees from what is currently available on the web sites of the Assembly and the Senate. The sites are poorly organized and contain few products of the lawmaking process. The Assembly posts and retains a bit more information about committees than the Senate, including notices of public hearings and sporadic reports.

Committees should publish all of their work on the Internet, including hearing transcripts, attendance records, vote records, and debate transcripts. California and Connecticut are good models for legislative operating transparency. California’s web site includes daily journals of floor proceedings, legislative counsel analysis of all pending legislation, committee analysis, committee and floor voting records, and audio and video of floor proceedings. Connecticut’s site includes a weekly record of all committee action taken on legislation under consideration, all fiscal notes, archived public hearing bulletins, committee minutes, committee reports, committee agendas, floor and committee vote tally sheets, and streaming audio and video of proceedings. This does not require extraordinary resources—Connecticut, which leads the nation in transparency and accessibility of records, employs ten clerical staff (three of whom are sessional) in each chamber.

SOLUTION:

All attendance, meetings, votes and minutes of committee meetings in both chambers should be recorded and made available to the public on the Internet at least once a month.

THE LEGISLATIVE RETRIEVAL SERVICE

According to state law, legislative records are available to the public through a request for information under the Freedom of Information Law (FOIL), which reads in part: “The people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.”⁴⁰

Given the extremely limited nature of the Senate and Assembly Web sites, FOIL requests, many of which we submitted in the course of researching this report, are necessary in order to fully assess the performance of the Legislature. FOIL requests, which can take weeks to bear results, are the only way to ascertain information on committee votes, transcripts of debate, attendance, fiscal notes, and records crucial to understanding the legislative process.

There is another option if FOIL requests are inconvenient: the Legislative Retrieval Service (LRS). An online service founded in 1984 by the bipartisan Legislative Bill Drafting Commission, a subscription to the LRS costs \$2,250 annually.

“The only people who can afford it are primarily lobbyists,” said Susan Lerner, Executive Director of Common Cause/New York. “Every state that has a good legislative Web site provides information in real time at no cost. This is public information prepared by public employees with public resources and it is now only available to private subscribers. It should be readily available to the public.”

III. LEADERSHIP CONTROL AS A BARRIER TO FULL CONSIDERATION OF LEGISLATION

In the 2004 and 2006 reports, we noted how difficult it is for legislators to move bills to the floor without the support of the Speaker or Majority Leader. As the 2004 report notes, the barriers to getting a bill from committee to consideration before the full chamber are greater than in any other state.⁴¹

This task of moving a bill from committee to a floor vote remains as difficult as ever for rank-and-file members. In the Assembly, chairs of the Ways and Means and Codes committees have broad latitude to request bills outside their jurisdiction. The joke inside the Assembly chamber is that Codes is where bills go to die.⁴²

The 2004 report identified three key barriers to full consideration: legislative leaders’ full control over the order of bills on the calendar and whether a bill is placed on the calendar at all; restrictions on motions to discharge a bill from committee to the floor; and the Senate Majority Leader’s ability to “star” a matter and prevent action until date of his choosing.

The 2004 Report noted that about one half of the country's 99 legislative chambers had a deadline for action on all bills referred to them.⁴³ The New York Senate's 30-day waiting period before a discharge motion can be made—reduced from 60 days in 2005—was exceptional among state legislatures. Only five other chambers required a waiting period of more than 21 days.⁴⁴

While “starring” is no longer permissible in its previous form, these essential barriers to consideration remain, encompassing a larger number of specific problems:

- Leadership control over the administration of bill introduction.
- Authority of Assembly Codes and Ways and Means committee chairs to request bills outside their logical jurisdiction as a means of preventing full consideration.
- Lack of successful discharge motions in either chamber.
- Off-the-record canvass by agreement votes on discharge motions in the Senate.
- Lack of dissent on the floor in either chamber.
- Senate committee chairs requesting and recommitting bills passed in the first year of the term to the committee of original jurisdiction at the beginning of the second year.

As a remedy to these problems, we propose the following reforms:

- Members should have the right to have all bills drafted within a reasonable period of time.
- Bill numbers must be provided within 48 hours of the bill's filing with the Clerk of each house.
- Explicitly prohibit any committee from requesting bills outside their jurisdiction.
- Motions to discharge should be allowed after 20 days following a bill's introduction or within two committee meetings.
- Bills may be discharged from committee and placed on the calendar by a motion approved by a simple majority of members on the floor.
- All votes—motions to discharge, canvasses of agreement, or otherwise—should be recorded and made public on each chamber's Web site.
- The rules of both chambers should clearly state that only the introducer of a bill can request that a bill be recommitted to committee after it has passed the full chamber in the first term of a session. This request can be granted only by majority vote of the chamber.

QUANTITATIVE ANALYSIS AND INDICATORS OF LEADERSHIP CONTROL

PROBLEM: **Leadership Control Over the Administration of Bill Introduction**

The uphill climb to get legislation to the floor begins even before bill introduction. The Legislative leadership controls the staff charged with drafting legislation, and one member of the Assembly majority reports that when he has sought to introduce legislation drafting staff has replied, “We have to ask [Assembly Speaker Sheldon Silver] if we can draft it.”⁴⁵ Even after a legislator receives the necessary “permission” to get legislation drafted, the bill must get an “assigned number,” which “can take five minutes or a month and a half” depending on the leadership’s preference.⁴⁶ In the Senate, committee chairs have more control over their own staff, though the leadership maintains control in other ways.

SOLUTIONS:

Members will have the right to have all bills drafted within a reasonable period of time.

Bill numbers must be provided within 48 hours of the bill’s filing with the Clerk of each house.

PROBLEM: **Authority of Assembly Chairs of Ways and Means and Codes to Request Bills Outside Their Jurisdiction**

The Assembly rules allow the chair of the chamber’s Ways and Means committee to request bills outside the committee’s jurisdiction with the approval of the Speaker. While the rules do not expressly grant this same authority to the Codes committee, the committee engages in this practice as well, presenting procedural roadblocks to the passage of legislation outside of the committee’s jurisdiction.

For example, a bill to create a standing Conference Committee to resolve differences between similar bills has been introduced year after year. Assemblywoman Sandy Galef sponsored the latest version⁴⁷ and introduced the bill in Governmental Operations in the past two years. In June of 2008, the bill was referred to Ways and Means two days before the end of the session, despite its lack of fiscal implications. Similarly, a bill introduced by Assemblywoman Nettie Mayersohn that changed written consent for an HIV test to oral consent, in part to remove bureaucratic barriers, was referred to Codes a week before the end of session despite its lack of sanction or penalty.⁴⁸ These unnecessary roadblocks are another means of Leadership control.

SOLUTION:

Explicitly prohibit any committee from requesting bills outside their jurisdiction.

PROBLEM: **No Successful Discharge Motions**

As was the case in 2005 and 2006, not a single discharge motion successfully moved a bill from committee to a floor vote in either chamber in 2006, 2007 or 2008.⁴⁹ Discharge motions are subject to stringent time restrictions that the chair holds the sole power to waive. Thus, it remains impossible to receive full consideration over the objection of the leadership even if enough support exists to pass a bill.

SOLUTIONS:

Motions to discharge should be allowed after 20 days following a bill's introduction or within two committee meetings.

Senate rules should be amended to allow bills to be discharged from committee and placed on the calendar by a motion approved by the majority members on the floor.

PROBLEM: Vote by Canvass of Agreement

In the Senate, but not the Assembly, motions to discharge bills from committees are subject to floor votes known as a canvass of agreement. (This is also the case with amendments to bills on the floor.) During canvass of agreement votes, the record only notes the “yes” votes; the record does not reflect nor distinguish between those who voted “no,” those who abstained, and those who were absent. These votes, which rarely if ever pass, protect members from going on record as failing to discharge a bill.

SOLUTION:

All votes—motions to discharge, canvasses of agreement, or otherwise—should be fully recorded and made public on each chamber's Web site.

PROBLEM: Lack of Dissent on Full Consideration

The lack of dissent on the floor is yet another sign of control by the leadership, who will not bring controversial measures to the floor if they think they will be defeated. Between 1997 and 2001 in the Senate and 1997 and 1999 in the Assembly, the periods covered in the 2004 Report, *neither chamber voted down a single bill*. The tradition of leadership control continued in 2005 when the Assembly voted on 1,649 bills and the Senate on 1,650, with none defeated. In 2006, the Assembly considered 2,063 bills and the Senate considered more than 2,100 bills, again without a single bill defeated. The Senate considered 1,867 bills in 2007, again without a single defeat. As of this printing, Assembly has not yet posted its 2007 Journal on the New York State Library Digital Archives, so it is difficult to discern the precise number of bills considered by that chamber in 2007.

Not only do all bills brought to the floor eventually pass, but very few bills meet any meaningful dissent. Of the 317 major bills passed in 2005, only 44 in the Senate (i.e., 13.9%) and 89 in the Assembly (i.e., 28.1%) received any “no” votes.

In 2006, only 36 of 191 major bills (i.e., 15.2%) received any “no” votes in the Senate, and 44 of the same 191 bills (i.e., 23%) received any “no” votes in the Assembly. In that same year, only 3 major bills (i.e., 1.5%) were opposed by at least 10% of the Senate membership and 7 (i.e., 3.7%) were opposed by at least 10% of the Assembly membership. In 2007, only 24 of 205 major bills (i.e., 11.7%) received any “no” votes in the Senate, and only 66 major bills (i.e., 31.7%) received any “no” votes in the Assembly. Only 4 major bills (i.e., 1.9%) were opposed by at least 10% of the Senate membership, and 21 major bills (i.e., 10.2%) were opposed by at least 10% of the Assembly membership.

SOLUTION:

No one rule can solve the problem of lack of dissent on the floor. However, the leadership loosens its stranglehold on the legislative process and rank-and-file members gain the power to move bills to the floor by majority vote, a greater number of contentious bills are likely to arrive on the floor, resulting in more rigorous and robust debate.

PROBLEM: Requesting Bills in Second Year of Term Passed in First Year

Under the rules of both chambers, bills passed in one house in the first term of a legislative session revert either to the third reading calendar (for a vote), or, upon the request of the committee chair, to the committee of original jurisdiction, at the beginning of the second session. There appears to be no justification for this, and it leads to inefficient repetition of efforts on the floor or in committees. In January 2006, nearly 83% of the 203 bills on the Assembly agenda were passed in 2005.⁵⁰ During January 2008, 90% of the 581 bills on the Assembly agenda were passed in 2007. In the Senate, 58% of the 60 bills on the January calendar in 2008 were passed the previous year.⁵¹

Assemblywoman Sandy Galef and Senator John Bonacic have introduced legislation calling for continual two-year session, which would streamline the process of bill introduction and prevent re-passing in the second year. Assemblywoman Galef's bill, which has 80 combined sponsors—enough to pass on the floor—was referred from the Governmental Operations committee where it remains.⁵² (Senator Bonacic introduced the bill to the Investigations and Government Operations Committee.⁵³)

SOLUTION:

The rules of both chambers should clearly state that only the introducer of a bill can request that a bill be recommitted to committee after it has passed the full chamber in the first term of a session. This request can be granted only by majority vote of the chamber.

IV. INSUFFICIENT DEBATE, LACK OF AMENDMENTS, INADEQUATE REVIEW

The lack of public discussion or debate in committee or on the floor is a debilitating weakness of New York's Legislative process. The legislature rarely engages in any deliberation, either by holding hearings on legislation or through public debate.

The few hearings and little public debate that exist in Albany virtually disappear during the end-of-session rush of bills reported out of committee. A majority of bills are passed in both houses in the final month of session, with a significant proportion passed in the last days before recess.

Most of the following ways in which consideration by the full chamber is limited are problems discussed in our previous reports:

- Senate records indicate that the joint rule requiring fiscal notes to be attached to all relevant legislation isn't widely followed, and when it is, the fiscal analysis is sometimes done irresponsibly.
- The full chambers rarely or never vote on or debate amendments to legislation.
- Both houses place serious constraints on floor debate.⁵⁴
- "Messages of necessity" are not used for their intended purpose of expediting the legislative process in case of emergency, but rather to circumvent the Constitution's three-day aging period for bills.
- The vast majority of legislation continues to come to the floor of both chambers within the final 30 days of the session, leaving no opportunity for meaningful deliberation and debate.

As a remedy to these problems, we propose the following reforms:

- Any member should have the ability to object to the consideration of a bill with fiscal implications on the grounds that it lacks a substantial and sufficient fiscal note.
- Actuaries who prepare fiscal notes must attest to no conflict of interest.
- All amendments to bills under consideration by the full chamber must be subject to a vote, and all "aye" and "nay" votes will be recorded and made public.
- Adopt a formal rule stating that no messages of necessity will be approved by the Governor unless a) at least two-thirds of the members of the chamber in question have voted to request that message, and b) the governor has personally reviewed and signed each message as intended by the Constitution.
- All bills must receive consideration by the full chamber within 30 days after being voted out of committee.

QUANTITATIVE ANALYSIS OF DEBATE, AMENDMENTS, AND LEGISLATIVE REVIEW

PROBLEM: **Few Fiscal Notes on Major Legislation**

The Senate Rules mandate that, “The Finance Committee shall keep and maintain a file containing all bills requiring fiscal notes and the notes appertaining thereto, which shall be available to Senators and officers of the Senate, accredited representatives of the press, and other responsible persons having a legitimate interest therein.”⁵⁵ However, no fiscal notes from 2006 are on file with the Finance Committee.⁵⁶ A fair number of fiscal notes from 2007 are on file, though only 3 pertain to major legislation, far fewer than the number major bills with potential fiscal impact.

Substantive fiscal notes are missing from some bills with clear fiscal impact. For example, the 2010 Campaign Reform Act, which passed the Assembly with Speaker Silver and its primary sponsor, was an important bill concerning public financing of state campaigns, a concept that several reform groups including the Brennan Center support. The bill’s statement of fiscal impact began: “Their [sic] will be no cost in 2008 or 2009. In 2010, there will be costs associated with participating candidates seeking election to the office of state comptroller,”⁵⁷ and ended with an unacceptable admission: “The long term cost of the system in New York is unknown.”⁵⁸ The joint rules of the Senate and Assembly currently state that, “No bill requiring a fiscal impact note shall be reported to the floor of the house unless accompanied by the appropriate note [...],”⁵⁹ but legislators clearly fail to follow this rule consistently.

Perhaps worse, In May of this year, the New York Times reported that an actuary on the payroll of a public employees union was providing fiscal analysis for how various bills would affect public employee pensions. In one case, the actuary claimed that a bill that dealt with early retirement would have no cost to the state. He later recanted the no-cost estimate admitting he got carried away and calling his estimates “a step above voodoo.”⁶⁰ A few weeks later, the Times reported that according to the independent actuary of the city pension system, the 11 bills vetted by this actuary that have become law since 2000 will result in \$500 million in eventual costs.⁶¹

SOLUTIONS:

Any member will have the ability to object to the consideration of a bill with fiscal implications on the grounds that it lacks a substantial and sufficient fiscal note.

Actuaries must attest to no conflict of interest before preparing a fiscal note.

PROBLEM: **The Full Chamber Rarely Votes to Amend Bills**

Amendments to bills on the floor provide an opportunity for rank-and-file legislators to give input on policy outside the jurisdiction of the committees in which they participate. In 2006 and 2007, however, amendments were almost never voted on or debated in committee.

In 2006, the Senate and the Assembly each voted on only one amendment to major legislation, and only the Senate debated the amendment on which it held a full vote. In 2007, the full Senate did not vote on a single amendment to major legislation, and the Assembly voted on only six amendments to major legislation, holding debate on only one of those amendments.

While the membership of the Senate voted on amendments concerning to 0.5% and 0% of to major legislation in 2006 and 2007, respectively, Senate bill sponsors amended nearly a fifth of all major legislation after passage out of committee. In the Senate, the sponsors of major legislation amended 21.5% of their own major bills in 2006 and 19.9% of their own major bills in 2007 on the third reading. None of these amendments received a debate or a vote by the full chamber; the Senate rules explicitly waive debate or a vote on sponsor amendments⁶² and the Assembly considers these Amendments to be housekeeping.⁶³ In the Assembly, sponsors amended 5.2% of their own major bills on the third reading in 2006 and 1.5% of their own major bills on the third reading in 2007.

SOLUTION:

While the rules of neither chamber explicitly prohibit amendments from members other than the bill sponsor, it is clear that leadership control over the legislative process has a stifling effect on non-sponsor amendments. If the leadership loosens its grip on the process, it is likely that more frequent amendments and debate thereon would be a part of a more robust deliberative culture in Albany.

All amendments to bills under consideration by the full chamber must be subject to a vote, and all “aye” and “nay” votes will be recorded and made public.

PROBLEM: Rare Debate

Floor debate has become even rarer since the 2006 report. In 2006, 97.4% of major bills passed the Senate and 96.5% of major bills passed the Assembly without substantive debate; 89.5% of major bills passed the Senate and 86.3% of major bills passed the Assembly *without any discussion at all*. In 2007, the frequency of debate improved slightly in the Assembly, but remained almost exactly the same in the Senate: 97.1% of major bills passed the Senate and 88.3% of major bills passed the Assembly without any substantive debate; 89.2% of major bills passed the Senate and 77.6% of major bills passed the Assembly with no discussion at all.

SOLUTION:

No one rule will remedy this problem. Once again, however, if the rules allow bills to come to the floor over the objections of leadership, more voices will be added to the legislative discourse and more public debate is likely.

CASE STUDY II: BROWNFIELD CLEANUP PROGRAM AND THE \$3 BILLION TAB

In our 2004 report, we described the failure of Albany to address the cleanup of environmentally contaminated abandoned industrial properties, so-called “brownfields,” as “one of the most blatant examples of Albany dysfunction.”⁶⁴ In June 2003, the “three men in a room”—Governor Pataki, Assembly Speaker Silver and Senate Majority Leader Bruno negotiated a bill behind closed doors and speedily ushered it through the Assembly without debate using a message of necessity, depriving members of any opportunity to review its complex provisions.⁶⁵ In its end-of-session haste, the Senate passed the wrong version of the bill. The Senate convened three months later for a special one-day session to correct their error.⁶⁶ The 2004 Report noted, “One can only imagine the errors that such inadequate review is likely to produce in laws that have a lower public profile than the brownfields legislation.”⁶⁷

It turns out that New York’s law included serious flaws. The fiscal note, which is required by Assembly and Senate Rules, stated that an estimated \$120 million in annually available bonds would fund the program.⁶⁸ Today, the state is facing a possible \$3.1 billion tab for the current slate of projects under the state’s Brownfields Program.⁶⁹ According to several news reports, real estate developers are reaping tax benefits that exceed the cost of redeveloping the brownfields.⁷⁰

The developer boondoggle was uncovered by Comptroller Tom DiNapoli—not by any of the relevant standing committees in the Legislature—who released a report in June 2008 concluding that the tax credits under the 2003 law could potentially amount to billions of dollars for 200 projects, far more expensive than neighboring states with similar legislation.

The shortcomings of the original legislation forced the Legislature to revisit the cleanup program, passing the Brownfields Cleanup Program 2008, which capped redevelopment credits for manufacturing and non-manufacturing projects at \$45 million and \$35 million respectively.⁷¹ To put the need for the legislative fix in perspective, a mall under construction in Syracuse could cost the state more than \$1 billion alone under the 2003 law.⁷²

The fiscal note attached to the 2008 law indicated savings in future years without providing an estimate.⁷³ Given that the cost of the original legislation far exceeded the \$120 million budgeted, it would have been wise to include a realistic accounting of the potential savings.

Two hearings on the most recent brownfields legislation took place in August and September of 2007, held jointly by the Senate and Assembly Committees on Environmental Conservation. At the first hearing, Pete Grannis, Commissioner of the State Department of Environmental Conservation, sounded the alarm about potential costs. “The current tax credits awarded to brownfields cleanup and development projects are simply too generous and insufficiently targeted resulting in the misdirection of hundreds of millions of dollar of state funds that could be used to stimulate better cleanups and more development.”⁷⁴ At least three committees in each chamber have potential oversight over brownfields legislation. Despite the Commissioner’s warning, the program’s cost was not discovered until the Comptroller released his report.

Ultimately, the revised brownfields legislation was introduced, passed though committee, and approved by the full chambers of the Assembly and Senate *in a single day* after the scheduled end of session using a “message of necessity.”⁷⁵ Lawmakers negotiated the legislation behind closed doors and discussed it in the privacy of the Assembly Democratic Conference over several days.⁷⁶

MODERATE IMPROVEMENTS: **Messages of Necessity**

The number of messages of necessity in 2006 rose slightly from the 2005 numbers indicated in our previous report, and then dropped in 2007, with a decline in the number of messages of necessity used in both houses and the most dramatic decrease in the Senate. This drop is reportedly due to increased tensions between the Senate and the executive branch in the last two years, rather than a reformed legislative process.⁷⁷

SOLUTION:

While the overuse of messages of necessity was apparently alleviated by the deterioration in relations between the former Governor and legislature, we nevertheless continue to recommend adopting a formal rule stating that no messages of necessity will be approved by the Governor unless a) at least two-thirds of the members of the chamber in question have voted to request that message, and b) the governor has personally reviewed and signed each message as intended by the Constitution.

PROBLEM: **End of Session Logjam**

The frenzy to pass bills in the final days of session remains problematic, even though the statistics have fluctuated somewhat in recent years. In 2005, 36% of all major legislation passed the Senate and 40.4% of major legislation passed the Assembly in the final three days of the legislative session.⁷⁸ These numbers represented an increase from the five year period between 1997 and 2001 when 21.4% of major bills passed the Senate and 24% of major bills passed the Assembly during the final three days of session. In 2006, 32% of major bills passed the Senate and 36% of major bills passed the Assembly in the final 3 days before recess. In the final 30 days of the 2006 session, a full 74% of major bills passed the Senate and 62% of major bills passed the Assembly. In 2007, 31% of major bills passed the Senate and a new high of 45% of major bills passed the Assembly in the final 3 days before recess. In the final 30 days of the 2007 session, 71% of major bills passed the Senate and 76% of major bills passed the Assembly.

SOLUTION:

All bills must receive consideration by the full chamber within 30 days after being voted out of committee.

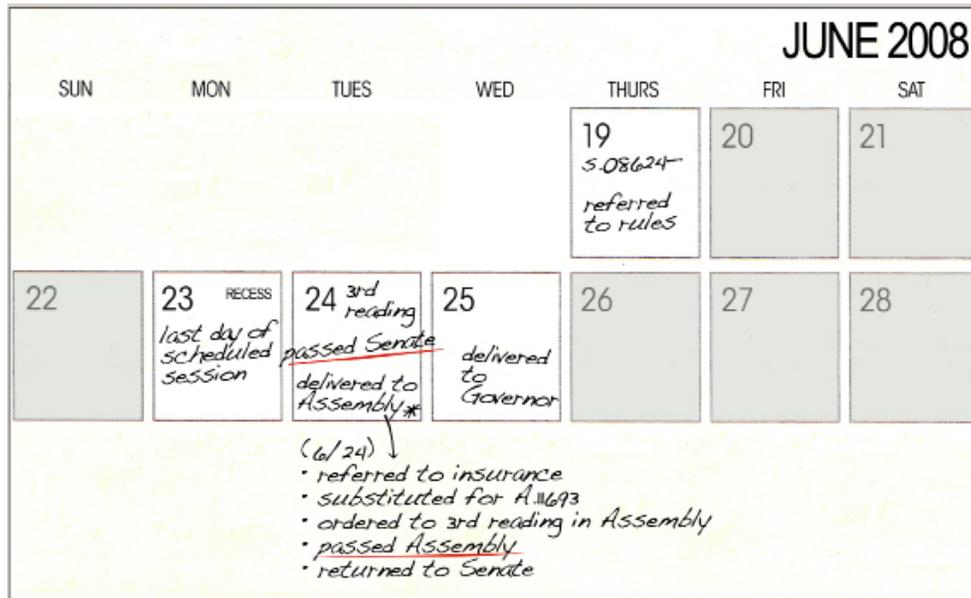
MESSAGES OF NECESSITY

YEAR	MON IN AT LEAST ONE CHAMBER	MON IN BOTH CHAMBERS
1997	7	6
1998	19	16
1999	17	10
2000	29	24
2001	11	5
2005	14	10
2006	16	11
2007	14	6

CASE STUDY III: COASTAL/AUTO INSURANCE

A bill that extended homeowner insurance protection for coastal residents of New York in Queens, the Bronx and Long Island gained a strange bedfellow when it was combined with an allowance for auto insurance companies to raise or lower rates up to 5% a year without prior approval from the state Insurance Department. It is not so much the strange combination of subject matter that is problematic; the real cause for concern is the speed with which the bill blew through the Legislature at last possible moment.

The time elapsed from bill introduction to passage in both houses was just seven days—at the very end of session. The bill passed the Senate, was delivered to the Assembly, and passed the Assembly in a single day.⁷⁹



The result of the bill’s short life cycle was a legislative process that didn’t allow for full deliberation or for input from affected parties. “At the end of the day, legislators have a responsibility to consider the full impact of the bills they are considering, especially how they affect consumers and members of the public, and vote in the public interest,” said Chuck Bell, Programs Director for Consumers Union, publisher of Consumer Reports.⁸⁰ “The Assembly and Senate’s decision to exclude consumer organizations from the legislative process was unfair and undemocratic, and it will likely have very negative financial impacts on working families in New York State.”

The speedy passage of the auto rate deregulation, combined with the end-of-session rush, effectively eliminated any meaningful discussion or review of the bill by outside groups or the public, thereby eliminating any negative attention about the impact of the bill.

CASE STUDY IV: LEGISLATIVE ETHICS, AN OXYMORON?: PEERA, CONTRASTING THE EXECUTIVE AND LEGISLATURE

The Public Employees Ethics Reform Act (PEERA) of 2007 is the only comprehensive modification to ethics laws in New York State in the last 20 years. Unfortunately, the process by which lawmakers developed this important legislation was not robust, undermining its potential for positive impact. The veiled proceedings surrounding the legislation's development caused one Assemblyman to remark, "Although this legislation is a good beginning, the fact that this was created behind closed doors by the Governor and Legislative Leaders of both houses undermines the public confidence in state government."⁸¹ Brian Horner, Legislative Director of NYPIRG has reported that the 73-page bill was unveiled on January 23, 2007 and adopted by the legislature without hearing or substantive debate on March 26, 2007.⁸²

The ethics act contains several apparent flaws that a robust and public development process might have identified and eliminated. The reform closed the revolving door loophole, preventing former employees of the legislature from lobbying their body for two years and adding a restriction on executive chamber employees appearing before state agencies. However, it didn't address the issue of former legislators lobbying state agencies, the exact problem presented by ex-Majority Leader Joseph Bruno who is now a registered lobbyist for a company that has active state contracts.

The most visible step taken under the new law was the creation of the Commission on Public Integrity (CPI), the result of merging of the Temporary Commission on Lobbying and the State Ethics Commission, which had jurisdiction over executive branch officials and their employees. Despite a lack of legislator interest in regulating ethics, the Legislative Ethics Commission—a body under the control of the legislature itself—retained jurisdiction over legislators and their employees under PEERA.

PEERA made only one change to the Legislative Ethics Commission, expanding its membership from eight to nine members: four legislators and five non-legislators. Each of the four legislative leaders appoints a legislator and a non-legislative member; the Speaker of the Assembly and the Senate Majority Leader jointly appoint the non-legislative member. The Commission remains an extension of the legislators' own team of lawyers, particularly those representing the Majorities in the Assembly and Senate.⁸³ Despite the litany of charges against legislators,⁸⁴ Melissa Ryan, the longtime Executive Director of the State's former Legislative Ethics Commission admitted, "We've never issued a notice of probable cause. I don't think we've ever assessed a penalty."⁸⁵

The failure of PEERA's development is borne out in the ineffectiveness of the Legislative Ethics Commission to regulate the actions of the members within its jurisdiction. In 2008 alone, four members of the Assembly have been on the wrong side of corruption. One was convicted and sentenced to two to six years for receiving bribes; another may be sentenced to a maximum of 10 years after pleading guilty to racketeering and perjury; a third faces an upcoming federal trial on charges of fraud; and the last was just accused of receiving \$500,000 for his official duties.⁸⁶

V. LEGISLATIVE INEFFICIENCY, UNFAIR DISTRIBUTION OF FUNDS, INFREQUENT CONFERENCE COMMITTEES

The New York State Legislature broke a record in 2008 year by introducing more than 18,000 bills—*while just 1,634, or 9%, passed both chambers.*⁸⁷ The excess bill introduction is a waste of resources and highly inefficient. By way of comparison, members of the United States Congress introduced fewer than 11,000 bills and resolutions in the same year. In other state legislatures, the next-highest bill introduction rate was in the New Jersey legislature, with only one-third the number of bills introduced in New York.

After introduction, bills sometimes languish due to a lack of political will or resources to usher them through the legislative process. Compounding the lack of efficiency is the unequal distribution of resources between senior and junior members of each party and between the Majority and Minority in both chambers.

The key problems related to legislative inefficiency are:

- Infrequent conference committees.
- An extraordinarily high number of bills introduced in both chambers.
- Unfair distribution of funds both between the majority and the minority and between junior and senior members of the legislature.
- Lack of transparency in legislative spending.

As a remedy to these problems, we propose the following reforms:

- When bills addressing similar subject matter pass both houses, a conference committee should be convened by request of primary sponsor *or* chair of committee of original jurisdiction *or* leader in both chambers. The Conference Committee will consist of members from each party proportionate to the parties' representation in each chamber, and no less than one member of the minority party from each chamber.
- Each member should be limited to introducing 20 bills in the Assembly and 30 bills in the Senate in each session.
- All members should receive equal funding for operating costs and staff budgets, regardless of party or seniority.
- As with the other products of the lawmaking process, the Legislature should publish their expenditures on the Internet semi-annually.

QUANTITATIVE ANALYSIS OF LEGISLATIVE EFFICIENCY, DISTRIBUTION OF FUNDS, AND CONFERENCE COMMITTEES

PROBLEM: **Infrequent Conference Committees**

The power to convene conference committees to reconcile similar legislation passed in both houses remains vested in the Leaders of each chamber according to a joint rule. No mechanism exists for bill sponsors or even committee chairs to resolve differences between bills passed by both of the chambers without the assent of the Assembly Speaker and Senate Majority Leader. To resolve differences, houses usually substitute a version of a bill passed in one chamber for their own, thereby circumventing input of legislators.

SOLUTION:

When bills addressing similar subject matter pass both houses, a conference committee should be convened by request of primary sponsor *or* chair of committee of original jurisdiction *or* leader in both chambers. The Conference Committee will consist of members from each party proportionate to the parties' representation in each chamber, and no less than one member of the minority party from each chamber.

PROBLEM: **Ratio of Bills Introduced to Bills Enacted**

The relatively high number of bills introduced in the Legislature has increased over time and continues to outpace other states. In 2006, the number of bills introduced, 17,700, jumped 17.7% in one year.⁸⁸ In 2008, 18,239 bills were introduced, yet only 1,634 (i.e., 9%), passed both houses. That's slightly better than the 8.2% of bills passed in 2005, but it represents a 20.1% increase in the number of bills introduced over 3 just years.

To put these figures in perspective, according to 2006 statistics, the state with the second highest number of bills introduced was New Jersey with 6,430, and California's legislature, representing nearly twice the population of New York, introduced fewer than 2,000 bills.⁸⁹

SOLUTION:

Each member should be limited to introducing 20 bills in the Assembly and 30 bills in the Senate in each session

PROBLEM: **Unfair Distribution of Funds for Minority**

The Leaders of both houses control the purse strings for members' budgets. From October 1, 2005 through March 31, 2006 the average budget for a member of the Senate Majority was \$361,142, compared to \$197,391 for a member of the Senate Minority—an 82% difference.⁹⁰ In the Assembly, the average budget was \$161,576 for members of the Majority and \$109,805 for the Minority, a disparity of 47%.⁹¹

For the same October to March period in 2008, the resource gap in the Senate narrowed to 62%, with average budgets of \$445,904 for members of the Senate Majority and \$274,316 for members of the Minority.⁹² In the Assembly, the resource disparity decreased to 33%, with an \$181,078 average budget for members of the Majority and a \$135,982 average budget for members of the Minority.⁹³ Even though the divide between staff budgets is narrowing, the difference in resource allocation remains high considering that all members of the Assembly and Senate, whether in the majority or minority, represent the same number of constituents. A reasonable model for distribution of funds between the Majority and Minority is the U.S. Congress. The

two houses have slightly different ways of disturbing the budget to members, but the bottom line is that all get an equal amount, regardless of party membership. In the House, each member receives an allowance to hire up to 18 full-time staff and 4 part-time staff. Furthermore, each member receives an allowance for office space expenses based on the rate charged by the General Services Administration. The U.S. Senate provides a lump sum, equal for all members, allowing flexibility in how their staffing and budget is allocated. The Senate also allows for varying real estate costs through a calculation tied to state population.

SOLUTION:

All members should receive equal funding for operating costs and staff budgets, regardless of party or seniority.

PROBLEM: Disparity of Staff Funds in the Assembly Majority

Control of funds for members' staff and operating expenses, yet another means of leadership control, is most stark in the Assembly Majority, where the most senior member receives \$500,000 for staffing their district and Albany offices, and the most junior member receives only \$100,000. The staffing budget of a junior member usually allows for only two full-time employees. At the other end of the spectrum, the most senior members can fund upwards of 10 full-time employees. While it's true that many senior members of the Assembly are chairs of committees, but committee staff budgets are separate and additional to the member budget.

Assemblyman Richard Gottfried has the most expensive office budget in the Assembly.⁹⁴ At one count this year, he had a staff of 10, six located in his Manhattan office and four in Albany.⁹⁵ (This does not include staff of the Health Committee, which he chairs.) On the other end of the spectrum, the average freshman or relatively new member of the Assembly can afford no more than two full-time employees, usually supplemented by at least one part-time staff member.

With far fewer resources, newer members of the Assembly tend to keep staff in their district offices to serve their communities. As a result, the policy-making responsibilities of new members receive less attention. This is not to say that new members don't devote resources to developing policy, but rather that they are put in the unenviable dilemma of deciding between policymaking and constituent services.

SOLUTION:

All members should receive equal funding for operating costs and staff budgets, regardless of party or seniority.

PROBLEM: Legislative Spending Isn't Transparent

The Legislature's office and staff expenditure reports are published semi-annually, but aren't made readily available to the public. The reports are only available to the general public through Freedom of Information Law request. Thanks to the work of the Empire Center for New York State Policy, state expenditures, the state payroll, and member items, i.e., pork barrel projects are available through the web site www.SEE THROUGH NY.NET. While this has added transparency, state government should not rely on private groups to lift the veil of secrecy—it should do so itself.

SOLUTION:

As with the other products of the lawmaking process, the Legislature should publish their expenditures on the Internet semi-annually.

VI. CONCLUSIONS AND SUMMARY OF PROPOSED RULES REFORM

It has become vogue to attach the phrase “most dysfunctional” to any discussion about the state Legislature. The results of the 2004 and 2006 Reports, the latter of which followed a narrow and failed attempt to reform the process, detail the acute absence of the hallmarks of a robust legislative body: accessibility, accountability, deliberativeness and representativeness. While the sad tradition is longstanding, a major fix would be easy: change the internal operating rules to end leadership control and open up the process.

In January of 2009, we urge the Legislature to heed the call of the people for change by implementing the following reforms at minimum:

- Strengthen standing committees by giving members authority to convene meetings and by requiring committee members to be present to vote.
- End the leadership stranglehold on bills coming to the floor by allowing rank-and-file members to discharge bills from committee and place them on the floor calendar by majority vote.
- Allow adequate opportunity for consideration of legislation by requiring adequate fiscal analysis and allowing ample time for full consideration of each bill on the floor before the close of session.
- Provide sufficient opportunity and resources for full consideration of legislation by making use of robust conference committees and distributing member funds equally.
- Make all records and products of the legislative process fully transparent and easily accessible to the public through the Internet.

For a complete list of specific rules recommendations, see Appendix A in the back of this report.

ENDNOTES

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- 20 2005 ASSEMB. R. IV, §1(d).
- 21 The authors sent a FOIL request to the Assembly Committee on Oversight and Analysis requesting a list of committee meetings and hearings. The response did not include any meetings; Telephone interview with N.Y. State Assembly Member E (Sept. 24, 2008) [hereinafter *Assembly Member E*].
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- 48 Assemb. B. A4813A, 230th Sess. (N.Y. 2007).

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METHODOLOGY

DATA SET. The research for this report primarily focuses on the sets of laws passed in 2006 and 2007 that were identified by McKinney’s Session Laws of New York as “major legislation.” See McKinney’s Session Laws of New York, III – XXVIII (2006); McKinney’s Session Laws of New York, III – XXVII (2007). For a list of these laws, see Appendix B. Bill Introduction, Intra-Chamber Passage, and Enactment. The Legislative Digest reports the number of bills introduced by each chamber in 2006 (7,284 in the Senate and 10,416 in the Assembly) and 2007 (6,537 in the Senate and 9,535 in the Assembly). To calculate the number of these bills passed by each chamber, the authors used the record of roll call votes in the Senate and Assembly journals for 2006 and 2007. See Journal of the Assembly of the State of New York, v2, 2302-2883 (2006); Journal of the Senate of the State of New York, v2, 2357-2716 (2006); Journal of the Senate of the State of New York, Senate Voting Record, v2, 1-486 (2007). The number of bills enacted into law was calculated as the number of bills that were passed by both chambers and signed by the Governor plus the number of bills that were approved by two-thirds of both chambers after initially being passed by both chambers and vetoed by the Governor. The number of bills passed by a single chamber (i.e., the Assembly or Senate) includes *the number of bills enacted into law* and the number of bills passed *only* by the chamber in question. See Legislative Bill Drafting Commission, State of New York Legislative Digest, at iii (2006); Legislative Bill Drafting Commission, State of New York Legislative Digest, at iii (2007).

FREQUENCY OF COMMITTEE MEETINGS. The authors obtained vote and attendance records for committee meetings at which votes on major legislation took place, and calculated the number of meetings for each committee by examining the dates on the attendance records. For a broader picture of committee meetings (including those during which no major legislation was discussed), we conducted interviews with legislators, their staff and legislative counsel in both chambers to determine whether scheduled meetings occurred and how they were attended.

COMMITTEE HEARINGS. Neither chamber keeps detailed, publicly available records of hearings held by committees. Because standing committees only hold hearings on broad issues and not concerning major legislation, this report only included a thorough investigation of the activities of the Ethics and Oversight committees in each chamber. Interviews provided information about hearings held by these committees and about the general culture of unspecific standing committee hearings in Albany.

COMMITTEE VOTES. To determine the amount of opposition faced by each of our major pieces of legislation in committee, the authors examined committee vote records provided by the Assembly Public Information Office and the Office of the Secretary of the Senate.

COMMITTEE REPORTS. The FOIL requests made of both chambers included a request for any committee reports. Neither office sent committee reports in response to our initial request, though a follow-up request did yield committee reports on most major legislation from the Office of the Secretary of the Senate, while the Assembly Public Information Office confirmed that no such reports exist for meetings in that chamber. Floor Debate. Information on debate was collected from the floor transcripts provided by the Senate Journal Clerk’s Office and the Assembly Public Information Office. The distinction between substantive debate and grandstanding—such as the explanation of a member’s vote after the passage of the bill—was determined based on whether a question was asked by a member before the vote.

AMENDMENTS. The rules of both the Senate and Assembly stipulate that the number of amendments be indicated with a letter at the end of the bill number (i.e., A1234A has been amended once, S5678B has been amended twice, etc.). The final printed bill number of each major law thus indicates if it has been amended and how many times. The authors used the State of New York Legislative Digest, compiled by the Legislative Bill Drafting Commission, to determine whether the bill was amended in committee or on a third reading. The authors also used the floor debate transcripts received from the Senate Journal Clerk's Office and the Assembly Public Information Office to determine if any of the amendments were debated on and agreed to by the full chamber.

FISCAL NOTES. The authors sent a FOIL request to the Office of the Secretary of the Senate requesting the list of bills requiring fiscal notes and the notes appended thereto for 2006 and 2007. The Secretary of the Finance Committee provided copies of all fiscal notes on file for this period, which we compared with the list of major legislation to determine how many major bills were accompanied by a fiscal note. The Secretary of the Senate twice confirmed that there were no fiscal notes on file for 2006.

MESSAGES OF NECESSITY. The Legislative Digest contains notation indicating whether a message of necessity was associated with a bill. The authors used this resource to compile statistics on the frequency of its use.

FLOOR VOTES. To determine the amount of opposition to bills on the floor of each chamber, the authors used voting records for each bill obtained from the Assembly Public Information Office and the Office of the Secretary of the Senate.

TIMING OF PASSAGE. To determine the percentage of bills passed in the final three days and the final thirty days of the session, we used the bill history provided in the Legislative Digest for each piece of major legislation. Bills passed in extraordinary session are included in these totals.

LEGISLATIVE EXPENDITURES. Legislative Expenditures were compiled using the Empire Center for New York State Policy's *See through NY* database, which compiles member personnel, travel, and operations expenses for the three six-month periods between October 1, 2006 and March 31, 2008.

INTERVIEWS WITH LEGISLATORS AND STAFF. As noted throughout the report, the data obtained through Freedom of Information requests were at times incomplete or insufficient; moreover, many records that would shed crucial light on the legislative process are simply not produced by either chamber. As a complement to the empirical data that were available, the authors sought additional evidence from more than a dozen legislators and staff to determine how the rules are enacted day-to-day, and what the records provided through FOIL requests truly reflect. Interviewees were given the option of remaining anonymous in this document, both to encourage candid responses and to protect legislators and staff from negative consequences. Accordingly, citations to interviews with individuals who opted to remain anonymous have been coded with alphabetical identifiers in the footnotes.

APPENDIX A: COMPLETE LIST OF RULES RECOMMENDATIONS

Strengthen standing committees

- Standing committee chairs should have exclusive authority and responsibility to hire and fire their staff and control committee budgets.
- At least one-fourth of the membership of a committee should be able to vote to convene a meeting.
- One fourth of the members of a committee should be able to petition for a hearing on a bill or an oversight hearing, and such hearing should be held unless rejected by a majority vote of the committee. All “yes,” “no,” “abstain,” or “absent” votes should be recorded and made available to the public.
- Each committee and sub-committee must hold an oversight hearing on at least one program or state agency within its jurisdiction at least once per year.
- No member’s vote on any matter before committee should be counted unless the member is physically present to cast her vote.
- All bills reported to the floor in both chambers must be accompanied by a substantive committee report showing the committee’s work on the bill
- Each committee and subcommittee in both houses should submit an annual end-of-term report to the Speaker in the Assembly and Majority Leader in the Senate, detailing the work of the committee, as the Assembly rules currently require.
- All attendance records, meeting agendas, committee votes, and minutes of committee meetings should be recorded and made available to the public on the Internet at least once a month.

End the leadership stranglehold on bills coming to the floor

- Members should have the right to have all bills drafted within a reasonable period of time.
- Bill numbers must be provided within 48 hours of the bill’s filing with the Clerk of each house.
- Explicitly prohibit any committee from requesting bills outside their jurisdiction.
- Motions to discharge should be allowed after 20 days following a bill’s introduction or within two committee meetings.
- Bills may be discharged from committee and placed on the calendar by a motion approved by a simple majority of members on the floor.
- All votes—motions to discharge, canvasses of agreement, or otherwise—should be recorded and made public on each chamber’s Web site.
- The rules of both chambers should clearly state that only the introducer of a bill can request that a bill be recommitted to committee after it has passed the full chamber in the first term of a session. This request can be granted only by majority vote of the chamber.

Allow ample opportunity for opportunities for legislative review, debate, and amendments

- Any member should have the ability to object to the consideration of a bill with fiscal implications on the grounds that it lacks a substantial and sufficient fiscal note.
- Actuaries who prepare fiscal notes must attest to no conflict of interest.
- All amendments to bills under consideration by the full chamber must be subject to a vote, and all “aye” and “nay” votes should be recorded and made public.
- Adopt a formal rule stating that no messages of necessity should be approved by the Governor unless a) at least two-thirds of the members of the chamber in question have voted to request that message, and b) the governor has personally reviewed and signed each message as intended by the Constitution.
- All bills must receive consideration by the full chamber within 30 days after being voted out of committee.

Provide all members with sufficient resources and opportunities to fully consider legislation

- When bills addressing similar subject matter pass both houses, a conference committee should be convened by request of primary sponsor *or* chair of committee of original jurisdiction *or* leader in both chambers. The Conference Committee should consist of members from each party proportionate to the parties’ representation in each chamber, and no less than one member of the minority party from each chamber.
- Each member should be limited to introducing 20 bills in the Assembly and 30 bills in the Senate in each session.
- All members should receive equal funding for operating costs and staff budgets, regardless of party or seniority.
- As with the other products of the lawmaking process, the Legislature should publish their expenditures on the Internet semi-annually.

APPENDIX B: MCKINNEY'S MAJOR LEGISLATION

2006

S6409, A09472	S3591, A02683	S8217, A11870	S1195, A05790
S8446, A11951	S2830, A03691	S8297A, A11993	S3978A, A07060A
S8441, A12012	S7075, A04360A	S8355, A11966	S8419A, A07975A
S6007, A09081	S4691A, A06763A	S8416, A12035	S7675C, A08417B
S6300, A09461A	S5668A, A07993B	S8422, A12028	S5728C, A08840C
S6429, A09529	S5754B, A08652A	S8431, A05533A	S1002C, A10309A
S6479, A09421	S7888, A08655A	S8435, A11792A	S6623, A10384
S6315, A09455A	S8341A, A08761B	S8450, A12015	S7941, A10621A
S6469, A09617	S5759A, A08854A	S8348, A11944	S8238, A10690A
Uni. S6621, A09835	S6220, A09058	S2069, A00271A	S7307B, A10757B
S5332, A08279	S4164, A09272	S3824C, A07368D	S7718A, A10891A
S6298, A09279A	S6381, A09346	S3912A, A08464A	S7158A, A11129A
S6343, A09451	S7394, A09595	S4047A, A11351	S5749, A05771A
S6417, A09517A	S7416, A09650	S4331B, A08105B	S8082, A11666
S6829, A09853B	S6402A, A09723A	S5392B, A11582B	S8208, A11763A
S6817A, A09854A	S6871A, A09907A	S6619A, A11544B	S1626A, A05058A
S7193A, A10569A	S7850, A10059	S6703B, A10623B	S2501B, A08521A
S6831, A10399A	S6919, A10269	S6723, A12033	S3249D, A05608D
S4120, A07027	S7019, A10293	S6852A, A10100A	S4502A, A05669A
S6456C, A09556B	S7216A, A10369A	S6884, A10208	S6541, A10094
S6457C, A09557B	S7233A, A10619B	S7011A, A11449A	S6681, A10144
S6458C, A09558B	S8287, A10721	S7042A, A11854	S6825A, A09992A
S6459C, A09559B	S7691A, A10767A	S7175B, A10883B	S6909C, A10076D
S7166, A10486	S7365, A10863A	S7421B, A11042B	S6997A, A10285A
S7265, A10653	S7887, A11141	S7526B, A11350A	S7001C, A10029B
S6805B, A07349D	S5087A, A11236	S7575A, A11109A	S7408, A11355
S5370C, A08025C	S7461A, A11550A	S7615, A08418A	S7630, A10856
S5178A, A08456B	S8430, A11585	S7641A, A11552A	S7636A, A10633A
S5917A, A08998A	S0043, A10673	S7659A, A11725A	S7755A, A11366A
S6441, A09691	S2319, A06486	S7782B, A11560B	S7936, A11474
S6435, A07066	S2633C, A05571B	S8029, A11590	S8021, A11595
S6330, A08351	S3169C, A05622B	S8096, A10447	S8024, A11627
S6845, A10295	S4744A, A10057B	S8227B, A12021A	S8182A, A03390A
S8174, A11804	S5343A, A00914A	S8272, A11891	S8209, A11843
S8457, A08370A	S6277B, A09305B	S8392, A11987	S8232, A11963
S8459, A08939A	S6630, A09979	S8400, A10540B	S8445, A11935B
S8471, A12045	S6753A, A10716A	S8417, A11996	S5690, A08842
S7008, A10539	S6887A, A10266A	S8468, A12041	S8344, A11852A
S5816, A08925	S7055, A10151	S0784B, A00699B	S8349, A11977A
S7849, A10548	S7169A, A10130A	S5005 F, A00891F	S8467, A12042
S8340, A00216	S7181A, A11252A	S3246B, A01600A	S6964A, A09116B
S6508A, A09703A	S7229, A11448	S4493, A02122	S7431A, A10802A
S7154B, A11458B	S7419A, A11570	S1787, A02833	S8515, A12121
S7840, A10470	S7602, A11357	S0759, A03072	S8518, A12120
S8289, A11869	S7637, A11475	S8281, A03995	S8054, A11731
S7847A, A11687A	S7828A, A11450A	S0044C, A04135C	S8482, A12080
S1318, A00727	S8124A, A11868A	S3410B, A04914B	
S7384, A00974	S8170, A11795	S2939, A05778	

S1322, A2755	S4482, A7451	S5541A, A8835A	S4542A, A8854A
S3322, A6163	S4557, A7949A	S5791A, A8487A	S5049, A4467
S3318, A6162	S4550, A8096	S5875A, A8356A	S5089A, A8326A
S2876, A3736	S4245, A8188	S6052A, A7948A	S5618A, A8794A
S3689, A6579	S4538, A8193	S6277, A7512A	S5620B, A8793A
S3544, A6430	S4958, A8365	S6332, A0256A	S6230, A9103A
S3945, A6848	S6319, A9249	S6352, A8592B	S6241, A9205
S3039, A6621	S1768A, A1095A	S6432, A9362	S6357, A9256
S3105A, A6846A	S2682, A4186	S5196A, A2434A	S5596, A1060
S3536, A2407	S3333B, A6830B	S5670B, A4932B	S3154, A1353
S4020, A7370	S3559, A8186	S0100, A6575	S5521, A1462A
S4044, A7080	S3886, A8198	S1511C, A7351B	S0583A, A3818A
S2492, A5658	S3907, A8192	S4518, A7676	S0255A, A5036A
S3908, A7373	S3913A, A3053A	S5790, A7873	S5972A, A5396A
S5734, A7950	S4066, A0618A	S5996, A8273A	S3420A, A6247A
S3167, A1839	S4083B, A7233B	S0053, A0206	S6378, A7334A
S5755, A8129	S4118B, A4484B	S0691, A0832	S6271, A7849B
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