

**THE NEW YORK STATE
LEGISLATIVE PROCESS:
AN EVALUATION
AND BLUEPRINT FOR REFORM**

JEREMY M. CREELAN & LAURA M. MOULTON

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FOR JUSTICE
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www.brennancenter.org

Six years of experience have taught me that in every case the reason for the failures of good legislation in the public interest and the passage of ineffective and abortive legislation can be traced directly to the rules.

New York State Senator George F. Thompson
Thompson Asks Aid for Senate Reform
New York Times, Dec. 23, 1918

Some day a legislative leadership with a sense of humor will push through both houses resolutions calling for the abolition of their own legislative bodies and the speedy execution of the members. If read in the usual mumbling tone by the clerk and voted on in the usual uninquiring manner, the resolution will be adopted unanimously.

Warren Moscow
Politics in the Empire State
(Alfred A. Knopf 1948)

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EXECUTIVE SUMMARY

■ INTRODUCTION

New York State’s legislative process is broken. This report documents five key weaknesses and compares New York’s process with those in other state legislatures and in the U.S. Congress. Together, the problems identified here deprive New Yorkers of the government they deserve. Indeed, New York’s legislative process limits legislators’ consideration of legislation – whether counted in hearings, debate, amendments, readings, conference committees, or even simply legislators’ presence when they vote – far more than any other legislature. Neither the U.S. Congress nor any other state legislature so systematically limits the roles played by rank-and-file legislators and members of the public in the legislative process.

Fortunately, many of the shortcomings of the current system can be remedied without new legislation or constitutional amendments. Mere changes in the rules of the Senate and Assembly would make a significant difference. For this reason, these reforms need not become the victim of the very legislative dysfunction they seek to repair.

This report identifies rules changes in five areas that together would make the New York State Legislature more representative, more deliberative, more accessible and accountable to the public, and more efficient. These proposed changes are organized here in the order of the legislative process itself – from a bill’s introduction and consideration by a committee, to its passage by the full Senate or Assembly, to the final reconciliation of the two chambers’ separate bills into a single bill for final passage.

Each chamber of the Legislature has complete control over whether or not to adopt these changes independent of each other and of the Governor. In January 2005, they will vote on the rules that govern their respective operations. Members of the Senate and Assembly who care about meaningful democracy in New York should seize that opportunity to adopt the changes recommended here. New York State’s voters should urge their representatives in Albany to reform the system now.

PROBLEM # 1

■ DYSFUNCTIONAL LEGISLATIVE COMMITTEES

In most modern legislatures, committees “are the locus of most legislative activity.”¹ Committees have two principal functions: first, to enable legislators to develop, examine, solicit public and expert feedback upon, and improve bills in a specific area of expertise and to convey the results of their work to the full chamber; and second, to oversee certain administrative agencies to ensure that they fulfill their statutory mandates. New York’s committee system generally does not serve either of these functions:

Few Committee Hearings. Only 0.5% of the major bills passed by the Assembly and 0.7% of the major bills passed by the Senate from 1997 through 2001 were the subject of a hearing devoted to their consideration.²

Few Committee Reports. Only 1.1% of the major bills passed by the Assembly and 0% of the major bills passed by the Senate from 1997 through 2001 were the subject of committee reports.

Proxy Voting. Senate rules permit committee members to cast their votes by proxy. Only five other legislative chambers (out of 99) – including only one other chamber comparable to New York’s “professional” legislature, the Pennsylvania Senate – allow proxy voting in committee.³

Central Control of Committee Staff. In New York, the Assembly Speaker and the Senate Majority Leader hire – and have the power to fire – committee staff. New York’s two chambers are among only 32 (out of 99) that give any role at all to the legislative leadership or party caucuses. In fact, 26 state legislatures rely on a central, nonpartisan staff agency for their committee staff support. New York’s centralized control over staff discourages committee chairpersons from developing and promoting legislation without leadership support.

Too Many Committee Assignments. The New York State Senate has more standing committees (32) than all but one other state senate (Mississippi, at 35). The New York State Assembly is ranked fifth among houses with 37 standing committees. The proliferation of committees saddles lawmakers with an excessive number of committee assignments, and threatens the quality of committee work. It is only the overall inactivity of committees in New York that renders this problem less acute than it would otherwise be.

With such a weak committee system, the Legislature cannot develop legislation that fully reflects collaborative policy expertise, improve it through public hearings and reports, or provide the legislators and members of the public with opportunities to address and debate the strengths and weaknesses of a proposed bill.

■ ■ PROPOSED RULES CHANGES:

- Each committee shall have the authority and funding to hire and fire its own professional staff.
- If one fourth or more of the members of a committee petition for a public hearing on a bill or an agency oversight hearing, such hearing shall take place, unless the petition is rejected by a majority vote of the committee.
- All bills reported to the legislative floor must be accompanied by a detailed public committee report.

- Attendance at committee meetings shall be mandatory, except upon good cause shown, and committee meetings shall be recorded and the record made publicly available.
- No member shall be assigned to more than three committees during a legislative session.
- All bills reported to the legislative calendar shall be reported by a standing committee with jurisdiction over the bill's subject matter rather than being reported only by the Committee on Rules.

PROBLEM # 2

■ BARRIERS TO CONSIDERATION OF LEGISLATION BY THE FULL SENATE OR ASSEMBLY

Even when a bill has the support of a majority of legislators within a chamber, New York's Legislature makes it more difficult than any other legislature in the country to discharge a bill from a committee for the full chamber to consider. In addition, New York allows the Majority Leader and Speaker complete control over the legislative calendars to determine whether and when a bill that has been reported out of a committee will be considered by the full Senate or Assembly, respectively.

Restrictions on Discharge Motions. Discharge motions are intended to allow supporters of a bill to obtain consideration by the full chamber despite the opposition or inaction of the committee to which the bill was referred or its chair. New York's Legislature places more restrictions than any other state legislature on motions to discharge a bill from a committee to the floor for a vote.

"Starring" in the Senate. The Senate Majority Leader can suspend action on bills listed on the Senate calendar by requesting that a "star" be placed beside its listing, and no action can be taken until one day after the star is removed. Only the Majority Leader can remove his own star. New York State's Senate is the only legislative chamber in the country that grants such unilateral authority over legislation to its leader.

Leadership Control over Legislative Calendar. The New York Senate and Assembly are two of only three chambers (out of 99) in which the leader of the chamber determines the order of bills placed on the second reading and special orders calendars; and two of only five chambers in which the leader determines the order of bills placed on the third reading calendar.

De Facto Veto Power of Speaker and Majority Leader. From 1997 through 2001, the Senate voted on 7,109 bills and, from 1997 through 1999, the Assembly voted on 4,365 bills. Not a single bill that reached the floor for a vote was rejected in either chamber. In other words, the Speaker and the

LEADERS' CONTROL OVER THE LEGISLATIVE CALENDAR:

PREVENTING A MINIMUM WAGE INCREASE

New York at one time led the nation in rewarding work with a decent minimum wage. Majorities in both the Assembly and Senate favor a wage hike. On March 1, 2004, the Assembly passed a bill (A.09710) that would increase the state minimum. In the Senate, thirteen Republican members joined the chair of the Labor Committee in sponsoring similar legislation (S.3291C), and a majority of that body has indicated its support. So why hasn't the minimum wage bill passed the Senate? The Senate Majority Leader's refusal to allow a floor vote, in combination with obstacles to the members' use of discharge motions, has, for now, prevented low-wage workers in New York from getting a raise.

RESTRICTIONS ON DISCHARGE MOTIONS:

WASTING TAXPAYERS' MONEY

In 1913, New York adopted a law requiring school districts and local governments to hire separate contractors for heating, plumbing, and electrical projects. The so-called "Wicks law" – aimed at curbing corruption – made sense 91 years ago. Today, critics argue that the cost of the Wicks law to New York's taxpayers may be as high as \$400 million per year. Majorities in the Assembly and the Senate support legislation that would partially repeal the Wicks law to allow local governments and school districts to save taxpayers' money. Yet, even in this time of state budget shortfalls, the legislation remains bottled up in committee.

**RULES COMMITTEE ROADBLOCKS:
BLOCKING TREATMENT
FOR THE MENTALLY ILL**

It is difficult to imagine a bill that, on the merits, would be expected to pass more quickly than “Timothy’s Law” (S.5329/A.8301). The legislation’s namesake was a 12-year-old boy who committed suicide. Timothy’s death might have been prevented by psychological treatment that was not covered by his insurance and, consequently, was denied to him. The legislation would require New York’s health insurers to cover treatment for mental illness and drug abuse. The Assembly has passed Timothy’s Law, and 33 of 61 senators have sponsored the legislation in their chamber. Why hasn’t Timothy’s Law become law? In 2003, the Senate Rules Committee (chaired by the Majority Leader) refused to report the bill to the full Senate for a vote.

Majority Leader are able to prevent any bill from reaching the floors of their respective chambers without the certainty of passage and, presumably, without their support.

Together, these barriers prevent legislators – and their constituents – from obtaining votes on much-needed legislation by the full Senate or Assembly. They also exacerbate the limits placed on members of the minority political party in each chamber – the Democrats in the Senate and Republicans in the Assembly at present – who seek to represent their constituents and their interests through legislative action.

■ **PROPOSED RULES CHANGES:**

- If three or more members of a committee petition for a vote on a bill, the chair shall schedule such vote as soon as practicable in the current legislative session and in any event no later than ten days before the end of the session.
- New York’s limits on discharge motions should be relaxed as follows:
 - ◆ Any elected member of the chamber shall be allowed to make a motion to discharge a bill from a committee, and the sponsor’s agreement shall not be required.
 - ◆ Motions to discharge shall be allowed at any time after 20 days has passed since the bill was referred to the committee and until five days before the end of the legislative session.
 - ◆ There shall be no limit on the number of motions to discharge within a legislative session.
 - ◆ Debate on a motion to discharge shall not be limited in duration, except that such debate shall be closed by a majority vote of the elected members of the chamber.
- Every bill that is voted out of committee shall be placed on the calendar and must be considered and voted upon by the full chamber within 60 days, or prior to adjournment, whichever comes first.
- All votes on discharge motions shall be taken by slow roll call and the votes of each member recorded as a public record.

PROBLEM # 3

■ **NO DEBATE, NO AMENDMENTS, INADEQUATE REVIEW**

In most legislatures, the procedural rules and practices encourage and even require legislators to read, consider, debate, and amend bills before voting on them in person. By contrast, New York’s Legislature discourages and even precludes such deliberative activities by legislators:

No Debate. From 1997 through 2001, 95.5% of the major legislation in the Assembly and 95.1% in the Senate were passed without any debate.

No Amendments. Not a single one of the 308 major bills analyzed from 1997 through 2001 was amended by the full chamber on the floor of either the Senate or the Assembly. Moreover, none of the amendments made to those major bills off the floor were debated on the floor of either chamber.

Closed Door Party Conferences. The four legislative party conferences in the Legislature – the Democratic and Republican Parties have one in each chamber – meet behind closed doors without any transcript or public record of their discussions, even on pending legislation. Such confidential meetings are arguably necessary on occasion. But the absence of legislative debate on the Senate and Assembly floors renders the complete secrecy of these conferences a significant obstacle to public information about the Legislature’s handling of legislation.

Empty Seat Voting. Both the Senate and the Assembly routinely employ a fast roll call procedure that facilitates what critics have called “empty seat voting,” in which members who have signed in for the day but are absent from the chamber, as well as members who are present but fail to indicate a negative vote by raising their hand to notify the clerk, are counted automatically as affirmative votes. In other words, at no time does a legislator have to consider how to vote – or even be physically present – in order to vote on legislation.

Empty seat voting is the rule rather than the exception in the Assembly according to available sources, although the Assembly does not record for the public the procedure used to pass a bill. In the Senate, out of 308 major bills passed from 1997 through 2001, the Senate used a fast roll call procedure on all but two occasions.

Among the nation’s “professional” legislatures, New York’s is reportedly the only legislature that routinely allows empty seat voting. Only 18 chambers of 94 surveyed use an empty-seat voting procedure or an equivalent procedure at any time, and at least 12 of those 18 reportedly use such a procedure only rarely. By contrast, it was reported that the other 76 of 94 chambers (81%) require attendance to cast a vote and adhere faithfully to that policy in practice.

Unnecessary “Messages of Necessity.” The New York State Constitution requires that legislators have the opportunity to read and consider a bill for at least three days before voting on its final passage.⁴ If, however, the Governor certifies in a “message of necessity” requested by the Speaker or Majority Leader that a bill must be voted on immediately, those leaders can pass the bill without allowing the legislators themselves or the public any meaningful opportunity to review it. Far from being reserved for emergencies, the Speaker and Majority Leader use the “message of necessity”

MIDNIGHT PASSAGE
WITHOUT DEBATE:

**\$1.8 BILLION FOR
AN ENDORSEMENT**

Few would argue that health care workers did not deserve a raise in 2002. But whether the legislation to provide those raises should have been debated and reviewed before passage is another story. The Health Care Workforce Recruitment and Retention Act of 2002 provided \$1.8 billion in raises for health care workers in SEIU Local 1199. The law was passed after closed-door negotiations among the Governor, Speaker, and Majority Leader. There was no debate, and there were no hearings. The Insurance and Health Committees never saw or voted on the bill. The legislation was passed in the middle of the night, using a message of necessity, without any chance for legislators even to read it. It was widely reported that in exchange for the law’s enactment, then-candidate Governor Pataki received the endorsement of SEIU Local 1199 president Dennis Rivera. Speaker Sheldon Silver’s campaign committee received \$281,200 from SEIU Local 1199 and its affiliated hospital association. Majority Leader Bruno’s campaign committee received \$230,350. The lesson? When the people’s representatives are left out of the legislative process, the people lose their voice. When the committees of the legislature are bypassed, fundamental public policy concerns, such as the state’s \$5 billion budget deficit at the time of this deal, are ignored. And when important laws are enacted without debate or hearings, political deal-making rules the day.

FEW CONFERENCE COMMITTEES: TOXIC BROWNFIELDS

In a properly functioning legislature, conference committees are routinely convened to reconcile differences between bills passed by the two legislative chambers. When they are bypassed, which is business as usual in Albany, the damage can be serious. For over a decade, legislation to clean up more than 800 contaminated industrial sites across the state known as “brownfields” remained stalled in the legislature despite widespread support, ongoing toxic hazards and economic stagnation in communities. With no conference committee system, differences between the Senate’s and Assembly’s separate bills went unresolved. Finally, in June 2003, the Governor, Speaker, and Majority Leader reached agreement behind closed doors and then rushed final passage of the law through the Assembly and Senate without meaningful opportunities for debate or even review. Acting in extreme haste without adequate review, the Senate passed the wrong version of the bill. The legislative session came to an end, and the people of New York still were without a brownfields law. Three months later, the Senate convened for a special one-day session to correct its mistake. The cost to New Yorkers? Harmful delay in resolving and passing legislation that protects communities from environmental threats and economic stagnation.

frequently to bypass the State’s constitutional aging requirement. From 1997 through 2001, a message of necessity was requested and obtained for at least one chamber’s vote on 26.9% of the major legislation that was passed.

Inadequate Review. For the 308 major laws passed from 1997 through 2001, the median number of days between a bill’s introduction and its passage was 10 in the Assembly and 35 in the Senate. In the Assembly, 124 out of the 308 laws (*i.e.*, 40.3%) were passed within five days or fewer of their introduction. In the Senate, 85 laws (*i.e.*, 27.6%) passed within five days or fewer. Notably, in both 1997 and 2000, the Assembly spent a median of just two days on major legislation between introduction and final passage.

Together, these practices prevent New Yorkers’ elected representatives from fully reviewing, considering, debating, and amending legislation before it becomes law. As a result, legislators cannot fully represent their constituents’ interests and are forced to allow flawed legislation to be passed.

■ PROPOSED RULES CHANGES:

- Votes by members shall be recorded and counted only when the member is physically present in the chamber at the time of the vote and personally indicates whether s/he wishes to vote “aye” or “nay.” Such votes shall be made available as a public record.
- No messages of necessity shall be approved by the Governor unless (a) at least two thirds of the elected members of the chamber in question have voted to request such message and (b) the Governor has personally reviewed and signed such message as intended by the Constitution.
- Debate on a bill shall not be limited to less than five hours and shall be so limited only by a majority vote of the elected members of the chamber.
- When considering bills, legislative party conferences shall be convened and remain in open session unless closed with respect to a specific bill by a vote of four fifths of the elected members of the conference.

PROBLEM # 4

■ FEW CONFERENCE COMMITTEES

Conference committees are widely used in the U.S. Congress and in other state legislatures to reconcile differences between the bills passed by the two houses of a legislature to produce a single law that can be passed by both. In New York, however, conference committees have been used only rarely since the first decades of the 20th century. Instead, to pass a bill into law one chamber must move to substitute the other chamber’s version of the bill for its own, with the leaders of the two chambers working out any differences directly.

As a result, New York does not have any established mechanism to prevent legislative gridlock if the Speaker and Majority Leader cannot resolve their differences directly in closed-door negotiations. The result, in too many cases, is a failure to pass even legislation that has garnered overwhelming support among legislators and the public. In addition, New York does not obtain the benefits of a conference committee’s review and airing for public scrutiny of the final version of a bill before it is voted into law.

■ PROPOSED RULES CHANGE:

- When bills addressing the same subject have been passed by both chambers, a conference committee shall be convened at the request of the prime sponsor from each chamber or the Speaker and Majority Leader. Such committee shall convene for a “mark up” session within two weeks of such a request to reconcile the differences in the two chambers’ bills before final passage. These sessions shall be open to the public and shall be transcribed.

PROBLEM # 5

■ LEGISLATIVE INEFFICIENCY AND HIGH COSTS

New York legislators introduce more bills than in any other state yet enact a lower percentage of bills into law than all but two other legislatures. New York’s legislators also spend more on the Legislature’s own operations than most if not all legislatures, yet as this report documents most members play a limited role in the legislative process. Together, these facts suggest that substantial member resources are inefficiently devoted not to the relatively few bills that pass the Legislature but to the mountain of bills that will never even reach a committee vote much less become law:

Most Bills Introduced. In 2002, 16,892 bills were introduced in New York, more than any other state, followed by Illinois at 8,717 and Massachusetts at 7,924.

Second Lowest Percentage of Bills Enacted. New York’s rate of enactment – *i.e.*, the percentage of bills introduced that is enacted into law – is consistently one of the lowest in the nation. In 2002, New York’s enactment rate was 4.1%, higher than only two other states (New Jersey and North Carolina, both 2.7%), while the national average was 28%. This is true despite the fact that New York State was sixth among states in the sheer number of bills signed into law in 2002 (693 bills).

High Costs of New York State’s Legislature. New York’s Legislature spends more than most, if not all, state legislatures on its staff and operations. In 2001, for example, New York appropriated more funds for its legislature’s operations than all but two other states in the country. At least as recently as 1996, moreover, New York’s Legislature had “by far the largest payroll,

LEGISLATIVE DELAY:

LIMITING GLBT RIGHTS

Those who think of New York as a progressive champion of human rights may be surprised to learn that the law forbidding discrimination based on sexual orientation took more than three decades to be enacted. The Sexual Orientation Non-Discrimination Act (“SONDA”) was first introduced in Albany in 1971 and was passed by the Assembly every year since 1993. The bill barred discrimination based on sexual orientation in employment, public accommodations, housing, education, and credit. In 2002, the Senate Majority Leader allowed SONDA to be voted on by the full Senate for the first time, where it passed on its first vote. The trigger for this breakthrough was reportedly the Governor’s pursuit of the endorsement of a leading gay rights organization in New York State during his re-election campaign. But for this political calculation, SONDA might still be awaiting its first Senate vote, at a continued cost to the rights of millions of New Yorkers.

with 3,899 staffers,” of any state legislature in the country.⁵

Member Funding Used to Punish Disloyalty. Because the Speaker and Majority Leader can control each member’s funding for staff and office operations, members are discouraged from challenging their leader’s approach to specific legislation or to procedural rules. This reality prevents members from advocating for any changes to the procedural rules that could lessen the authority of the chambers’ leader, regardless of the merits of such changes.

■ PROPOSED RULES CHANGES:

- Each member shall be limited to introducing 20 bills in the Assembly and 30 bills in the Senate in each session.⁶
- No member shall be assigned to more than three committees during a legislative session.
- All members shall receive equal funding for the operating costs and staff of their individual offices, regardless of the member’s party affiliation or seniority.

¹ ABNER J. MIKVA & ERIC LANE, *LEGISLATIVE PROCESS* 207 (2d ed. 2002).

² Every year, the editors of *McKinney’s Session Law News of New York* identify and publish a list of those laws enacted in the prior year and determined to be “major legislation.” For the purposes of this study, we have analyzed the “major legislation” passed from 1997 through 2001. See *McKINNEY’S SESSION LAW NEWS OF NEW YORK (1997-2001)*. Although 310 laws were identified by McKinney’s, two of those laws (S70001 and S70002) were not listed in the Legislative Digest for the years in question. Accordingly, we did not include those two laws in our analysis of major legislation.

³ Professional legislatures (California, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin) are defined through an index of legislative professionalism presented in SARAH McCALLY MOREHOUSE & MALCOLM E. JEWELL, *STATE POLITICS, PARTIES, AND POLICY* 212-13 (2d ed. 2003). The use of this cohort as a benchmark against which to assess the New York State Legislature was suggested to us by Gerald Benjamin, *Reform in New York: The Budget, the Legislature, and the Governance Process* (Background Document Prepared for a Citizens Budget Commission Conference, “Fixing New York State’s Fiscal Practices, Nov. 13-14, 2003), at <http://cbcny.org/>. See also Keith F. Hamm & Gary F. Moncreif, *Legislative Politics in the States, in POLITICS IN THE AMERICAN STATES* 157-58 (Virginia Gray & Russell L. Hanson eds., 8th ed. 2003).

⁴ N.Y. Const. Art. III, § 14

⁵ ROBERT WARD, *NEW YORK STATE GOVERNMENT: WHAT IT DOES, HOW IT WORKS* 108 (Rockefeller Institute Press 2002).

⁶ This limitation shall apply only to introductions as sole or prime sponsor, and shall not apply to: resolutions, floor amendments, or budget bills; emergency introductions at the request of the Governor; bills requested to be brought to the floor for “same as” bill consideration; departmental bills; or to “local bills” submitted through a member at the request of a county or municipal government.

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INTRODUCTION

It has become something of a cliché to bemoan Albany’s dysfunctional legislative process and the “three men in a room” system of lawmaking. Virtually every major newspaper in New York State has editorialized for many years against the current system and its byproducts, including perennially late budgets,¹ the lack of open deliberation and debate,² empty seat voting,³ gridlock,⁴ costliness and inappropriate payments,⁵ incumbency protection,⁶ or the extent of control exercised by the two leaders.⁷ In addition, a handful of academics and policy analysts have explored various aspects of the legislative process in greater depth and proposed reforms to improve the system.⁸ Certain state legislators have proposed thoughtful reforms to their chambers’ rules, and others have complained behind closed doors about their lack of input into the legislative process.⁹

This study analyzes New York State’s legislative process in depth to answer several important questions: What precisely is dysfunctional about the current system? Is New York State’s legislative process unique? Why should New Yorkers care about the state of the current system in Albany? How did the current system develop in New York State? What, if anything, should be done specifically to change it? We have used quantitative, historical, and comparative data to document New York’s legislative process and to compare it, where possible, with that in other states and in the U.S. Congress.

To obtain an accurate picture of the current legislative process, we analyzed data in seven areas. First, we analyzed all of the “major” laws – 308 laws identified as such by *McKinney’s Session Law News of New York* – passed by the Legislature and signed into law from 1997 through 2001.¹⁰ For each of those laws, we documented the steps taken – or, in many cases, not taken – by legislators in each chamber to develop, debate, obtain public comment on, amend, read, and vote upon the legislation. To that end, we analyzed the records of committee votes on each of these laws from the Assembly’s Public Information Office and the Senate Journal Clerk’s Office, and where possible, interviewed staff of the bills’ sponsors to obtain additional information about committee hearings and reports on each bill.¹¹ We also analyzed the records of both chambers to determine the extent of debate on the floor of each chamber that was devoted to each bill, which bills were amended, and which bills were passed with a message of necessity from the governor to allow immediate passage.¹² Second, we analyzed the voting records of one committee, the Assembly Committee on Economic Development, Job Creation, Commerce and Industry, to determine how often the committee used each of the five options available when voting on a bill (favorable without amendment, favorable with amendment, favorable with referral to another committee, defeated, and held for consideration).¹³ This analysis provides a snapshot of one committee’s voting patterns. Third, we interviewed numerous sitting members of the Assembly and Senate and members of their staff concerning various legislative procedures; these interviews were conducted on the condition of anonymity to ensure that their responses would be candid and that they would not face any negative conse-

quences. Fourth, we analyzed the vote tallies for all bills on which the Senate and Assembly voted from 1997 through 2001 to determine how often bills are voted on and rejected by either chamber. Fifth, we conducted historical research on New York's legislative procedures to place Albany's current system in historical context, drawing principally upon contemporary press accounts and commission reports, proceedings of the constitutional conventions, and scholarly secondary sources.¹⁴ Sixth, we analyzed the published rules of the 99 state legislative chambers and Congressional procedures to compare the rules and practices of New York State's Assembly and Senate with those of other legislatures.¹⁵ Finally, in a national telephone survey, we interviewed at least one source in each state (where possible, from a non-partisan research or library service associated with the legislature and devoted to maintaining the state's legislative records) in order to learn the frequency of debate on the floor, roll call procedures used, and attendance at votes on the floor.¹⁶

Through all of these analyses, we compare New York's legislative process with those in the other 49 states and in the U.S. Congress. Where possible, we have also compared New York's Legislature with a smaller universe of nine "professional" legislatures (18 chambers) that are most directly comparable to New York with respect to levels of staff support, time in session, and other criteria.¹⁷

Five values served by a well-functioning legislature inform this evaluation of New York State's legislative process:¹⁸

- **Representativeness.** A representative legislature facilitates legislators' full and faithful representation of their constituents. Individual legislators can and do actively participate in crafting, debating, and passing legislation that reflects their constituents' interests. Members of each house can obtain the full chamber's consideration of bills that have obtained majority support by bringing such bills to the floor for a vote. Through these and other procedural guarantees, legislators ensure that their constituents' voices are heard and their interests served by the legislature.¹⁹
- **Deliberativeness.** A deliberative legislature ensures that "enacted legislation is based on a public consensus on the need for, as well as the type of, change."²⁰ Committees function as incubators of innovative policy ideas and repositories of expertise where members gather evidence, identify solutions, and debate and draft legislation tailored to the targeted problem. Legislators critically review and debate bill terms and offer amendments prior to a final floor vote to improve legislation and eliminate unintentional errors. Procedural rules ensure that all legislators (and members of the public) have opportunities to read legislation and to address its merits prior to voting. In short, the legislative process reaches the best policy result by encouraging and facilitating policy innovation, robust debate, careful review of legislation, and substantive amendments by legislators. Indeed, without deliberation the value of a legislature, as against a single decision maker, is not clear.

- **Accessibility.** An accessible legislature guarantees members of the public – like their legislators – meaningful opportunities to review and comment upon legislation prior to its final passage, transparent legislative procedures, open meetings, and accurate and complete records of governmental proceedings. Constituents can obtain information about their representatives’ views and actions, and about the legislative process itself, and can make their views known to their representatives before final decisions are made.
- **Accountability.** An accountable legislature encourages members to take responsibility for the content of legislation and facilitates voters in their efforts to judge their representatives for the legislation they pass or fail to pass. To this end, legislators are given a meaningful role in the development of legislation and can vote their conscience in committee or on the floor. Lawmakers personally consider and vote on bills, rather than delegating this responsibility to another or voting by proxy. Accurate information about legislators’ roles in the lawmaking process, their committee attendance and votes, and their attendance and votes on the floor, is readily available to voters in a timely manner. Without both legislators’ meaningful participation in the legislative process and publicly available information about the same, voters cannot honestly and effectively hold their representatives accountable for the actions of the legislature.
- **Efficiency.** An efficient legislature produces legislation for the governor’s signature without unnecessary delays, unduly high ratios of bills introduced to bills passed, or unnecessary barriers to final passage of a single bill by both chambers. The financial costs of the legislative process are no greater than necessary to accomplish the goals outlined already; staff and other legislative resources are directed where they are most effectively used. A well-functioning legislative process may not be cheap, but it need not be inefficient in its use of resources.

In addition to these critical values, a functional legislature provides sufficient evidence of legislative intent – through committee reports, floor statements, hearing records, and other documented legislative history – to allow courts and administrative agencies to interpret and enforce the laws of the jurisdiction accurately and justly.

This report concludes that New York’s current legislative process deprives the people of the representativeness, deliberativeness, accessibility, accountability, and efficiency that they deserve, and that are provided to a greater extent by all other legislatures in the United States. With respect to representation, the current system effectively shuts the people’s elected representatives out of the policymaking process, and often prevents important legislation that enjoys majority support from reaching the floor of the Senate or Assembly. The Legislature’s deliberativeness is undermined by: a moribund committee system that does not function effectively, voting procedures that allow bills to be passed into law without adequate review, and a dysfunctional reconciliation process. The current system

precludes public input into legislation and access to information about legislators' activities at virtually every stage of the legislative process, and prevents rank-and-file legislators from being held publicly accountable for legislative actions by limiting and obscuring their true role in that process. Finally, contrary to the efficiency that one might expect of a heavily centralized system, New York's legislative process features profound inefficiencies, including unnecessary delays in considering significant legislation, introduction of a massive number of bills combined with an extremely low rate of enactment, and a system of resolving differences between chambers that depends, for the most part, upon the work of two individual leaders rather than upon multi-member conference committees with policy expertise and public accountability. In addition, these inefficiencies continue despite the fact that New York's Legislature has more staff and devotes more resources to its operations than most, if not all, state legislatures.

These shortcomings can and should be remedied without undermining the principle and practice of strong legislative leadership. Such leadership is critical to handle the complex challenges and massive output of the New York State Legislature and to counterbalance the far-reaching authority of the governor over legislative and budgetary matters.²¹ Moreover, New York has been and continues to be blessed with many talented, committed legislative leaders in Albany.

But strong leadership is not a sound rationale for the longstanding, systemic flaws in the legislative process that prevent both legislators and their leaders from serving the people of New York State as well as they otherwise might. Even with the finest leadership at the helm, New York's Legislature has functioned, in essence, without the practices it needs to perform as well as it should. Far from undermining the Legislature's leaders, the reforms proposed in this report would, if implemented, enhance their capacity to provide high-quality legislation in timely fashion to meet New Yorkers' many needs.

Many of the shortcomings of the current system could be addressed simply by making changes in each chamber's rules without requiring new legislation or constitutional amendments. Accordingly, we propose specific rules changes to be adopted when the Assembly and Senate next convene to vote on their respective rules in January of 2005.²² The reforms we propose could be accomplished separately in the Assembly and Senate without bipartisan agreement and without the governor's involvement or approval. They need not fall victim to the very legislative process they are designed to reform. In short, they are "low-hanging fruit." Together, however, they would represent a significant step to improve New York State government.

Recent public attention to Albany's legislative process suggests that the opportunity for such meaningful improvements has arrived. It is hoped that this report and its proposed reforms will form the rallying point for a broad-based coalition of individuals, organizations, advocates, and legislators to seize that opportunity.

NEW YORK STATE'S LEGISLATIVE PROCESS

■ THE SHORT LEGISLATIVE PROCESS

The period of time in a session between the introduction of a bill and its final passage by both chambers of the Legislature is the timeframe during which any review, debate, deliberation, or amendment of that bill occurs. In New York, that period is generally extremely brief, even for the major legislation that one might expect to receive the most sustained attention from legislators.

For the 308 major laws passed from 1997 through 2001, the median number of days between a bill's introduction and its passage was 10 in the Assembly and 35 in the Senate.²³ In the Assembly, 124 out of the 308 laws (*i.e.*, 40.3%) were passed within five days or fewer of their introduction. In the Senate, 85 laws (*i.e.*, 27.6%) were passed within five days or fewer. Notably, in both 1997 and 2000, the Assembly spent a median of just two days on major legislation between introduction and final passage. *See Fig. 1.*

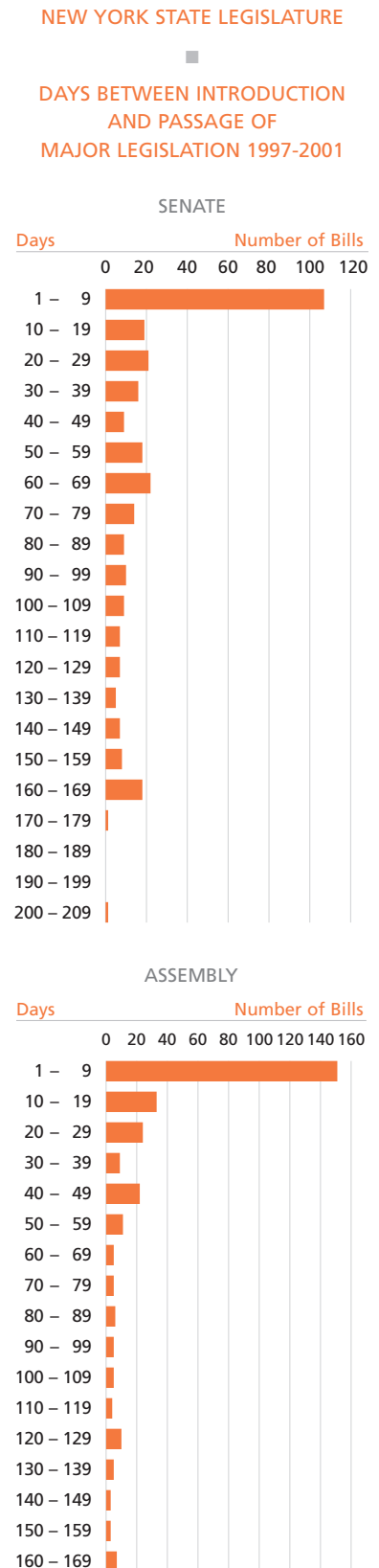
With such an abbreviated period available between a bill's introduction and its passage, there is rarely even the possibility that legislators could meaningfully review, consider, hold hearings on, debate, or amend a bill prior to its passage. To be sure, individual legislators may have considered the issue at hand before the legislation itself is introduced. In addition, some of these bills were doubtless versions of earlier bills that may have been passed or considered in prior sessions by one of the two chambers. Still, even in such cases, consideration of an earlier version of a bill or of the general issue it addresses cannot fully substitute for the careful consideration that a bill should itself receive prior to final passage.

The subsections that follow document a legislative process that facilitates speedy passage of legislation without full consideration, debate, or amendments by legislators. Specifically, the section addresses each of five steps in the life of a bill—committee consideration, procession through the legislative calendar, debate and amendments on the floor, passage by each chamber, and reconciliation between chambers—to compare New York's legislative process with that of other state legislatures and Congress.²⁴ In addition, we analyze committee staffing and assignments, which have a significant impact on that process.

■ CONSIDERATION BY COMMITTEES

In most modern legislatures, committees “are the locus of most legislative activity.”²⁵ Committees have two principal functions: first, to enable legislators to develop, examine, solicit public and expert feedback upon, and improve bills in a specific area of expertise and to convey the results of their work to the full chamber;²⁶ and second, to oversee certain administrative agencies to ensure that they fulfill their statutory mandates. New York's high volume of bills introduced

FIGURE 1



and the complexity of this large state's legislative concerns demand an effective committee system that both develops, improves, and prioritizes legislation through hearings, debate, review, and amendments and efficiently reports such legislation to the full Senate or Assembly. Unfortunately, New York's committee system does not serve any of these functions well.

The committee process in New York rarely includes significant deliberation, policy development, drafting, or amendments to legislation, even for major bills that become law. As detailed in this section, for example:

- **Committee Hearings.** In the Senate, out of the 152 pieces of major legislation that were ultimately passed into law from 1997 through 2001 for which complete data were available, only one bill was the subject of a hearing devoted specifically to its consideration (*i.e.*, 0.7%). Similarly, in the Assembly, out of the 202 pieces of major legislation that were ultimately passed into law from 1997 through 2001 for which complete data were available, only one bill was the subject of a committee hearing (*i.e.*, 0.5%).²⁷
- **Committee Reports.** For the 152 major pieces of Senate legislation passed from 1997 through 2001 for which complete data were available, the Senate committees that approved them did not produce a committee report on even a single bill. In the Assembly, out of the 181 bills for which complete data were available, committees produced only two reports on specific legislation (*i.e.*, 1.1%).²⁸
- **Proxy Voting.** Senate Rules permit committee members to cast their votes by proxy, a privilege allowed in the rules of only five other state chambers. Only one other professional chamber, the Pennsylvania Senate, allows proxy voting in committee in its rules.²⁹
- **Unanimous Committee Votes and Chairpersons' Control over Bills in Committee.** In New York's Legislature, rank-and-file legislators cannot require a committee chairperson to hold a hearing or a committee vote on a bill, even if a majority of the committee's members would support the bill. As a result, the chairperson generally only allows votes on bills that he or she supports, leaving even popular bills to languish in committee. One indication of the chairpersons' control over which bills are reported out of committee is the fact that committee votes are almost always unanimous. In the Assembly, 83% of committee votes on major legislation passed from 1997 through 2001 for which data were available were unanimous. In the Senate, 90% of such votes were unanimous from 1998 through 2001.³⁰

This and other evidence presented in the following section stands in contrast with the rest of the country, where experts' "[i]mpressions are that the amount of legislative shaping by committee has increased since the 1970s."³¹

■ REFERRAL OF LEGISLATION TO COMMITTEES

Upon a bill's introduction in the Assembly or Senate in New York, the Speaker and Majority Leader, respectively, refer it to a standing committee of their choice with jurisdiction over the bill's subject matter.³² In most of the nation's 99 state legislative chambers and in Congress, the legislative leaders play a significant role in such referrals. In 58 chambers and in Congress, however, the full chamber can override their leader's referral, whether by majority vote or by another mechanism.³³ By contrast, New York's Speaker and Majority Leader can refer bills to the committees of their choice without any possibility under the rules of being overridden. This tool allows the leader of each chamber to refer bills to committee chairs who he believes will handle bills in accordance with the leader's wishes. As discussed below, moreover, New York State's uniquely large number of legislative committees, often with overlapping jurisdictions, facilitates the leaders' use of this tool by providing several committees in a substantive policy area to which a bill may be properly referred.

■ COMMITTEE HEARINGS

In most legislatures, committee hearings serve four important purposes. First, they allow a committee to obtain the testimony of experts in the policy field at issue that addresses both the precise nature of the problems that require legislative attention and the wisdom of the specific bill under consideration. Second, hearings allow members of the public and other witnesses to comment on both the topic and the bill at hand. Third, through debate between committee members at the hearing, and media and public reactions to the hearing, legislators gain both specific ideas to improve the bill under consideration and a better understanding of the public consensus, or competing views, on the proper legislative course. Such fact gathering and debate are critical to shape and draft legislation, to determine legislative priorities, and to understand the intended and unintended consequences of a proposed bill. Fourth, hearings provide the chief mechanism for a legislature to oversee the administrative agencies for which it is responsible under the law.³⁴

Twelve of the 99 state legislative chambers require committees to hold hearings on every bill referred to them. In 13 more, committees must hold a hearing on a bill if requested by the sponsor or, in some states, by any legislator.³⁵ One student of Congressional procedure has suggested that "[h]olding hearings is perhaps Congress' single most extensive activity."³⁶

In New York, however, a committee hearing devoted to a specific piece of legislation is all but unheard of. In the Senate, out of the 152 pieces of major legislation that were ultimately passed into law from 1997 through 2001 for which complete data were available, only one bill was the subject of a hearing devoted specifically to its consideration (*i.e.*, 0.7%).³⁷ The Senate Majority Leader sponsored that bill.³⁸ Moreover, in only eight cases (*i.e.*, 5.3%) were hearings held to

address the general topic or problem addressed by a bill, and none of those hearings addressed the bill itself.³⁹ Daniel Hevesi, a former Democratic State Senator, summed up the situation as follows: “[T]he system of governance in Albany is so broken that I don’t believe it functions any longer as a representative democracy. There’s no debate, no discussion, *never any hearings*.”⁴⁰

Similarly, in the Assembly, out of the 202 pieces of major legislation that were ultimately passed into law from 1997 through 2001 for which complete data were available,⁴¹ only one bill was the subject of a committee hearing (*i.e.*, 0.5%).⁴² In only nine cases (*i.e.*, 4.5%) were there any hearings held on the general topic addressed by a bill.⁴³ *See Fig. 2.*

The failure to hold hearings on legislation undermines the effectiveness of the committees and the Legislature as a whole. The public is deprived of an important opportunity to have input into the formulation of policy legislation by their representatives. The Legislature is robbed of the benefit of hearing expert testimony and critiques of a proposed legislative approach to address the problem at issue, and of submissions by persons affected by that problem. The legislators are deprived of a forum to educate themselves and to debate and mark up proposed

FIGURE 2

NEW YORK STATE LEGISLATURE ■ COMMITTEE HEARINGS ON MAJOR LEGISLATION 1997-2001

SENATE

Year	Major Legislation Passed With Committee Hearing on Bill	Major Legislation Passed With Committee Hearing on General Topic	Major Legislation Passed Without Committee Hearing	Total Major Legislation Passed for Which Data Available	% With Hearing on Bill
1997	0	1	15	16	0.0%
1998	0	0	23	23	0.0%
1999	1	1	38	40	2.5%
2000	0	6	40	46	0.0%
2001	0	0	27	27	0.0%
Total	1	8	143	152	0.7%

ASSEMBLY

Year	Major Legislation Passed With Committee Hearing on Bill	Major Legislation Passed With Committee Hearing on General Topic	Major Legislation Passed Without Committee Hearing	Total Major Legislation Passed for Which Data Available	% With Hearing on Bill
1997	0	2	29	31	0.0%
1998	0	1	30	31	0.0%
1999	0	2	50	52	0.0%
2000	1	4	53	58	1.7%
2001	0	0	30	30	0.0%
Total	1	9	192	202	0.5%

legislation. As a result, the final product – the bill reported to the floor and passed into law – suffers from being inadequately fertilized, revised, and incubated into a mature and well-crafted approach to a specified problem. In addition, the absence of hearings prevents the development of an important part of the legislative history that courts use to interpret laws and to enforce the Legislature's will faithfully.

■ ■ COMMITTEE MEETINGS

It is commonly understood in Albany that meetings of standing committees rarely involve any significant consideration, discussion, or debate concerning a piece of legislation. Although the available data are limited, what is available confirms this perception.

For each of the 308 major laws analyzed, we sought minutes and other records for all meetings of the committees to which each bill was referred for the legislative session in question.⁴⁴ Significantly, the Rules of the Senate require that minutes shall be taken of all open meetings of committees, including a record of all motions, proposals, resolutions, and any other matters voted upon.⁴⁵ As a general rule, however, chairpersons of Senate committees do not have minutes recorded for their meetings except to the extent that members' votes are recorded for each bill.⁴⁶ This failure to comply with the Senate's limited requirements for transparency not only impedes research but also limits public access to the legislative process and reduces public accountability of the State's elected representatives. The Assembly's committees follow the same unfortunate practices, albeit without being in violation of any of that chamber's own rules.⁴⁷ Still, from the records of committee votes on legislation and other materials that are available, certain facts are clear.

First, the standing committees in the Assembly and the Senate usually address each bill at only one committee meeting, if at all, to cast a vote on it.⁴⁸ According to one Senator, moreover, “[c]ommittees handle the average bill in a matter of seconds. While there is occasionally longer discussion of legislation, this is the exception rather than the rule.”⁴⁹

Second, the infrequency of committee meetings reflects the limited scope of committee work. In both the Assembly and the Senate, committee meetings are ostensibly scheduled either weekly or biweekly throughout the session.⁵⁰ Because minutes are not regularly kept and no reliable record of the use of proxy votes in the Senate exists, however, it is not possible to determine accurately the number or the regularity of committee meetings in either chamber. Many committees meet only a few times each year. For example, in 2003, the Senate Aging Committee met only three times; the Senate Banks Committee met five times; the Senate Cities Committee met five times; and the Senate Housing, Construction, and Community Development Committee met only once for the entire year.⁵¹ Tales of committees that have never met but nevertheless voted to pass bills are

not uncommon. According to a 1988 article in the *New York Times*, for example, Senator Nancy Lorraine Hoffmann

received a letter from a Senate official asking how she wanted her vote on the Finance Committee to be formally recorded on a number of bills listed as having passed the committee at the end of last year's session, in July. But according to Senator Hoffmann, there were never any Finance Committee meetings on those bills. Senate staff members, rushing to get bills to the floor at the end of the session, bypassed the committee. . . .⁵²

The Assembly likewise has many committees that rarely, if ever meet: in the five-year period from 1997 through 2001, seven committees held only one meeting at which a vote was taken (Aging; Alcoholism & Drug Abuse; Energy; Housing; Libraries & Education Technology; Mental Health; and Veterans Affairs).⁵³ In response to our query, one member of the Assembly suggested as one improvement to the Assembly committee system that "more of the committees meet."⁵⁴ Substantial evidence suggests, therefore, that many committees do not meet on a regular basis.

Third, while official records of attendance at committee meetings purport to show that members attend as a matter of course, the evidence proves otherwise at least with respect to the Senate. For the meetings at which committees voted upon the major legislation passed from 1997 through 2001, the attendance records kept by the Senate for the 212 meetings for which data are available suggest that the average attendance rate over the five-year period was 96.7%. Attendance at 145 out of the 212 meetings was recorded to be 100%.⁵⁵ These records are extremely misleading, however, because they count as "Present" senators who voted by proxy.⁵⁶ Testimonial evidence from senators and first-hand observers of committee meetings suggests that attendance at most committee meetings is extremely sparse. According to one senator, for example, "lobbyists are more regular attendees of committee meetings than senators."⁵⁷ The same senator adds that poor attendance makes it extremely difficult to have a meaningful discussion of legislation.⁵⁸ By contrast, in the Assembly, where proxy votes are not permitted and a quorum is required, committee meetings are better attended.⁵⁹

Fourth, as noted, Senate Rules permit committee members to cast their votes by proxy,⁶⁰ a privilege allowed in the rules of only five other state legislative chambers across the country.⁶¹ Twenty chambers expressly prohibit proxy voting in committees. Only one other professional chamber, the Pennsylvania Senate, allows proxy voting in committees.⁶² In Congress, proxies are allowed but with key exceptions: proxy votes cannot be counted toward a quorum, and numerous committees do not count proxies on votes concerning whether to report a bill.⁶³ In New York's Senate, however, proxy voting facilitates the committee chair's disposition of bills without any actual meeting of committee members, much less any debate or deliberations.

■ COMMITTEE REPORTS

Legislatures and courts in other states often rely upon committee reports to set forth the purposes of a bill, the proposed changes to existing law, section-by-section analysis, its procedural history, committee or subcommittee votes, and any individual members' comments on the bill.⁶⁴ Committee reports similarly play an important role in the U.S. Congress, where in the case of nearly all bills they provide senators and representatives, as well as the courts and the public, with information on committee votes, amendments, the impact of the bill on existing law, cost and regulatory impact assessments, and the views of the executive, as well as in some cases minority views.⁶⁵ Beyond these valuable uses, the requirement of producing a committee report also encourages, if not guarantees, that the committee in question will in fact analyze, debate, and fully consider a bill.

With few exceptions, New York State's legislative committees do not produce committee reports on the bills they consider. For the 152 major pieces of Senate legislation passed from 1997 through 2001 for which complete data were available, the Senate committees that approved them did not produce a committee report on even a single bill.⁶⁶ In the Assembly, out of 181 bills for which complete data were available,⁶⁷ committees produced only two reports on specific legislation (*i.e.*, 1.1%).⁶⁸ The absence of committee reports in New York both reflects and reinforces the marginal role played by committees in developing final legislation. It also leaves New York State's courts without a key source from which to determine the legislative intent behind a statute.

Nor do the sponsor's "bill memo" or the Committee Bill Memo ("CBM") satisfy any of the purposes served by committee reports in other legislatures. The sponsor's bill memo summarizes the bill's provisions and its purpose according to its sponsor, usually in just a few paragraphs. By definition, it includes no contributions from other committee members, no committee analysis of the bill or its impact, no evidence or testimony gathered via hearings or other means, and no committee debate or deliberations. The CBM, produced by the Central or Program & Council staff and attached to all bills that are placed on a committee's agenda, usually mirrors the sponsor's bill memo in its main text, and then may include brief arguments in favor of or in opposition to the bill. While more enlightening than the sponsor's bill memo, CBMs thus include none of the analysis, testimony, debate, or other evidence of committee deliberations that fill committee reports in other legislatures.⁶⁹

■ COMMITTEE STAFFING

In New York, the Speaker and Majority Leader exercise almost complete control over committee staffing, which helps to solidify their control over members' and committees' legislative activities. The significance of such authority increased with the rise of a professional legislature in the late 1960s, when legislators were increasingly provided with expert and administrative staff to complete their

work.⁷⁰ In 1973, the Legislative Office Building opened, providing office suites with room for staff for each legislator and “in the next few years district offices were funded for all state legislators and budgets were granted so that those offices could be staffed.”⁷¹ According to critics of the current system, the legislative leaders could then use such staff grants as “political rewards,” and take advantage of their “monopoly of knowledge” through control of the staff.⁷²

In New York, the Assembly Speaker and the Senate Majority Leader hire – and have the power to fire – all committee staff, known as Central Staff.⁷³ One legislative director for a member of the Assembly put it succinctly: “Ultimately, staff is hired and salaried by the Speaker’s office.”⁷⁴ The minority conference in each chamber receives a set amount of funds to distribute for minority conference staffing and office staff for individual members, although this amount is significantly less than the minority’s share of members.⁷⁵ The leaders’ control extends as well to committee resources – from office space, to conference rooms, to access to Xerox machines.⁷⁶ (The leadership also controls the budget for each member’s personal staff and can use the threat of cutting this budget to ensure agreement from members.⁷⁷ That control also extends to mundane amenities such as computers, parking spaces, and travel reimbursements.⁷⁸)

By contrast, 26 of the 50 state legislatures rely on a central, nonpartisan staff agency for their committee staff support.⁷⁹ Whatever disadvantages are presented by such a system may be countered by the availability of data and legislative analyses without the appearance of partisan biases.⁸⁰ New York’s two chambers are among only 32 (out of 99) that give any role at all to the legislative leadership or party caucus.⁸¹ New York is one of four (out of nine) professional legislatures to do so. *See Fig. 3.*

The leaders’ control over committee staff has several significant effects on legislative and policy development. First, committee chairpersons are effectively deprived of the capacity to develop legislation without the leadership’s express or implicit approval.⁸² If leadership-controlled staff drives a committee’s production or analysis of legislation, then the committees’ course is charted by the leaders’ priorities and, in some cases, explicit directions. This presumably limits the range of policy alternatives and the extent of innovation that would otherwise be fostered by encouraging committees to develop and propose diverse solutions to the state’s problems independently of each other and of the leadership. Procedurally, this system discourages committee chairpersons from significantly altering the way their committees conduct business, because staff loyalties are directed to the Speaker or Majority Leader who has designed the relevant chamber’s rules.

Testimonial evidence confirms that the centralization of staff resources with majority and minority leadership undermines committee independence. Staff recommendations on legislation – which often represent the views of the leadership – are usually adopted by the chair, and the chair’s recommendations are

FIGURE 3

COMMITTEE STAFFING IN PROFESSIONAL LEGISLATURES

■

IS LEADERSHIP OR CAUCUS INVOLVED IN COMMITTEE STAFFING?

STATE	BODY	YES
California	House	
California	Senate	
Illinois	House	X
Illinois	Senate	X
Massachusetts	House	
Massachusetts	Senate	
Michigan	House	X
Michigan	Senate	X
New Jersey	House	
New Jersey	Senate	
New York	House	X
New York	Senate	X
Ohio	House	
Ohio	Senate	
Pennsylvania	House	X
Pennsylvania	Senate	X
Wisconsin	House	
Wisconsin	Senate	

usually adopted by the full committee.⁸³ If a bill is not of major concern to the Speaker or Majority Leader, the leader will simply defer to the chair. However, if the Speaker or Majority Leader feels strongly that the bill should be reported out of or left to languish in committee, he will communicate his wishes to the chair either directly or through the relevant staff.⁸⁴

■ COMMITTEE ASSIGNMENTS

The New York Senate has more standing committees (32) than all but one other state senate (Mississippi, at 35). The New York Assembly is ranked fifth among state houses with 37 standing committees, following Nebraska, Missouri, Illinois, and Wisconsin.⁸⁵ Among professional senates and houses, New York's Senate and Assembly are ranked first and third, respectively, in their number of standing committees. *See Fig. 4.* The U.S. House of Representatives has 19 standing committees, while the U.S. Senate has 16 standing committees.⁸⁶ In Congress, however, significant numbers of subcommittees exist as well.

The proliferation of standing committees in New York State strengthens the Speaker's and Majority Leader's control over the Legislature by providing each with additional titles and compensation to offer legislators in exchange for their loyalty.⁸⁷ When it is necessary, these leaders (and the minority leaders in each chamber) can punish disloyal committee chairs by withdrawing such compensation. Most recently, the *New York Times* reported that during the 2003 budget battle, Republican Assemblyman Pat M. Casale openly defied Assembly Minority Leader Charles Nesbitt, and was summarily stripped of his \$9,000 committee stipend.⁸⁸ In addition, overlaps in committee jurisdictions allow the leaders greater flexibility to assign bills to their committees of choice.⁸⁹ These leaders also appoint committee members and chairs, authority that is customary in most legislatures.⁹⁰

The proliferation of committees also weakens the Legislature by saddling lawmakers with an unmanageable number of assignments, resulting in an inevitable reduction in the quality or extent of work.⁹¹ The problem is especially acute in the New York State Senate, which has the highest average number of committee assignments per member (8) of any chamber surveyed across the country.⁹² In the Assembly, while still considerable, the average number of assignments per committee member is 3-4 – less than half the number in the Senate – and proxy voting is not used in committees. Scholars have argued that fewer committees “enhance the rational division of labor and help produce improved performance levels” by increasing members’ real specialization and limiting workloads.⁹³ In New York, the proliferation of committees may explain in part not only the extensive use of proxy voting in the Senate but also the absence of meaningful debate, hearings, reports, or other time-consuming committee work in both chambers of the Legislature. Indeed, it is only the overall inactivity of committees in New York that renders this problem less acute than it would (and arguably should) otherwise be.

FIGURE 4

NUMBER OF STANDING COMMITTEES IN PROFESSIONAL LEGISLATURES

STATE	SENATE
New York	32
California	26
Pennsylvania	22
Michigan	21
Illinois	17
Wisconsin	16
New Jersey	14
Ohio	14

STATE	HOUSE
Illinois	42
Wisconsin	41
New York	37
California	27
Pennsylvania	25
Michigan	23
New Jersey	20
Ohio	18

■ ■ ■ REPORTING BILLS OUT OF COMMITTEE

All legislatures provide a mechanism to move a bill from a standing committee to the full chamber for its consideration. But New York State's Legislature renders it more difficult than in any other legislative chamber for a rank-and-file legislator to obtain consideration of a bill by the full Senate or Assembly.⁹⁴ Because committee chairpersons determine whether a bill will be voted on by a committee and generally will not allow such a vote without certainty that a bill will be favored unanimously or held for further consideration, the committee acts as a virtually insurmountable barrier to any bill that does not have the chairperson's support and, in turn, the support of the Speaker or Majority Leader.⁹⁵ The legislative director for one sitting Assembly member reported that, "usually, a bill is not placed on an agenda unless the chair and staff know that they have the votes to move the bill."⁹⁶ In addition, the Speaker and Majority Leader indirectly but firmly control the process of bringing a bill to the floor of the Assembly or Senate, respectively.

Nor are these features recent developments. The leadership's control over bills in committee, and the resulting difficulty of moving bills to the floor without action by the Speaker or Majority Leader, have characterized the New York State Legislature for over 50 years. A 1953 study found that "better than 90 percent of all bills reported favorably by committees in both houses [were] passed and sent to the Governor," in part because the legislative leaders could ensure that bills did not obtain a committee's favorable report without their approval.⁹⁷ In 1964, Assembly Speaker Joseph F. Carlino and Senate Majority Leader Walter J. Mahoney proposed to allow uncontroversial bills to clear committees and be voted on more quickly and easily.⁹⁸ The next year, their successors, Speaker Anthony J. Travia and Senate Majority Leader Joseph Zaretzki called for the "[l]iberalization of the procedures for bringing measures to the floor after a committee has failed to do so."⁹⁹ In 1968, the *New York Times* advocated for "a rule enabling one-third of the members of either house to force a bill out of committee onto the floor."¹⁰⁰ None of these reforms became a reality.

■ ■ ■ RESTRICTIONS ON DISCHARGE MOTIONS

At least 21 out of the country's 99 legislative chambers require standing committees to report all bills referred to them for consideration.¹⁰¹ Furthermore, approximately one half of the nation's legislative chambers impose a deadline for committee action.¹⁰² Without such requirements or deadlines, bills often remain in committee indefinitely. Professor Rosenthal explains:

In some states, like New Jersey and New York, a bill will languish in committee unless a sponsor requests action. This permits legislators to introduce bills on behalf of groups and constituents, even though they believe these measures are short on merit and should not move. . . . There are occasions, moreover, when sponsors publicly request a vote on specific bills they have introduced, while privately imploring committee members to sit on the same bills.¹⁰³

Neither of New York State's two chambers requires that committees vote on the bills referred to them. Moreover, New York State's Legislature renders it extremely difficult for a bill to be voted out of a committee for consideration by the full chamber even despite significant support. In both the Assembly and the Senate, the committee chairs alone determine whether to place a bill on the committee's agenda for consideration or a vote.¹⁰⁴ This means that minority party members of a committee can rarely obtain consideration of the bills they support because all committees are chaired by members of the majority party. It also means that the Speaker and Majority Leader are able to control fully which bills reach a vote in committee through the committee chairs.

Moreover, most legislative chambers allow motions on the floor of the full chamber to discharge a bill from committee if a committee does not bring its consideration of a bill to a vote and report the bill to the legislative calendar.¹⁰⁵ Such discharge motions are intended to allow supporters of a bill to obtain consideration by the full chamber despite the opposition or inaction of the committee to which the bill was referred or its chair. In addition, the threat of such a motion, if real, discourages legislators from sponsoring bills that they do not intend to pass.¹⁰⁶ In New York and in most states, such motions require a majority of members elected in the chamber to vote for passage to succeed.¹⁰⁷ Seven chambers require only one third of members to pass such a motion.¹⁰⁸ In the U.S. House of Representatives, the motion to discharge is rarely used but still serves as a "safety valve" against leadership domination and thus "looms much larger in public debate . . . than would be expected from the infrequency of its successful use."¹⁰⁹

In New York State, however, stringent limitations on the use of discharge motions prevent consideration by the full Assembly or Senate of any legislation that does not have the Speaker's or Majority Leader's support, respectively. Indeed, New York is alone in placing six different restrictions of significance upon such motions:

- **Only Sponsor Can Move to Discharge a Bill.** In both the Assembly and the Senate, only the original sponsor of a bill is permitted to make a motion to discharge the bill from a committee.¹¹⁰ Our survey of legislative rules found explicit procedures for discharging bills in 76 chambers. Only five of those 76 chambers (besides New York's two chambers) require the concurrence of the primary sponsor for such a motion to be made, and only in New Jersey's two chambers is the primary sponsor herself required to make the motion as in New York.¹¹¹
- **60-day Waiting Period Before Discharge Motions Allowed.** New York's chambers prohibit any discharge motions to be made before a committee has had at least 60 days to consider and report a bill.¹¹² Although 35 of the 76 chambers with express procedures impose waiting periods of some length before such a motion can be made, New York's required waiting period of 60 days is unusually long. Only five other chambers require a waiting period of more than 21 days: both Massachusetts chambers (45 days; motions still can

be made before that, but require two-thirds vote to pass), both Ohio chambers (30 days), and the New Jersey Senate (60 days).¹¹³

- **Deadline for Discharge Motions of Second Tuesday in April.** New York places a uniquely long ban on motions to discharge after a specified deadline, namely, the second Tuesday in April, “except with unanimous consent of the members or in the discretion of the Temporary President [in the Senate, or the Speaker in the Assembly].”¹¹⁴ The only other four chambers with similar blackout periods have made them quite brief, ranging from the last two to seven days of the session.¹¹⁵ Even more striking, in ten chambers there are methods to expedite motions to discharge later in the session, generally through deadlines related either to the length of time a committee has had a bill or to the end of the session.¹¹⁶ New York provides no such methods. This deadline, in conjunction with the 60-day waiting period, effectively reduces the period of time during which a motion to discharge can be introduced by three months and precludes such motions at the end of the session when the legislators focus their attention on passing bills.
- **Discharge Motions Must Remain on Calendar for Five Days.** A motion to discharge must be on the calendar for a longer period of time (five days) in New York than in any of the 76 state chambers with express procedures.¹¹⁷
- **Leadership Action Required for Discharge Motions.** New York’s legislative leaders play an unusually prominent role in discharging a bill from committee, albeit indirectly, because the extremely restrictive rules on timing can be overridden only by the discretion of the Senate Majority Leader¹¹⁸ or Speaker, or by the unanimous consent of the chamber. In only six other chambers is leadership action directly required for discharge. In the Arizona Senate, the President alone can act upon petitions to discharge; in the Florida Senate, the Chair of the Committee on Rules & Calendar alone can make the motion to discharge after a request from the bill’s sponsor; in the Illinois Legislature, the Rules Committee alone handles bills after the committee deadline has passed by choosing to discharge or to re-refer; and in the Maine Legislature, deadlines for committee action are set and enforced by the Speaker and the President. Sixty-eight of the 76 chambers with explicit discharge procedures allow members to vote or petition to discharge directly.¹¹⁹
- **Debate on Discharge Motions Limited.** New York’s Senate is one of only a handful of chambers that limit debate on motions to discharge:¹²⁰ in the Senate, the motion’s sponsor “shall have five minutes to explain said motion, and no other explanation or debate on the motion or upon the canvass of agreement shall be permitted by any member.”¹²¹ Only six other chambers have special debate limits on the motion to discharge.¹²² *See Fig. 5.*

One Senate observer noted in 1975 with respect to discharge motions that “[n]o

FIGURE 5

**RESTRICTIONS ON MOTIONS TO DISCHARGE LEGISLATION FROM COMMITTEES
IN CHAMBERS WITH EXPRESS PROCEDURES**

State	Body	Vote Required	Number of Restrictions	Waiting Period After Referral to Committee	Session Deadline	Waiting Period (Days) After Motion Made	Petition Required	Sponsor Must Make or Concur with Motion	Debate Is Restricted	Leaders Must Act for Discharge to Occur	Only Leader Can Override Restrictions
Alabama	House	50%	1			1					
Alabama	Senate	60%	1	6 days		0					
Alaska	House	50%	0			0					
Alaska	Senate	50%	0			0					
Arizona	House	60%	1			0	■				
Arizona	Senate	60%	3		■	0				■	■
Arkansas	House	67%	0			0					
Arkansas	Senate	50%	1	20 days		0					
California	House	50%	0			0					
California	Senate	50%	0			0					
Connecticut	House	50%	1	1 week after action deadline		0					
Connecticut	Senate	50%	1	1 week after action deadline		0					
Delaware	House	50%	1	12 legislative days		0					
Florida	House	67%	0			0					
Florida	Senate	67%	2			0		■		■	
Georgia	House	67%	1	10 legislative days		0					
Hawaii	House	33%	1	20 days		0					
Hawaii	Senate	33%	1	20 days		0					
Idaho	House	50%	1	5 days		0					
Idaho	Senate	33%	2	3 days		1					
Illinois	House	50%	2			1				■	
Illinois	Senate	60%	1			0				■	
Iowa	House	50%	1	18 legislative days		0					
Iowa	Senate	50%	1	15 legislative days		0					
Kansas	House	56%	3	10 legislative days		1			■		
Kansas	Senate	60%	2			1			■		
Kentucky	House	50%	2			1	■				
Kentucky	Senate	50%	1			1					
Louisiana	House	50%	0			0					
Louisiana	Senate	50%	0			0					
Maine	House	n/a	2			0				■	■
Maine	Senate	n/a	2			0				■	■
Massachusetts	House	50%	2	45 days (67% vote before)		7*					
Massachusetts	Senate	50%	3	45 days (67% vote before)		1			■		
Michigan	House	50%	1			1					
Michigan	Senate	50%	0			0					
Minnesota	House	50%	0			0					
Minnesota	Senate	61%	0			0		■			
Mississippi	House	50%	1			1					
Mississippi	Senate	50%	1			0	■				
Missouri	House	33%	2	10 legislative days		0	■				
Missouri	Senate	33%	0			0					
Montana	House	60%	0			0					
Nebraska	Unicameral	50%	1	20 legislative days		0					
Nevada	Senate	67%	2		■	1					
New Jersey	House	50%	4	3 committee meetings		1			■		
New Jersey	Senate	50%	3	60 days		1			■		
New York	House	50%	5	60 days	■	5		■			■
New York	Senate	50%	6	60 days	■	5		■			■
North Carolina	House	60%	2	10 legislative days		3					
North Carolina	Senate	60%	4	10 legislative days		1	■				■
North Dakota	House	50%	0			0					
North Dakota	Senate	50%	0			0					
Ohio	House	50%	3	30 days		1	■				
Ohio	Senate	50%	2	30 days		0	■				
Oregon	House	50%	0			0					
Oregon	Senate	50%	1			0			■		
Pennsylvania	House	50%	4	15 legislative days	■	1	■				
Pennsylvania	Senate	50%	2	10 legislative days		1					
Rhode Island	House	50%	3	16 days		0	■				■
Rhode Island	Senate	67%	2	16 days		0	■				
South Carolina	Senate	50%	1	5 legislative days		0					
South Dakota	House	33%	0			0					
South Dakota	Senate	33%	0			0					
Tennessee	House	67%	2	7 legislative days		1					
Tennessee	Senate	50%	3	7 legislative days		1			■		
Utah	House	50%	1		■	0					
Virginia	House	50%	0			0					
Virginia	Senate	50%	0			0					
Washington	Senate	50%	0			0					
West Virginia	House	50%	2	5 legislative days		0					■
West Virginia	Senate	50%	0			0					
Wisconsin	House	50%	2	21 days		0			■		
Wisconsin	Senate	50%	1	1 week before & after hearing		0					
Wyoming	House	50%	0			0					
Wyoming	Senate	50%	0			0					

* Only for discharge from Ways & Means and Counties Committees.

such motion has passed during this century.”¹²³ Unless these numerous restrictions on discharge motions are relaxed, the same comment will likely apply with equal force to the present century as well. Because such motions do not provide an independent mechanism to obtain consideration of a bill by the full Senate or Assembly, such consideration depends upon action by the Majority Leader or Speaker.

■■■ OPTIONS FOR COMMITTEE VOTES

If the chair of a standing committee allows a bill to reach a committee vote, committees in New York have several options. In the Assembly, standing committees have four options in addition to rejecting a bill if a vote is taken:

A standing committee may report any bill, either with or without amendments, or it may report adversely to the same or it may report that a bill has been held for further action and/or study.¹²⁴

The Senate’s rules, however, do not provide standing committees with an option to report a bill with amendments; they can only report a bill favorably without amendments or report it adversely.¹²⁵ As a result, the Senate committees are deprived of a legislative tool – approval with amendments – that encourages meaningful committee consideration of a bill and is available to 93 out of 99 chambers in the country.¹²⁶

Because it is impossible for the members of a committee (or any other members) to force a committee to vote on a bill without the chair’s (and, thus, the Speaker’s or Majority Leader’s) assent, bills are virtually never defeated outright on a committee vote. The Assembly’s Committee on Economic Development, Job Creation, Commerce and Industry, for example, voted on 592 bills from 1997 through 2002 and defeated only one bill.¹²⁷ See *Fig. 6*. Occasionally, the committee and the Speaker or Majority Leader will stage a recommendation by the chair

FIGURE 6

NEW YORK STATE ASSEMBLY COMMITTEE ON ECONOMIC DEVELOPMENT, JOB CREATION, COMMERCE AND INDUSTRY

■ VOTE OUTCOMES 1997-2002

Year	Favorable Without Amendment	Favorable With Amendment	Favorable With Referral to Another Committee	Defeated	Held for Consideration	Total
1997	13	0	86	0	13	112
1998	3	0	90	0	25	118
1999	10	0	89	0	0	99
2000	0	0	60	0	40	100
2001	5	0	62	1	0	68
2002	8	0	45	0	42	95
Total	39	0	432	1	120	592

that is overturned; this allows the chair to maintain support publicly for the bill, while obtaining the outcome desired by the leader.¹²⁸

Despite the availability of the option to report a bill favorably but with proposed amendments, Assembly committees do not generally take advantage of this option. The Economic Development Committee, for example, did not do so in its consideration of any of the 592 bills voted on from 1997 through 2002. The committees simply do not engage in the kind of debate and mark-ups necessary to produce amendments to the bills as a committee.

Moreover, most votes are unanimous. In the Assembly, 83% of committee votes on major legislation passed from 1997 through 2001 for which data were available were unanimous. In the Senate, 90% of such votes were unanimous from 1998 through 2001. *See Fig. 7.*¹²⁹

It is plain from these figures that committee members overwhelmingly follow the lead of the committee chair in their votes, either literally by allowing the chair to vote their proxies, as routinely occurs in the Senate, or by simply voting with the chair as a matter of course. Rank-and-file members do not have significant influence over the committee's ultimate consideration of a bill.

FIGURE 7

NEW YORK STATE LEGISLATURE

■ UNANIMITY OF COMMITTEE VOTES ON MAJOR LEGISLATION, 1997–2001

SENATE				
Year	Unanimous	Not Unanimous	Total Bills for Which Data Available*	% Unanimous
1998	41	3	44	93%
1999	56	5	61	92%
2000	58	6	64	91%
2001	40	8	48	83%
Total	195	22	217	90%

ASSEMBLY				
Year	Unanimous	Not Unanimous	Total Bills*	% Unanimous
1997	30	8	38	79%
1998	36	10	46	78%
1999	60	10	70	86%
2000	64	15	79	81%
2001	44	5	49	90%
Total	234	48	282	83%

* No data were available for Senate committee votes in 1997.

Testimonial evidence confirms these findings. One Assembly staff member characterized committee votes as “pro forma”: the chair usually signals his or her recommendation before the meeting; if a majority member has a different opinion, the protocol is to contact the chair before the meeting and resolve the issue so that, in practice, the chair’s recommendation is never voted down.¹³⁰ Similarly, in the Senate little debate or dissent occurs in committee meetings; the committee’s vote is usually a rubber stamp for the chair’s position.¹³¹

■■■ THE RULES COMMITTEES

No discussion of committees’ reporting of bills is complete without an understanding of the role played by the committees on rules in each chamber in New York State. Chaired by the Speaker in the Assembly and the Majority Leader in the Senate,¹³² these committees have effectively controlled the true flow of legislation to the floor for at least a century.

These committees’ control takes slightly different forms in the Assembly and the Senate, but is essentially complete in both houses. First, in the Assembly the committee on rules determines the order of the bills reported by standing committees on the legislative calendar, while in the Senate the Majority Leader (*i.e.*, the chair of the rules committee) exercises parallel authority through his “starring” powers, as discussed below.¹³³ Regardless of a bill’s origins, therefore, the committees on rules control whether and when the full chamber votes on a bill. Second, the Assembly’s committee on rules can introduce legislation and refer the same to the appropriate standing committee for consideration.¹³⁴ In the Senate, the committee on rules “shall have the authority to introduce and refer bills to itself.”¹³⁵ In other words, by using these rules committees, the Speaker and Majority Leader need not depend substantively upon the standing committees for the bills they choose to bring to the floor. Third, throughout the legislative session, standing committees in both chambers often refer bills to the rules committees rather than directly to the floor.¹³⁶ In the Senate, on or after the second Thursday in May, “[a]ll committee reports . . . shall be made directly to the Committee on Rules” rather than to the full chamber.¹³⁷ Finally, in both chambers the committees on rules can discharge a bill from a standing committee to itself at any time – in the words of the Senate Minority Counsel, the rules committee can “just pluck a bill out of committee” and report it itself.¹³⁸ In short, when it matters most during the latter part of the legislative session, the committees on rules become the gatekeepers for all bills to be considered by the full chamber.

Unlike other committees, moreover, these committees can meet at the leaders’ discretion, without formal notice,¹³⁹ an exemption expressly granted in only 16 other chambers nationwide.¹⁴⁰ Among professional legislative chambers, the Illinois Senate and House are the only chambers besides New York’s that exempt their rules committees from such a meeting notice requirement.¹⁴¹ See *Fig. 8*. In addition, New York’s rules committees virtually never meet in any event; instead, the Speaker and Majority Leader and their respective staff simply act on behalf

FIGURE 8

**NOTICE REQUIREMENTS FOR
RULES COMMITTEES IN
PROFESSIONAL LEGISLATURES**

■

**IS RULES COMMITTEE EXEMPTED FROM
NOTICE REQUIREMENT?**

STATE	BODY	YES
California	House	
California	Senate	
Illinois	House	X
Illinois	Senate	X
Massachusetts	House	
Massachusetts	Senate	
Michigan	House	
Michigan	Senate	
New Jersey	House	
New Jersey	Senate	
New York	House	X
New York	Senate	X
Ohio	House	
Ohio	Senate	
Pennsylvania	House	
Pennsylvania	Senate	
Wisconsin	House	
Wisconsin	Senate	

of these committees.¹⁴² In 1971, a former Senate Majority Leader summarized the situation in terms that could apply fully as well today: “The Rules Committee can do anything.”¹⁴³

The rules committees, and by extension the Speaker and Majority Leader, have controlled the fate of legislation for at least a century. In 1906, for example, the *New York Times* reported a failed attempt on the first day of the Assembly session “by Democrats and some Republicans to take from the Committee on Rules its plenary power over legislation in the last ten days of the session.”¹⁴⁴ In 1913, Chester Lloyd Jones, a scholar of American legislative procedure, noted that the ten days during which the rules committee had its extraordinary powers were in fact extended by party leaders, who “set the day for adjournment earlier than there was any possibility of adjourning,” thus lengthening the actual period of Rules Committee control to up to a month.¹⁴⁵ By the 1940s, the rules committees in both houses had consolidated “virtually a directive power over the process of legislation,” particularly in the last weeks of the session.¹⁴⁶

■ THE LEGISLATIVE CALENDARS

The legislative chambers of most states, including New York, and the Congress use a calendar system to organize their business and determine when and whether a bill will be considered by the full chamber.¹⁴⁷ In general, bills may be scheduled for floor debate using one of three methods: (1) by automatic calendar (*e.g.*, in numeric sequence, alphabetical order by committee name, or in the order reported from committee); (2) by specific order of the presiding officer or another individual leader; or (3) by the determination of a rules or management committee. In New York, both chambers use an automatic calendar of sorts, but allow the Speaker and Majority Leader to exercise control over the order of the calendar in their respective chambers.

Although “relatively few individuals [are] involved in calendar decisions in most state legislatures,”¹⁴⁸ New York’s system is unusual in placing complete control in the hands of the Speaker and Majority Leader. As a formal matter, all bills must proceed through three stages or “readings” prior to a floor vote.¹⁴⁹ In the Senate, all bills reported by a standing committee (unless designated an “order of special report”) are automatically placed on the “first report” calendar, moved to the “second report” calendar after one legislative day, and then to the “order of third reading” after another legislative day.¹⁵⁰ This schedule can be collapsed into a single day upon unanimous consent of the Senators. If a bill reaches the third reading, then the vote on its final passage “shall be taken immediately thereafter.”¹⁵¹ But a bill does not reach a third reading unless and until the Senate Majority Leader so allows.

In every other state, legislation may be removed from a calendar only by a majority vote.¹⁵² Under New York’s Senate rules, however, action on bills listed on the Senate calendar may be suspended by requesting that a “star” be placed beside

its listing, and no action can be taken until one day after the “star” is removed.¹⁵³ A bill may be “starred” by its sponsor or by the Majority Leader, and only the Majority Leader can remove his own star.¹⁵⁴ Of course, the starring procedure arguably helps to keep bills that are technically defective off the floor until revisions are made,¹⁵⁵ and one commentator suggests that more than half of all “stars” are requested by the sponsors.¹⁵⁶ Still, this procedure has been described by one former Senator as “[t]he most absolute, undemocratic procedure that can possibly exist.”¹⁵⁷ What cannot be disputed is that the practice allows the Majority Leader to halt consideration of a scheduled bill, even where it would have majority support in its current form.¹⁵⁸

In the Assembly, the calendaring process is similar in substance although not in form. The Speaker alone determines the order of bills on the calendars.¹⁵⁹ The Speaker does not have parallel authority to “star” a bill and prevent its consideration directly.¹⁶⁰ Instead he must rely on more indirect, though no less effective, tools to control which bills are considered by the full chamber. The Speaker can prevent committee chairs from reporting bills to the floor rather than to the Committee on Rules (which he controls), or from reporting bills at all. He can also convince a sponsor to delay a bill by using the many informal tools of leadership at his disposal, including the threat of defeat or the loss of committee appointments or member items. In other words, the formal absence of “starring” authority does not prevent the Speaker from controlling whether a bill reaches the floor for a vote.

New York is among a small handful of states that give to the leaders of their legislative chambers such extensive control over the legislative calendars. Specifically, New York State’s Senate is the only legislative chamber in the country that grants its leader the unilateral authority to “star” a bill.¹⁶¹ New York’s Senate and Assembly are two of only three chambers (out of 99) in which the leader of the chamber determines the order of bills placed on the second reading and special orders calendars;¹⁶² and two of only five chambers in which the leader determines the order of bills placed on the third reading or final passage calendar.¹⁶³ Although the Speaker of the U.S. House of Representatives effectively maintains control over which bills reach the floor through the Rules Committee, in the U.S. Senate the lack of a germaneness rule against bringing amendments to the floor allows any Senator to bring an issue or legislation (in the form of an amendment) to the floor over the Majority Leader’s objections.¹⁶⁴ In New York, however, the Speaker’s and Majority Leader’s control over the calendars gives them unparalleled control over the legislative agenda in each chamber and prevents the consideration of any bill that does not enjoy their support.

■ DEBATE AND AMENDMENTS ON THE FLOOR

In most legislatures, legislators debate and amend bills not only in committees but also on the floor of their full chambers prior to a final floor vote. In New York, such debate and amendment on the floor would provide the only meaningful opportunity for rank-and-file members to comment publicly upon and have input

into, a bill because the committee process does not, as we have seen, provide such opportunities. As discussed more fully in this section, however, debate and amendments on the floor rarely occur in New York's Senate or Assembly:

- **Debate.** 95.5% of the major legislation in the Assembly and 95.1% in the Senate passed without any debate during the five-year period from 1997 through 2001.
- **Amendments.** Not a single one of the 308 major bills analyzed from 1997 through 2001 was amended by the full chamber on the floor of either the Senate or the Assembly. Moreover, none of the amendments made to major bills during that period off the floor were debated on the floor of either chamber.

■ DEBATE

It is customary for state legislative chambers to place limits on debate in order to complete legislative business in an orderly fashion. Of the 99 state legislative chambers, only 12 do not limit debate at all with respect to either its duration or its frequency.¹⁶⁵ At least 40 chambers limit debate through both limits on the number of times a member can speak and the duration of such presentations, while the great majority of the others impose at least one of these two limits.¹⁶⁶ The U.S. House of Representatives also imposes restraints on debate in various contexts, although members are allowed to place undelivered speeches into the record.¹⁶⁷ The U.S. Senate imposes limits on debate only upon successful passage of a motion for cloture by at least 60 Senators.¹⁶⁸

New York is typical in its formal limitations, as embodied in the Senate and Assembly rules. To be sure, among professional legislatures New York's Assembly is one of only six chambers (out of 18) that impose both types of limits on debate.¹⁶⁹ See *Fig. 9*. The Assembly allows members to speak no more than twice on the same subject, limits their presentations to fifteen minutes, and allows each member two minutes to explain their vote.¹⁷⁰ In the Senate, all debate must be "germane to the question under discussion," members may not speak more than twice in one day on the same subject,¹⁷¹ and a simple majority of those present may close debate after two hours.¹⁷² The Senate's limits do not stand out among the country's legislative chambers.

But these formal rules do not provide an accurate picture of debate in the New York State Legislature. Of the 308 pieces of major legislation passed from 1997 through 2001, 81.8% were passed without any discussion of any kind, much less debate, on the Assembly floor, and 70.8% without any discussion in the Senate.¹⁷³ But even these figures misleadingly overstate the extent of true debate.

If one excludes occasions where a bill's sponsor simply summarized its terms for the chamber before the vote without any comments by other members – not

“debate” by any measure – 95.5% of the major legislation in the Assembly and 95.1% in the Senate were passed without *any* debate during the five-year period.¹⁷⁵ See Fig. 10.

Other states report significantly more debate on legislation in their chambers. We conducted a telephone survey that garnered information concerning 94 (of 97) other state legislative chambers.¹⁷⁶ Respondents from only one chamber outside New York (Mississippi House) reported that debate is rare on significant legislation (10% of such bills), while respondents from 60 chambers reported that all, or almost all, significant legislation is debated. Respondents from an additional 21 chambers reported that at least two thirds of *all* significant legislation is debated. In total, moreover, 54 respondents from chambers reported that one half or more of *all* legislation is debated.

New York is alone among professional legislatures in only rarely debating legislation, with respondents from 11 (out of 18) professional chambers reporting debate on half or more of *all* bills and respondents from the remaining five chambers reporting substantially more debate than occurs in New York.¹⁷⁷

FIGURE 9

LIMITS ON DEBATE IN PROFESSIONAL LEGISLATURES

State	Body	Limit on Duration	Limit on Number of Times Member May Speak
California	House	Yes	Yes
California	Senate		Yes
Illinois	House	Yes	Yes
Illinois	Senate	Yes	Yes
Massachusetts	House	Yes	Yes
Massachusetts	Senate		Yes
Michigan	House		Yes
Michigan	Senate	Yes	Yes
New Jersey	House		
New Jersey	Senate		
New York	House	Yes	Yes
New York	Senate		Yes
Ohio	House	Yes	
Ohio	Senate		Yes
Pennsylvania	House		Yes
Pennsylvania	Senate		Yes
Wisconsin	House		Yes
Wisconsin	Senate		Yes

Additional research is necessary to compare more fully the extent and nature of debate in the many state legislative chambers. The telephone survey conducted for this report provides only a rough snapshot of each chamber's practices for comparison, and in no way can substitute for a documentary review of the transcripts from each chamber. Still, this survey makes clear that the paucity of debate in New York's Legislature – even on significant legislation – stands in stark contrast with most of the other chambers.

Of course, in most contexts the fact that debate has not occurred in a particular instance does not necessarily indicate that legislators have inadequately considered a bill's merits. In one commentator's view, "[d]ebate is often irrelevant to decision and only infrequently wins over votes. Most people's votes have already been committed."¹⁷⁸ In New York State, however, at no point in the legislative process prior to the floor vote is there any opportunity for members to hear from each other in an open forum about the policy implications of a specific piece of legislation. (The four closed legislative party conferences may offer such discussion, but by definition these meetings do not allow cross-party debate or policy discussion and are not open to the public.) Accordingly, the absence of public debate at this late stage is significant as the final lost opportunity for sustained policy debate to improve a bill.

■ AMENDMENTS

In both the Assembly and the Senate, sponsors amend bills on occasion after they have been reported out of a committee. Although such amendments are customarily announced on the floor of each chamber after they have been made, they are virtually never voted on or debated on the floor. Not a single one of the 308 major bills analyzed from 1997 through 2001 was amended by the full chamber on the floor of either the Senate or the Assembly.¹⁷⁹ Moreover, none of the amendments that were made to those 308 major bills off the floor were debated on the floor of either chamber. *See Fig. 11.*

FIGURE 10

NEW YORK STATE LEGISLATURE ■ DEBATE ON MAJOR LEGISLATION 1997-2001

Year	Total Bills Considered	Total Bills Debated in Assembly	Total Bills Debated in Senate
1997	43	1 (2.3%)	4 (9.3%)
1998	60	4 (6.7%)	4 (6.7%)
1999	72	3 (4.2%)	3 (4.2%)
2000	82	3 (3.7%)	0 (0%)
2001	51	3 (5.9%)	4 (7.8%)
Total	308	14 (4.5%)	15 (4.9%)

■ PASSAGE IN EACH CHAMBER

Several practices and procedures related to the full chambers' votes on legislation preclude most of New York's legislators from actively considering – and, in many cases, from even reading a bill – prior to its passage. First, the “message of necessity” (explained below) allows some of the most important bills to be passed without any opportunities for legislators to debate, challenge, or even read them. Second, the procedure known among critics as “empty seat voting,” whereby legislators are automatically counted as affirmative votes for a bill if they have appeared at the start of the day's proceedings but are no longer in the chamber for the actual vote, helps to ensure that many, if not most, legislators do not actually assent individually to the bills passed. Third, the passage of many bills in the final days of the legislative session precludes rank-and-file members from playing a meaningful role in the negotiation, final drafting, or passage of legislation.

FIGURE 11

NEW YORK STATE LEGISLATURE

■ AMENDMENTS OF MAJOR LEGISLATION AFTER LEAVING COMMITTEE 1997-2001

SENATE

Year	Major Bills Passed by Assembly	Major Bills Amended* (% of Major Bills for Year)	Amendments Announced on Assembly Floor on Date of Amendment(s), with Debate (% of Major Bills Amended)
1997	43	16 (37%)	0 (0%)
1998	60	21 (35%)	0 (0%)
1999	72	24 (33%)	0 (0%)
2000	82	27 (33%)	0 (0%)
2001	51	18 (35%)	0 (0%)
1997-2001	308	106 (34%)	0 (0%)

* 41 bills were amended more than once during the entire five-year period.

ASSEMBLY

Year	Major Bills Passed by Assembly	Major Bills Amended* (% of Major Bills for Year)	Amendments Announced on Assembly Floor on Date of Amendment(s), with Debate (% of Major Bills Amended)
1997	43	4 (9%)	0 (0%)
1998	60	5 (8%)	0 (0%)
1999	72	11 (15%)	0 (0%)
2000	82	15 (18%)	0 (0%)
2001	51	8 (16%)	0 (0%)
1997-2001	308	43 (14%)	0 (0%)

* 20 bills were amended more than once during the entire five-year period.

Finally, analysis of the outcomes of votes in both chambers reveals that no bills that reach the floor for a vote are rejected – a sign of the complete control exercised by the Speaker and Majority Leader over the legislative calendar.

■ ■ MESSAGES OF NECESSITY

The New York State Constitution provides that

No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage¹⁸⁰

Added to the Constitution in 1894 and strengthened in 1938, this provision seeks to ensure that legislators have the opportunity to read and consider a bill adequately before voting on its final passage and the public has an opportunity to review and comment on a bill before it becomes law. The exception to this requirement is embodied in what has come to be known as a “message of necessity,” the document by which the governor certifies “under his or her hand” and explains the need for immediate consideration of a bill.

New York is not unique in requiring bills to be printed in their final form and on legislators’ desks before passage; at least 27 other chambers have similar rules.¹⁸¹ Among professional legislatures, nine chambers besides New York’s (out of 18) have variations of such rules.¹⁸² *See Fig. 12.* In addition, at least 71 other chambers follow New York’s pattern in requiring a certain number of readings on separate days (generally three readings on three different days).¹⁸³ New York’s requirements are unique in placing the power to override these requirements in the hands of the governor, who can write a message of necessity to waive the aging requirement.¹⁸⁴ In practice, however, the Speaker and Majority Leader request messages of necessity from the office of the governor and thus determine which bills are passed using such a message.¹⁸⁵ Sometimes a message of necessity is used in only one of the two chambers to pass a bill.

Far from being reserved for emergencies, the Speaker and Majority Leader use the “message of necessity” frequently to bypass the State’s constitutional aging requirement. From 1997 through 2001, a message of necessity was requested and obtained for at least one chamber’s vote on 26.9% of the major legislation that was passed.¹⁸⁶ *See Fig. 13.*

In addition, the messages of necessity often do not state any particular facts that “necessitate an immediate vote” on the bill and are usually signed by autopen by the counsel’s office rather than “under [the Governor’s] hand” as required specifically by the Constitution.¹⁸⁷ As it is currently used, the message of necessity

allows an immediate vote on legislation without even the legislators themselves, much less the public, having a meaningful chance to review it in final form.

This process facilitates the passage of major legislation without any debate or participation by legislators. For example, the Health Care Workforce Recruitment and Retention Act of 2002 was passed after negotiations between the governor, legislative leaders, and lobbyists, without any debate or hearings. The Insurance and Health Committees in each house never saw or voted on the bill. According to Assemblywoman Sandy Galef (D-Westchester), who sits on the Assembly Health Committee, “the bill was changing from hour to hour . . . not having any sunshine on it . . . It was hard to know what you were voting for.”¹⁸⁸ According to Senator Thomas Duane (D-Manhattan), “maybe a half-dozen legislators and

FIGURE 12

AGING REQUIREMENTS IN PROFESSIONAL LEGISLATURES

State	Body	Aging Requirement
California	House	No bill may be passed until the bill with amendments has been printed and distributed to members.
California	Senate	No bill may be passed until the bill with amendments has been printed and distributed to members.
Illinois	Senate	Bill and all amendments must be printed before final passage.
Illinois	House	Bill and all amendments must be printed before final passage.
Massachusetts	Senate	
Massachusetts	House	
Michigan	House	No bill shall be passed until it has been printed and in possession of House for five days.
Michigan	Senate	No bill shall be passed until it has been printed and in possession of Senate for five days.
New Jersey	Senate	
New Jersey	House	No bill shall be considered unless it has been placed on calendar and distributed six days prior to final action. If “at least 60 members agree that a bill or joint resolution is an emergency measure,” a bill may move immediately to third reading for final passage (but a copy must still be placed on each member’s desk prior to consideration).
New York	Senate	No bill shall be passed unless it has been on members’ desks in final form for three days, except by governor’s message of necessity.
New York	House	No bill shall be passed unless it has been on members’ desks in final form for three days, except by governor’s message of necessity.
Ohio	Senate	
Ohio	House	
Pennsylvania	Senate	All amendments shall be printed before final passage of a bill.
Pennsylvania	House	All amendments shall be printed before final passage of a bill.
Wisconsin	Senate	
Wisconsin	House	

maybe 20 staff people saw it before it arrived on our desk [and] it was like a Bible. It was such a huge bill.”¹⁸⁹ The bill itself was 61 pages long.¹⁹⁰

Historical evidence indicates that the constitutional provision that created the message of necessity has never really functioned as intended. As early as 1895, the *New York Times* criticized the Legislature for allegedly abusing this measure in order to rush a bill through.¹⁹¹ An 1895 report by the Commission to Recommend Changes in Methods of Legislation (appointed by the governor) asserted that existing scheduling restrictions were insufficient and called for further regulations, including a day calendar printed at least one day in advance and limitations on the filing of private and local bills.¹⁹² At the 1915 constitutional convention, delegates proposed to eliminate the governor’s ability to waive the three-day aging requirement with a message of necessity. Finding that from 1895 to 1915, 502 bills were passed using the message of necessity, “and it was doubted whether one real emergency” could be found among them, the delegates concluded that the governors “apparently had used this extraordinary power to promote the convenience of the Legislature, to expedite party measures and to prevent discussion in or out of the Legislature.”¹⁹³ The 1915 constitution proposed by convention delegates was rejected by the voters.¹⁹⁴ Although abolition of the message of necessity provision was proposed again in constitutional amendments in 1916 and 1917, the proposed amendment never made it through the legislative process to a popular vote.¹⁹⁵

Based on these persistent complaints, the 1938 constitutional convention succeeded in revising the provision to require the governor to state not only that it is necessary to vote on the bill more quickly, but also the reasons why.¹⁹⁶ The delegates’ reasons for the change echoed the original aims of the provision: to avoid a last-minute rush of bills and to allow legislators a chance to study bills before voting on them.¹⁹⁷ In practice, a delegate acknowledged, the governor “has a printed form in which he certifies to the necessity for the immediate passage.” Requiring the governor to certify the reasons would not be likely to end the use

FIGURE 13

NEW YORK STATE LEGISLATURE

■ USE OF MESSAGES OF NECESSITY IN PASSAGE OF MAJOR LEGISLATION 1997-2001

Year	Total Bills Passed	Message of Necessity for Assembly Vote Only	Message of Necessity for Senate Vote Only	Message of Necessity for at Least One Chamber’s Vote (% of Total Bills Passed)	Message of Necessity for Both Senate and Assembly Vote (% of Total Bills Passed)
1997	43	0 (0%)	1 (2.3%)	7 (16.3%)	6 (13.9%)
1998	60	1 (1.7%)	2 (3.3%)	19 (31.7%)	16 (26.7%)
1999	72	4 (5.6%)	3 (4.2%)	17 (23.6%)	10 (13.9%)
2000	82	1 (1.2%)	4 (4.9%)	29 (35.4%)	24 (29.7%)
2001	51	0 (0%)	6 (11.8%)	11 (21.6%)	5 (9.8%)
1997-2001	308	6 (1.9%)	16 (5.2%)	83 (26.9%)	61 (19.8%)

of the message even where an emergency does not exist: “We know that probably some bright fellow down there acting as counsel to the Governor will sooner or later formulate a statement of facts” necessitating an immediate vote that the governor could sign by rote.¹⁹⁸

Such predictions were well founded. In the 1970s, members of the Legislature claimed “that governors and legislative leadership have employed the emergency provision to minimize both publicity and legislative debate on controversial and self-serving proposals.”¹⁹⁹ Former State Senator Clinton Dominick reported during this period that the leader “can even hold secret Saturday and Sunday meetings to ‘age’ bills he supports,” so that they quickly pass the three-day rule and can be voted on.²⁰⁰ Abuse of the message of necessity was briefly raised as a target for legislative reform in 1973, but was not ultimately addressed.²⁰¹ In short, without amendments to the Legislature’s rules, the message of necessity will continue to allow legislation to be passed without debate, or even review, by legislators or the public.

■ VOTING PROCEDURES

In most legislative chambers, some form of roll-call vote is required for final passage of legislation.²⁰² In a slow roll-call vote, each legislator’s name is called and each must vote “aye” or “nay,” and these votes are recorded in the chamber’s journal.²⁰³ Both the Senate and the Assembly in New York use a “fast roll call” as the default procedure, in which the members’ names are not called individually and their votes are counted automatically as affirmative unless they take action to record a negative vote.²⁰⁴ Only upon the request of one member in the Assembly, or five members in the Senate, must a slow roll call be taken on a final vote.²⁰⁵

Both chambers also employ what critics have called “empty seat voting,” in which members who have signed in for the day but are absent from the chamber, as well as members who are present but fail to indicate a negative vote by raising their hand to notify the clerk, are counted as affirmative votes.²⁰⁶ At no time does a legislator have to consider or cast a vote in order to pass legislation. Nor does he or she even need to be present when it happens. This is true despite the New York Constitution’s requirement that no bill shall “be passed or become a law, except by the *assent* of a majority of the members elected to each branch of the legislature.”²⁰⁷ One Assembly member notes that members’ ability to vote “aye” without being present also contributes to the paucity of debate on the floor.²⁰⁸

Although the Assembly does not keep a record of the procedure used to pass each bill, legislative staff and other sources confirm that the fast roll call and empty seat voting are the rule rather than the exception.²⁰⁹ In the Senate, the Annual Journal of the Senate includes a record of which procedure was used for each bill. Out of the 308 major bills passed from 1997 through 2001, the Senate used a slow rather than fast roll call on only two occasions.²¹⁰ On one additional occasion a “party vote” was taken in which votes were automatically tallied based on party affiliation.²¹¹

Few other states rely so heavily upon the fast roll call. Respondents from only 19 of the 94 chambers outside New York surveyed by telephone reported that those chambers *ever* use a fast roll call or equivalent method that would circumvent the recording of each member's vote individually for final passage of bills.²¹² Among professional legislatures, according to the same telephone survey, New York is one of only three states that use a fast roll call.²¹³ See *Fig. 14*. With respect to the other two states, moreover, New Jersey's legislature reportedly uses that procedure fewer than ten times per session, and Pennsylvania's legislature uses it only half the time and never to pass significant legislation. In the U.S. House of Representatives, nearly all votes are recorded by an electronic system that displays each member's vote on a board.²¹⁴ In the U.S. Senate, most votes are resolved by unanimous consent or by voice vote, but a recorded roll call can be demanded by one fifth of those present.²¹⁵

Similarly, respondents from only 18 (of 94) chambers reported that those chambers ever use an empty-seat voting procedure or an equivalent procedure at any time, and at least 12 of those 18 chambers reportedly use such a procedure only rarely.

FIGURE 14

USE OF FAST ROLL CALL IN PROFESSIONAL LEGISLATURES

State	Body	Fast Roll Calls Used	If Yes, How Often?
California	House	No	
California	Senate	No	
Illinois	House	No	
Illinois	Senate	No	
Massachusetts	House	No	
Massachusetts	Senate	No	
Michigan	House	No	
Michigan	Senate	No	
New Jersey	House	Yes	Fewer than 10 times per session
New Jersey	Senate	Yes	Fewer than 10 times per session
New York	House	Yes	Almost always
New York	Senate	Yes	Almost always
Ohio	House	No	
Ohio	Senate	No	
Pennsylvania	House	Yes	One-half of bills voted on (never on significant legislation)
Pennsylvania	Senate	Yes	One-half of bills voted on (never on significant legislation)
Wisconsin	House	No	
Wisconsin	Senate	No	

Moreover, six out of the 18 chambers use a procedure known as “pairing,” by which a member may find a fellow member who intends to vote the opposing position so that their votes will cancel each other out. Once agreed, the pair need not be on the floor for the actual vote. Unlike New York’s empty-seat voting practice, pairing thus requires that each member determine how he or she will vote on a specific bill instead of simply leaving that choice to the leadership. By contrast, the other 76 of 94 chambers (81%) reported that attendance is absolutely required to cast a vote, and members adhere to that policy.

Among the nation’s professional legislatures, New York’s is the only legislature that routinely allows empty seat voting.²¹⁶ *See Fig. 15.* In New Jersey, where empty seat voting does sometimes occur, the respondent reported that it is nevertheless rare, happening fewer than ten times per session.²¹⁷ In Massachusetts, revelations in 2000 that votes had been counted for several absent legislators during a late-night session led to considerable public outcry, forcing Speaker Thomas Finneran publicly to promise full enforcement of House rules against the practice in the future.²¹⁸ In the U.S. Congress, members must be present to vote, although “pairing” is allowed in certain instances.²¹⁹

FIGURE 15

ATTENDANCE FOR FLOOR VOTES IN PROFESSIONAL LEGISLATURES

State	Body	Presence Required by Rules	Presence Required by Custom	Legislators Present for Votes in Practice
California	House		X	X
California	Senate		X	X
New York	House	X		
New York	Senate	X		
Massachusetts	House	X	X	X
Massachusetts	Senate		X	X
Pennsylvania	House	X	X	X
Pennsylvania	Senate	X	X	X
Ohio	House		X	X
Ohio	Senate	X	X	X
Wisconsin	House		X	Almost always
Wisconsin	Senate	X	X	Almost always
New Jersey	House		X	Empty seat voting occurs less than 10 times per session
New Jersey	Senate	X	X	Empty seat voting occurs less than 10 times per session
Michigan	House		X	X
Michigan	Senate		X	X
Illinois	House	X	X	X
Illinois	Senate	X	X	X

Both the fast roll call (also known as the “short” roll call) and empty seat voting have been the rule rather than the exception in Albany for at least a century. An anonymous letter to the editor in the *New York Times* in 1907 decried the “short” roll call and claimed that “nine-tenths of the bills passed at the present session of the New York Legislature are defective and unconstitutional because of this practice.”²²⁰ The State Legislative Voters Association also criticized the same practice because “it is a favorite method for ‘railroading’ questionable measures through the Senate and Assembly.”²²¹ At the 1913 meeting of the American Political Science Association, the political scientist Chester Lloyd Jones condemned “this sort of unanimous consent legislation” as “a wholesale falsification of the journal [which records individual votes for the public] and defeat of constitutional provisions.”²²²

In 1920, the City Club of New York introduced a new element into the long-running debate on roll-call votes when it urged the adoption of “electrical equipment” such as that used already in Iowa and Wisconsin that would enable “the vote of every member to be recorded on every occasion and would bring about the elimination of the so-called ‘short’ roll call.”²²³ Five years later, the Citizens’ Union condemned the “short” roll call, arguing that it led to party-line voting and “contributed to the lowering of the general legislative morale.”²²⁴ However, the voting systems and customs remained unchanged.

In 1946, it was estimated that 97 percent of all roll calls were short, and in 1953, the figures were 95 percent in the Senate and 94 percent in the Assembly.²²⁵ While a slow (or “long”) roll call could “be demanded by any member at the risk of his personal popularity,” in practice this demand was made only for controversial measures whose votes were preceded by debate.²²⁶ The legislature resisted continued calls for an electronic voting device to circumvent the need for “long” roll calls to record the individual members’ votes on all bills.²²⁷ In the late 1940s, journalist Warren Moscow described the voting situation as follows:

Some day a legislative leadership with a sense of humor will push through both houses resolutions calling for the abolition of their own legislative bodies and the speedy execution of the members. If read in the usual mumbling tone by the clerk and voted on in the usual uninquiring manner, the resolution will be adopted unanimously.²²⁸

In 1968, responding to decades of demands by reformers, the Legislature installed electronic voting machines.²²⁹ At the start of the 1971 session, a proposal was made to record “each member’s vote more prominently on the \$200,000 electronic voting machines that are rarely used.”²³⁰ The proposal failed badly: in October 1971, the machines were removed.²³¹ In a 1971 article, the *New York Times* reported that the electronic voting machines were “not used because they would spotlight the practice of voting empty chairs.”²³² In that same year, certain Assembly members proposed that a member’s physical presence should be required in order to have a vote recorded, but the proposal was defeated; “even as the debate on the measures continued, members could be seen leaving the chamber but first signaling the clerk with gladiatorial thumbs up or thumbs down how they wished to be voted on bills in their absence.”²³³

■ END-OF-SESSION PASSAGE

The glut of legislation to be considered at the end of the legislative session is a pervasive problem across the country. “No practice of state legislatures’ workload management has been more thoroughly condemned than the end-of-session logjam of business.”²³⁴ Out of 82 respondents to a 2001 survey by the National Conference of State Legislatures, 58 chambers reported that end-of-session logjams are unavoidable; in 1998, 43 out of 50 state legislatures surveyed experienced frequent logjam.²³⁵

Evidence is not available for this report to determine whether New York State’s Legislature has faced a greater logjam than other chambers in recent years. In 1982, 48% of all laws passed in New York were passed in the last 10% of the session, while the national average was 38%.²³⁶ Although not comparative, more recent statistics demonstrate that New York passes a large proportion of its major legislation at the very end of the session. From 1997 through 2001, approximately one of every four major laws was passed in the last three days of the session or in a special session day after the final day of the regular session.²³⁷ See Fig. 16.

Plainly, the end-of-session logjam in New York acts as one of many practices and procedures that preclude legislators’ significant consideration of final legislation prior to a floor vote. Indeed, this problem may result at least in part from decisions by the legislative leaders and staff to bring bills before the full chamber at the final hour to avoid full review and possible objections by the members or by the public.

■ VOTE OUTCOMES

An examination of all bills voted on in the Senate from 1997 through 2001 and in the Assembly from 1997 through 1999 demonstrates the amount of control

FIGURE 16

NEW YORK STATE LEGISLATURE

■ MAJOR LEGISLATION PASSED IN FINAL THREE DAYS OF LEGISLATIVE SESSIONS OR DURING SPECIAL SESSION AFTER REGULAR SESSION, 1997-2001
(% of Total Major Laws Passed in Same Year)

Year	Senate	Assembly
1997	8 (18.6%)	10 (23.3%)
1998	4 (6.7%)	5 (8.3%)
1999	14 (19.4%)	16 (22.2%)
2000	22 (26.8%)	27 (31.2%)
2001	18 (35.3%)	16 (25.5%)
1997-2001	66 (21.4%)	74 (24%)

that the leaders exert over which bills reach the floor.²³⁸ During these periods the Senate voted on 7,109 bills and the Assembly voted on 4,365 bills. Not a single bill that reached the floor for a vote was rejected in either chamber. In other words, the Speaker and the Majority Leader are able to prevent any bill from reaching the floors of their respective chambers without the certainty of passage and, presumably, without their support. *See Fig. 17.*

When combined with the absence of floor amendments, these statistics show that, in all or nearly all cases, the full chambers do not act except to approve those bills already agreed upon by the Speaker or Majority Leader in their final form.

■ RECONCILING BILLS PASSED BY EACH CHAMBER

Conference committees are widely used in the U.S. Congress and in other state legislatures to reconcile differences between the bills passed by the two houses of a legislature to produce a single law that can be passed by both.²³⁹ In a survey conducted by the National Conference of State Legislatures, only Nebraska (which, as a unicameral legislature, has no need for conference committees) and Delaware reported not having at least the procedural option of using conference committees.²⁴⁰ In July 1999, a request for information as to the actual usage of conference committees was posted to the electronic discussion group of the American Society of Legislative Clerks and Secretaries.²⁴¹ The 25 chambers that responded reported using an average of about 59 conference committees in that year alone. All 25 chambers that responded had used at least one conference committee in 1999.

The results from the professional legislatures that responded are shown in Figure 18.²⁴² *See Fig. 18.*

Although New York's legislative rules include conference committees as a mechanism for resolving differences between versions of bills passed in the Senate and the Assembly, in practice this method has rarely been used since the first decades

FIGURE 17

NEW YORK STATE LEGISLATURE ■ OUTCOMES OF FLOOR VOTES ON ALL LEGISLATION 1997-2001

SENATE

	1997	1998	1999	2000	2001
Bills Approved	1463	1465	1497	1481	1203
Bills Defeated	0	0	0	0	0

ASSEMBLY

	1997	1998	1999	2000	2001
Bills Approved	1104	1640	1621	Not available	Not available
Bills Defeated	0	0	0	Not available	Not available

of the twentieth century. Conference committees were briefly invoked to address individual bills in 1995, 1996, and 1997.²⁴³ In 1999, efforts to use a conference committee to resolve conflicting budget bills broke down amidst fingerpointing and failed to become institutionalized.²⁴⁴ In 2004, the Legislature assembled a conference committee that successfully reached agreement on several reforms to the budget process in Albany.²⁴⁵ Generally, however, to pass a bill into law one chamber must move to substitute the other chamber’s version of the bill for its own, with the leaders of the two chambers working out any differences directly.²⁴⁶

As a result, unlike the many legislatures and the Congress, which use conference committees as a matter of course, New York does not have any established mechanism to prevent complete legislative failure if the Speaker and Majority Leader cannot resolve their differences directly in closed-door negotiations. The result, in too many cases, is simply legislative gridlock, even where the legislation at issue has garnered overwhelming popular and member support. In addition, New York does not obtain the benefits of a conference committee’s crafting, reviewing, and airing for public scrutiny the final version of a bill before it is voted into law.

■ ENACTMENT RATES AND THE INTRODUCTION OF BILLS

New York State legislators introduce an extraordinarily large number of bills each year, few of which are passed or even considered by the full Legislature. From 1997 through 2001, 45,420 bills were introduced in the Assembly, and 31,734 in the Senate. On average during that period, the Assembly and Senate passed only 2.29% and 7.91% of the bills introduced each year, respectively. Only 1.99% of the Assembly bills and 7.12% of the Senate bills introduced each year were signed into law during that period.²⁴⁷ See Fig. 19.

Although the numbers of bills introduced each year has generally risen across the country, more bills are introduced in the New York State Legislature than in any other state. This has been true in every year from 1997 through 2002 and, in all likelihood, before that period as well. In 2002, 16,892 bills were introduced in New York, the highest in the nation, followed by Illinois at 8,717 and Massachusetts at 7,924.²⁴⁸

New York’s rate of enactment – *i.e.*, the percentage of bills introduced that are enacted into law – is one of the lowest in the nation. In 2002, New York’s enactment rate was 4.1%, higher than only two other states (New Jersey and North Carolina, both 2.7%), while the national average was 28%.²⁴⁹ Among professional legislatures, only New Jersey’s enactment rate was lower than New York’s in 2002.²⁵⁰ See Fig. 20. This is true despite the fact that New York State was sixth among states in the sheer number of bills signed into law in 2002 (693 bills).²⁵¹ There is little relation – and none expected by most New York legislators – between the introduction of a bill and its passage.

FIGURE 18

FREQUENCY OF CONFERENCE COMMITTEES CONVENED IN 1999 LEGISLATIVE SESSION IN PROFESSIONAL LEGISLATURES ACCORDING TO RESPONSES TO NCSL QUERY

State	Frequency
California House	20-30 per biennium
Illinois House	42 to date
Ohio Senate	2 to date
Pennsylvania Senate	2 to date
Wisconsin Senate	1 to date

Nor is this pattern a recent phenomenon. The introduction of large numbers of bills, and the high ratio of bills introduced to bills signed into law, has been a feature of New York State's legislative process since at least the beginning of the last century. In 1919, for example, the *New York Times* complained that "the New York State Legislature at its last session broke all records for the number of bills introduced, 4,000," and praised the Governor for limiting the number of bills enacted to 645.²⁵² Still, that ratio of bills introduced to those signed – 16% – compares favorably to recent figures (*e.g.*, 4.1% for 2002). In the 1994-95 session, 32,263 bills were introduced in New York, the highest number in the nation. In the same session, New York's enactment rate was the lowest in the nation at 4.9%, while the national average was 19.8%.²⁵³

The immense annual flood of bills introduced in each chamber reflects that the Speaker and Majority Leader do not impose any limits on this first step in the legislative process. Indeed, as shown already, this is the only step in that process which is not controlled, directly or indirectly, by these leaders. For much of the legislative session, members can and do introduce bills to highlight their policy priorities and fealty to certain institutional, organizational, or constituent interests that seek changes in state law.²⁵⁴ The fact that only a miniscule percentage of these bills will be voted on by either chamber does not deter members from using

FIGURE 19

NEW YORK STATE LEGISLATURE

■ BILLS INTRODUCED, PASSED, AND SIGNED IN NEW YORK STATE 1997-2001

ASSEMBLY

	1997	1998	1999	2000	2001	Total
Introduced	8,230	9,266	8,866	9,943	9,115	45,420
Passed by Both Chambers	192	213	229	186	221	1,041
Signed	174	188	203	150	188	903
% Passed	2.33%	2.30%	2.58%	1.87%	2.42%	2.29%
% Signed	2.11%	2.03%	2.29%	1.51%	2.06%	1.99%

SENATE

	1997	1998	1999	2000	2001	Total
Introduced	5,808	6,833	6,183	7,052	5,858	31,734
Passed by Both Chambers	565	477	503	525	441	2,511
Signed	509	432	455	459	403	2,258
% Passed	9.73%	6.98%	8.14%	7.44%	7.53%	7.91%
% Signed	8.76%	6.32%	7.36%	6.51%	6.88%	7.12%

the sponsorship process to accomplish these political goals.

In fact, claiming credit for the introduction of legislation (without regard to its likelihood of passage) is a critical part of legislators' public relations and campaign strategies. For the most part, members of the public and even outside advocates of specific bills do not perceive the introduction of a bill as an empty gesture, even if, statistically, it almost always is. The substantial political value of simply introducing legislation may explain, at least in part, why most members do not object more vocally to their leaders' control over the full Legislature's true consideration and passage of legislation. This may be the key lesson to be drawn from New York State's high rate of introduction and low rate of enactment.

In addition, although further research is needed to determine the precise impact of this high rate of bills introduced but not passed, these figures suggest that substantial staff and member resources are inefficiently devoted not to the proportionately few bills that may pass the Legislature but to the mountain of bills that will never even reach a committee vote much less final passage into law. As discussed in more detail in a later section, this inefficiency may help to explain the apparent contradiction between New York's high expenditures on the Legislature's operations and staff and the limited role played by most members in the production and negotiation of final legislation.

This inefficient use of resources also undermines the conclusion that New York's Legislature must introduce more bills than other legislatures simply to address the inherently complex and numerous challenges faced by such a large and diverse state. Indeed, one Assembly member noted that the large number of bills introduced often precludes in-depth discussion of important bills by dividing members' attention.²⁵⁵

FIGURE 20

BILLS INTRODUCED AND ENACTED IN THE PROFESSIONAL LEGISLATURES, 2002
(Sorted by Enactment Rate)

State	Bills Introduced	Bills Enacted	Percent Enacted
Michigan	1112	767	69.0%
Ohio	324	167	51.5%
California	5162	2118	41.0%
Illinois	8717	746	8.6%
Wisconsin	497	42	8.5%
Pennsylvania	4356	353	8.1%
Massachusetts	7924	525	6.6%
New York	16892	693	4.1%
New Jersey	5004	134	2.7%

A COMPARATIVE SUMMARY OF NEW YORK'S LEGISLATIVE PROCESS

A comparison with other states' legislatures and with the Congress shows that New York's legislative process limits legislators' consideration of legislation – whether counted in hearings, debate, floor amendments, readings, conference committees, or even simply legislators' presence when they vote – far more than any other legislature. Figure 21 summarizes the comparison of 14 different legislative practices across all 50 states and Congress drawn from the analyses already discussed in earlier sections.

As the chart illustrates, New York's Legislature ranks worst or is tied for worst in 11 out of the 14 practices analyzed. With respect to the three remaining practices, moreover, New York State is nearly the worst. Only New Jersey and North Carolina had a lower legislative enactment rate (2.7%) than New York's (4.1%) in 2002. Only five chambers besides New York's Senate allow proxy voting in any committees. New York's two chambers are two of only 32 chambers in which the legislative leadership or party caucuses play any role in committee staffing decisions.

It is also important to note that, as a result of insufficient data for other states, this chart does not include any comparison of the frequency of floor amendments to legislation. As already documented, New York's Legislature did not amend a single piece of major legislation from 1997 through 2001 on the floor. If the chart were to include this comparison, therefore, New York's Legislature would, in all likelihood, rank worst or tied for worst. Similarly, a comparison of the frequency with which conference committees are used to reconcile two chambers' versions of legislation would doubtless show that New York uses such committees less than most, if not all, legislatures.

In sum, neither the Congress nor any other state legislature so systematically limits the roles played by rank-and-file legislators and members of the public in legislative deliberations, development, negotiations, and passage. The significant impact of New York's peculiar legislative process on New Yorkers will be explored in the next section.

FIGURE 21

A COMPARATIVE SUMMARY OF LEGISLATIVE PRACTICES

State	Body	Legislative Enactment Rate (2002)	Can the Body Vote to Override Committee Referral?	Committee Assignments Per Member	Are Committees Required to Hold Hearings on a Bill?	Does Leadership or Political Party Caucus Control Committee Staffing?	Is Proxy Voting Allowed in Committee?	Number of Restrictions on Discharge Motions	Is Rules Committee Exempt from Meeting Notice Requirement?	Is Debate Limited by Time?	Is Debate Limited by Frequency?	How Often Does Debate Occur on Significant Legislation?	Can Leader Remove Bill from Legislative Calendar Indefinitely Without Possibility of Override by Members?	Do Fast Roll Calls Occur on Final Passage of Bills?	Is Empty Seat Voting Common?
Alabama	H	20.90%	Yes	3-4	No	Yes	No	1	Yes	Yes	Yes	Always	No	No	No
Alabama	S	20.90%	Yes	6	No	Yes	No	1	No	Yes	Yes	Always	No	No	No
Alaska	H	35.80%	Yes	1-2	No	Yes	No	0	Yes	No	No	Almost always	No	No	No
Alaska	S	35.80%	Yes	2-3	No	Yes	No	0	Yes	No	No	Almost always	No	No	No
Arizona	H	29.10%	No	4	No	Yes	No	1	Yes	Yes	Yes	75%	No	No*	No
Arizona	S	29.10%	No	4	No	Yes	No	3	No	No	No	75%	No	No*	No
Arkansas	H	n/a	Yes	2	No	No	No	0	No	Yes	Yes	Almost always	No	No	Yes
Arkansas	S	n/a	Yes	2	No	No	No	1	No	Yes	Yes	Almost always	No	Yes*	Yes
California	H	41.00%	Yes	3-4	No	No	No	0	No	Yes	Yes	n/a	No	No*	No
California	S	41.00%	No	4-5	No	No	No	0	No	No	Yes	n/a	No	No*	No
Colorado	H	55.30%	No	2-3	No	No	No	n/a	No	Yes	Yes	Almost always	No	No	No
Colorado	S	55.30%	No	3	No	No	No	n/a	No	No	No	Almost always	No	No	No
Connecticut	H	n/a	Yes	2-3	Yes	No	No	1	No	No	Yes	Almost always	No	No	No
Connecticut	S	n/a	Yes	3-4	Yes	No	No	1	No	No	Yes	Almost always	No	No*	No
Delaware	H	37.30%	No	3-4	Yes	No	No	1	No	No	No	n/a	No	Yes*	No
Delaware	S	37.30%	n/a	n/a	No	No	No	n/a	No	No	No	n/a	No	Yes	No
Florida	H	17.30%	Yes	4-6	No	No	No	0	Yes	Yes	Yes	Always	No	No*	No
Florida	S	17.30%	Yes	3	No	No	No	2	Yes	Yes	No	Always	No	No*	No
Georgia	H	30.30%	Yes	3	No	No	No	1	No	Yes	Yes	Almost always	No	No	No
Georgia	S	30.30%	n/a	n/a	No	No	No	2	No	Yes	Yes	Almost always	No	No*	No
Hawaii	H	11.70%	No	5	No	Yes	No	1	No	Yes	Yes	67%	No	No	No
Hawaii	S	11.70%	No	3-4	No	Yes	No	1	No	No	Yes	Almost always	No	Yes*	No
Idaho	H	61.40%	No	2	No	No	No	1	No	Yes	Yes	67%	No	No	No
Idaho	S	61.40%	Yes	2-3	No	No	No	2	No	No	Yes	67%	No	No*	No
Illinois	H	8.60%	No	4	No	Yes	No	2	Yes	Yes	Yes	Almost always	No	No*	No
Illinois	S	8.60%	No	3	No	Yes	No	1	Yes	Yes	Yes	Almost always	No	No	No
Indiana	H	19.70%	No	3-4	No	No	Yes	n/a	Yes	No	Yes	Almost always	No	Yes	No
Indiana	S	19.70%	Yes	3	No	No	No	n/a	Yes	Yes	Yes	Almost always	No	Yes	No
Iowa	H	18.30%	Yes	4	No	Yes	No	1	No	Yes	Yes	75%	No	No	No
Iowa	S	18.30%	No	5	No	Yes	No	1	No	Yes	Yes	Almost always	No	No	No
Kansas	H	28.00%	No	3	No	No	No	3	No	No	Yes	Almost always	No	No	No
Kansas	S	28.00%	No	4	No	No	No	2	No	No	No	Almost always	No	Yes	No
Kentucky	H	26.90%	Yes	3	No	No	No	2	No	Yes	Yes	Almost always	No	No	No
Kentucky	S	26.90%	Yes	3	No	No	No	1	No	Yes	Yes	Always	No	No*	No
Louisiana	H	23.20%	Yes	3	Yes	Yes	No	0	No	Yes	Yes	n/a	No	n/a*	n/a
Louisiana	S	23.20%	Yes	3-4	Yes	Yes	No	0	No	No	Yes	n/a	No	n/a	n/a
Maine	H	85.10%	Yes	1	No	No	No	2	No	No	Yes	67%	No	Yes	No
Maine	S	85.10%	Yes	1-2	No	No	No	2	No	No	No	67%	No	No	No
Maryland	H	24.90%	Yes	1	n/a	No	n/a	n/a	n/a	n/a	n/a	Almost always	n/a	No*	No
Maryland	S	24.90%	No	1	n/a	No	n/a	n/a	n/a	n/a	n/a	Almost always	n/a	No*	No
Massachusetts	H	6.60%	n/a	n/a	Yes	No	No	2	No	Yes	Yes	67%	No	No	No
Massachusetts	S	6.60%	n/a	n/a	Yes	No	No	3	No	No	Yes	67%	No	No	No
Michigan	H	69.00%	No	3	No	Yes	No	1	No	No	Yes	n/a	No	No	No
Michigan	S	69.00%	No	2	No	Yes	No	0	No	Yes	Yes	n/a	No	No*	No
Minnesota	H	8.10%	Yes	4	No	Yes	No	0	No	No	Yes	Almost always	No	No*	No
Minnesota	S	8.10%	No	3	No	No	No	1	No	Yes	Yes	Almost always	No	No*	No
Mississippi	H	17.10%	Yes	3	No	No	No	1	No	Yes	Yes	10%	No	No	No
Mississippi	S	17.10%	n/a	n/a	No	No	No	1	No	Yes	Yes	Almost always	No	n/a	n/a
Missouri	H	11.60%	No	3-5	Yes	No	No	2	No	Yes	Yes	Always	No	No*	No
Missouri	S	11.60%	Yes	n/a	No	No	No	0	No	No	Yes	Always	No	No*	No
Montana	H	n/a	Yes	2	No	No	Yes	0	No	Yes	Yes	67%	No	No*	No

A COMPARATIVE SUMMARY OF LEGISLATIVE PRACTICES (continued)

State	Body	Legislative Enactment Rate (2002)	Can the Body Vote to Override Committee Referral?	Committee Assignments Per Member	Are Committees Required to Hold Hearings on a Bill?	Does Leadership or Political Party Caucus Control Committee Staffing?	Is Proxy Voting Allowed in Committee?	Number of Restrictions on Discharge Motions	Is Rules Committee Exempt from Meeting Notice Requirement?	Is Debate Limited by Time?	Is Debate Limited by Frequency?	How Often Does Debate Occur on Significant Legislation?	Can Leader Remove Bill from Legislative Calendar Indefinitely Without Possibility of Override by Members?	Do Fast Roll Calls Occur on Final Passage of Bills?	Is Empty Seat Voting Common?
Montana	S	n/a	Yes	3	No	No	Yes	n/a	No	No	No	67%	No	No*	No
Nebraska	U	27.10%	Yes	2-3	Yes	No	No	1	No	No	Yes	67%	No	No*	No
Nevada	H	n/a	No	n/a	No	No	No	n/a	No	No	Yes	67%	No	No*	No
Nevada	S	n/a	Yes	3	No	No	No	2	No	No	Yes	67%	No	No	No
New Hampshire	H	36.50%	Yes	1	No	Yes	No	n/a	No	No	Yes	Almost always	No	No	No
New Hampshire	S	36.50%	Yes	5-6	Yes	Yes	No	n/a	No	No	Yes	Almost always	No	No	No
New Jersey	H	2.70%	No	2	No	No	No	4	No	No	No	Almost always	No	Yes	No
New Jersey	S	2.70%	Yes	2-3	No	No	No	3	No	No	No	Almost always	No	Yes	No
New Mexico	H	14.20%	Yes	2	No	No	No	n/a	Yes	No	Yes	Always	No	No	No
New Mexico	S	14.20%	Yes	2	No	No	No	n/a	Yes	No	Yes	Always	No	Yes*	No
New York	A	4.10%	No	3-4	No	Yes	No	5	Yes	Yes	Yes	4.5%	No	Yes	Yes
New York	S	4.10%	No	8	No	Yes	Yes	6	Yes	No	Yes	4.9%	Yes	Yes	Yes
North Carolina	H	2.70%	No	5	No	No	No	2	No	Yes	Yes	67%	No	No*	No
North Carolina	S	2.70%	n/a	n/a	No	No	No	4	No	Yes	Yes	Almost always	No	No	No
North Dakota	H	n/a	Yes	2	No	No	No	0	No	Yes	Yes	n/a	No	No	No
North Dakota	S	n/a	Yes	2	No	No	No	0	No	Yes	Yes	n/a	No	No	No
Ohio	H	51.50%	No	3	Yes	No	No	3	No	Yes	No	Always	No	No	No
Ohio	S	51.50%	Yes	4	No	No	No	2	No	No	Yes	75%	No	No	No
Oklahoma	H	27.40%	Yes	4	n/a	Yes	n/a	n/a	No	n/a	n/a	Almost always	n/a	No	No
Oklahoma	S	27.40%	No	3	n/a	Yes	n/a	n/a	No	n/a	n/a	Almost always	n/a	No	No
Oregon	H	n/a	No	2-3	No	No	No	0	No	Yes	Yes	Almost always	No	No	No
Oregon	S	n/a	No	2-3	No	No	No	1	No	Yes	Yes	Almost always	No	No	No
Pennsylvania	H	8.10%	No	3	No	Yes	No	4	No	No	Yes	75%	No	Yes	No
Pennsylvania	S	8.10%	No	5	No	Yes	Yes	2	No	No	Yes	75%	No	Yes	No
Rhode Island	H	18.70%	n/a	2	No	Yes	No	3	No	Yes	Yes	Always	No	No*	No
Rhode Island	S	18.70%	Yes	n/a	No	Yes	No	2	No	No	Yes	Always	No	No*	No
South Carolina	H	32.10%	Yes	1	No	Yes	No	n/a	Yes	No	Yes	n/a	No	Yes	No
South Carolina	S	32.10%	n/a	n/a	No	No	No	1	Yes	No	Yes	n/a	No	Yes	No
South Dakota	H	49.20%	Yes	2	No	No	No	0	No	Yes	Yes	Always	No	No*	No
South Dakota	S	49.20%	Yes	2	No	No	No	0	No	Yes	Yes	Always	No	No*	No
Tennessee	H	35.20%	Yes	2	No	No	No	2	No	Yes	No	25%	No	No*	No
Tennessee	S	35.20%	Yes	2-3	No	No	No	3	No	Yes	Yes	33%	No	No*	No
Texas	H	n/a	Yes	2	No	No	No	n/a	No	Yes	Yes	Almost always	No	No*	No
Texas	S	n/a	Yes	n/a	Yes	No	No	n/a	No	No	Yes	Almost always	No	Yes*	No
U.S.	H	3.80%	Yes	1-4	No	n/a	Yes	n/a	n/a	Yes	Yes	n/a	No	No	No
U.S.	S	3.80%	Yes	3-5	No	n/a	Yes	n/a	n/a	No	No	n/a	No	Yes	No
Utah	H	60.70%	No	2	No	No	No	1	No	Yes	Yes	Always	No	No*	No
Utah	S	60.70%	Yes	2	No	No	No	n/a	No	No	Yes	Always	No	No*	No
Vermont	H	22.10%	Yes	n/a	No	No	No	n/a	No	No	Yes	Always	No	No	No
Vermont	S	22.10%	Yes	2	No	No	No	n/a	No	No	Yes	Always	No	No	No
Virginia	H	43.40%	Yes	3	No	No	No	0	No	No	Yes	33%	No	No*	No
Virginia	S	43.40%	No	3-4	No	No	Yes	0	No	No	Yes	Almost always	No	No*	No
Washington	H	27.10%	Yes	3	No	Yes	No	n/a	No	Yes	Yes	Almost always	No	Yes*	No
Washington	S	27.10%	Yes	3	No	Yes	No	0	No	No	Yes	Almost always	No	Yes*	No
West Virginia	H	16.00%	Yes	3	No	Yes	No	2	No	No	Yes	Almost always	No	No	No
West Virginia	S	16.00%	Yes	5	No	Yes	No	0	No	No	Yes	Almost always	No	No	No
Wisconsin	H	8.50%	Yes	5	No	No	No	2	No	No	Yes	67%	No	No	No
Wisconsin	S	8.50%	Yes	2-4	No	No	No	1	No	No	Yes	67%	No	No	No
Wyoming	H	n/a	Yes	1-2	No	No	No	0	No	No	Yes	Almost always	No	No*	No
Wyoming	S	n/a	Yes	2	No	No	No	0	No	No	Yes	Almost always	No	No*	No

H=House. S=Senate. U=Unicameral

* These chambers use a consent calendar for certain bills. See note 212.

THE IMPACT OF NEW YORK'S DYSFUNCTIONAL LEGISLATIVE PROCESS

The foregoing analysis suggests that the current legislative process in Albany inflicts five direct injuries, and one indirect yet significant injury, upon the people of New York State:

- **Failed Representation.** The current system prevents legislators from fully and faithfully representing the people of New York. Most legislators are effectively shut out of the legislative process, particularly at the most significant stage, when the leadership determines which bills should be passed and in what form. As a result, New Yorkers' voices are not fully heard, and bills are not tested to ensure that they reflect the public's views. Legislators who wish to obtain the full chamber's consideration of bills confront insurmountable barriers – reporting bills out of committee, discharging bills to the floor, or keeping them on the chamber's calendar – and significant bills have either died in committee forever, or been delayed unnecessarily year after year. *See infra* at 43–46.
- **Ineffective Government Without Deliberativeness.** The current system severely undermines the effectiveness of the Legislature in addressing the state's problems through legislation. A moribund committee system robs New Yorkers of the ongoing benefits of having multiple sources of innovative policy development and expertise and a mechanism to gather evidence, debate solutions, and draft legislation that reflects such efforts. The absence of debate and amendments by rank-and-file members prior to a final floor vote has allowed unnecessarily flawed bills to be passed into law. In certain cases, such laws have been detrimental to the public interest and, at the very least, worthy of greater debate and analysis prior to a final vote. Voting procedures and abuse of the message of necessity allow bills to be passed without being reviewed by legislators. Finally, the current reconciliation process produces unnecessary gridlock and precludes, once again, open debate over the proper form of final legislation. Together, these shortcomings deprive New Yorkers of legislation that accurately reflects a public consensus and embodies the policy benefits of full deliberation, debate, and amendments. *See infra* at 46–49.
- **Inaccessible Government.** Members of the public – like their legislators – have no opportunities to comment upon or review legislation prior to its passage. Even those voters who wish to obtain information about the role of their representatives in the legislative process are stymied by a system that improperly obscures such information. For example, it is impossible for voters to determine, even from the written records kept of Senate committee meetings, whether their Senator physically attended a committee's vote or instead voted by proxy through the chairperson. Similarly, in the Assembly voters cannot know whether their Assemblyperson actually voted for a bill or

whether their vote was instead “cast” automatically through the “empty seat” voting procedure. In both houses, the legislative party conferences – arguably the only locus of group discussion between members – remain entirely closed to public scrutiny. In short, the current system is inaccessible to the people who elect their representatives and who deserve to be able to hold those representatives accountable. *See infra* at 49–50.

- **Absence of Public Accountability.** Under the current system, voters cannot hold their elected representatives accountable for the Legislature’s work for two reasons. First, most rank-and-file legislators are shut out of the legislative process and play minimal roles in developing and passing legislation. Second, publicly available information about the Legislature’s actual practices and procedures, and the role of individual legislators, is scant. Indeed, legislators cannot make clear to their constituents the extremely limited roles they are allowed to play in Albany without undermining their own political interests in touting their legislative achievements. As a result of this vicious cycle, voters rarely receive sufficient information to hold the legislators in their districts properly accountable on Election Day for the current legislative process. *See infra* at 50–51.
- **Inefficiency.** Although a centralized system might be expected to increase efficiency, the New York State Legislature features profound inefficiencies, including unnecessary delays in considering significant legislation, a massive number of bills introduced that absorb significant staff resources combined with an extremely low rate of enactment, and a system of resolving differences between chambers that depends, unsuccessfully, upon the capacity of two individual leaders to reach agreement rather than upon conference committees with policy expertise and public accountability. *See infra* at 51–52.
- **Courts without Guidance.** Finally, the absence of any committee reports, hearings, or other true legislative history places courts at a disadvantage in interpreting and enforcing New York’s complex laws. *See infra* at 52.

Together, these ongoing injuries have hurt New Yorkers and, in turn, undermined the stature of their Legislature and its efficacy.

■ **FAILED REPRESENTATION**

The current system deprives voters of legislative representation that is faithful to their interests in two significant respects. First, legislation that enjoys the support of a majority of legislators and voters often never reaches the floor for a vote, or is needlessly delayed for years. Second, most legislators are essentially shut out of the key stages of the legislative process and therefore cannot adequately express or represent their constituents’ interests.

■ ■ LEGISLATION DELAYED OR NOT PASSED

Interest groups in every state can point to legislation they support that has failed to become law. Such complaints cannot be the test of a solid legislative process, however, unless the legislation in question also has the support of a majority of legislators in both chambers but has nevertheless failed to pass. In that latter circumstance, the legislature has failed to function properly to allow the people's elected representatives to address their concerns.

In New York State, the current system has prevented numerous bills from being considered and approved by the full Senate and Assembly despite such majority support. The following examples are drawn from published reports and represent only a few of the most notable cases:

- **Increase in the Minimum Wage.** On March 1, 2004, the Assembly passed a bill (A.09710) to raise the state's minimum wage. In the Senate, a clear majority of senators have indicated their support for similar legislation (S.3291C) introduced by then-Senator Velella, the chairman of the Senate's Labor Committee, and thirteen other Republican senators. Despite majority support for such an increase, however, the Senate Majority Leader has prevented the bill from reaching the Senate floor for a vote.²⁵⁶ Because of the Majority Leader's control over the legislative calendar, as well as the stringent limitations on discharge motions, the voters' elected representatives cannot bring the bill to a vote.
- **Mental Health Insurance Parity.** "Timothy's Law" (S.5329/A.8301) would require health insurers in New York State to cover treatment for mental illness and substance abuse. Named for a 12-year-old boy who committed suicide, and whose insurance did not cover the psychological treatment that might have helped prevent his death, the bill has received widespread public support. A coalition advocating for the bill has over 30 member organizations, including hospitals, mental health agencies, and health care, teacher, and school employee unions. Significantly, the bill has passed the Assembly and has at least 33 majority co-sponsors in the Senate (out of a total of 61 Senators). Despite this majority support, the bill has languished for several years in committees. Most recently, in 2003, movement on the bill halted when the Senate Rules Committee did not release the bill to the floor for a vote.²⁵⁷
- **Partial Repeal of the Wicks Law.** For many years, school districts and local governments have sought reform of a 91-year-old provision of New York State Law known as the "Wicks law." The law requires school districts and local governments to hire separate contractors for heating, plumbing, and electrical duties on any construction project that costs over \$50,000. Although the law was originally passed to curb corruption in the construction industry, requiring multiple contractors allegedly often causes the projects to

become more cumbersome, ultimately resulting in delays in public construction projects, including schools and mental health facilities. The law reportedly increases the costs of public construction, driving up taxes and creating a strain on local governments. Advocates of the law's repeal have asserted that state and local governments could save up to \$400 million annually by avoiding this mandate.

S.1607 (Spano)/A.3176 (Sanders) would address this problem by eliminating the multiple contractor requirement. Instead, it would let local school boards choose between hiring multiple contractors or hiring a single contractor to oversee subcontractors – allowing local governments and school districts the freedom to choose whichever approach is most efficient in their particular circumstances. The legislation has majority support in both houses, and the bill would reportedly pass each house easily if floor votes were allowed. However, the legislation has never made it out of committee. In 2003, the Assembly's Local Governments Committee reported the bill favorably and referred it to the Ways and Means Committee where it languished. In the Senate, it was referred to the Local Government Committee, where it never even received a vote. Although it is clear that opposition to the bill exists, the widespread support for reform suggests that these concerns should be heard on the floor as part of a full and open debate rather than blocked quietly in committee.²⁵⁸

- **Sexual Orientation Non-Discrimination Act (“SONDA”).** SONDA amended the state's human rights laws to forbid discrimination based on sexual orientation in employment, public accommodations, housing, education, and credit. Introduced in 1971, SONDA passed by ever-increasing margins in the Assembly every year from 1993 through 2002, and received support from a majority of senators long before its passage. Every year, however, the bill died in committee. SONDA did not reach the Senate floor for a vote until 2002, when it passed by a significant margin. The Senate Majority Leader reportedly decided to allow the full Senate to consider and vote on it only when Governor Pataki sought the endorsement of a leading gay rights organization in New York State, and needed to deliver SONDA to obtain that endorsement. Although SONDA ultimately passed both chambers and became law, the barriers to obtaining the full Senate's consideration despite majority support among its members unnecessarily delayed its passage for several years.²⁵⁹

These and other examples point to the need to remove barriers to moving bills from committees to the floor for a vote. The legislative leadership's control over committee staff, and in turn, over committee chairs has helped to prevent bills from being reported to the floor without the Speaker's or Majority Leader's support. Similarly, the uniquely heavy restrictions on motions to discharge bills to the floor prevent members outside of the committee from bringing bills to the full chamber. Finally, the leaders' control over the legislative calendars prevents even bills that have made it out of committee from being considered by the full chamber unless the Speaker or Majority Leader approves. Together, these barriers

must be reformed if the people of New York are to obtain the legislative representation they deserve.

■ ■ LEGISLATORS UNABLE TO LEGISLATE

This report documents a remarkably consistent and unique pattern of barriers to most legislators' involvement in the legislative process in Albany. With the exception of introducing bills, every step in that process is marked by a lack of input, debate, and deliberation devoted to crafting legislative solutions to New York's problems. In this way, legislators are prevented from fulfilling their chief function, namely representing the people in producing and passing legislation. The voters are deprived of the representativeness that modern legislatures must, and in most cases do, provide.

■ INEFFECTIVE GOVERNMENT WITHOUT DELIBERATIVENESS

The current legislative process also deprives New Yorkers of an effective Legislature that produces laws of the highest quality that reflect a public consensus. Both chambers lack the committee infrastructure that could serve as an engine for and refinery of innovative policy solutions – a necessity in a state facing numerous and complex challenges. The legislative process features several specific procedures that preclude the review of legislation that is necessary to improve bills, to ensure that they embody public consensus, and to prevent errors. By placing the sole burden of negotiating and finalizing legislation upon two legislative leaders rather than on an institutional mechanism such as conference committees, the current process also ensures that the final product, if there is one, does not have the benefit of either open debate or the policy expertise of all of the legislators. The result of these barriers to deliberativeness is not simply gridlock, but also legislation that is at times substantively flawed.

■ ■ COMMITTEES: AN UNTAPPED RESOURCE

In Congress and in many state legislatures, standing committees act as semi-independent incubators for policy and legislation. The committee chairpersons are allowed and even encouraged to develop legislation independently, to fertilize and refine bills through committee hearings and mark-up sessions, and ultimately to improve final bills through reconciliation with other committees and other chambers. Along the way, legislators and committee staff openly debate the wisdom and pitfalls of different approaches to policy problems, and then choose an approach in final legislation that reflects such a consensus. After companion bills pass each chamber, moreover, a conference committee further debates these issues and marks up the bills to produce a single compromise that better reflects the consensus of the two chambers.

In New York State, however, the most significant policy development and legisla-

tive drafting is confined to “Central Staff” directed ultimately by the legislative leaders. The substantive negotiations, drafting, amendments, and resolution of different approaches occur behind closed doors among the Speaker, Majority Leader, and Governor and their staff. Because conference committees are rarely used to resolve disputes, if the two chambers do not pass identical bills agreed to by these leaders, the legislation dies. In other words, the committee system in New York fails to provide any independent laboratories for policy development with any realistic hope of producing the final legislation that becomes law. Nor does New York’s committee system provide a forum for members to debate and deliberate to ensure that favorably reported bills embody the best policy solutions to meet the public’s interests. For these reasons, New Yorkers are deprived of a significant value of legislative process, namely better legislation to address society’s complex problems.

■ INADEQUATE REVIEW OF LEGISLATION

The lack of debate, deliberation, and review of legislation prior to a final floor vote has produced laws that include troubling errors or, in certain cases, laws that would not have been passed if they had received public or legislative scrutiny. These errors range from unnecessary grammatical and syntactical errors that may impair enforcement and judicial interpretation of such laws to massive financial expenditures that arguably do not benefit the people of New York. Although it is impossible to prove what would have happened with a different legislative process, the following examples suggest that more substantial committee involvement, significant debate and mark-ups, and compliance with the aging requirement rather than resort to messages of necessity could have led to a sounder outcome:

- **Union Health Care Worker Package.** The Health Care Workforce Recruitment and Retention Act of 2002 was passed after negotiations among the Governor, Speaker, and Majority Leader, without any debate or hearings. The Insurance and Health Committees in each house never saw or voted on the bill. The final bill was passed using a message of necessity, in the middle of the night, without any chance for the legislators to review it. According to Senator Thomas Duane (D-Manhattan), “maybe a half-dozen legislators and maybe 20 staff people saw it before it arrived on our desk [and] it was like a Bible. It was such a huge bill.” It was widely reported that Governor Pataki negotiated the bill, which provided \$1.8 billion in raises for health care workers in SEIU Local 1199, in exchange for the political endorsement of Dennis Rivera, the president of Local 1199, in the 2002 gubernatorial race. In a year when the New York State budget featured a \$5 billion deficit, critics asserted that this law represented a fiscally irresponsible result of pure politics and personal lobbying. While Governor Pataki received the union’s endorsement, Local 1199 and the hospital association with which it is affiliated contributed \$281,200 to Assembly Speaker Sheldon Silver’s legislative campaign committee and \$230,350 to Senate Majority Leader Joseph Bruno’s Senate

campaign committee shortly after the law was passed. The current system facilitated the law's passage without any review, debate, or public discussion of either its merits or its shortcomings.²⁶⁰

- **Brownfields Legislation.** Environmentalists and urban renewal advocates have long fought for legislation to cleanup “brownfields,” abandoned industrial properties that have been environmentally contaminated. Such properties cannot attract development because of concern over liability for cleanup and potential injuries, and often lead to urban blight and decay as a result. Legislation to provide incentives and standards to clean up over 800 abandoned industrial sites across the state was stalled for over a decade in the Legislature, and was referred to as “one of the most blatant examples of Albany dysfunction.”²⁶¹ Despite widespread support for legislation, the New York State Legislature could not reconcile persistent policy differences between the Senate and Assembly because there was no conference committee system in place to do so.²⁶² In June 2003, the Speaker, Majority Leader, and Governor negotiated a bill behind closed doors that was agreeable to all three. The Assembly finally passed the bill without debate and through the use of a message of necessity that deprived members of any opportunity to review its complex provisions. The Senate, however, actually passed the wrong version of the bill as a result of such haste, and the session ended without a law. Three months later, the Senate convened for a special one-day session and passed the correct bill by a vote of 51-9. In short, the current system not only deprived New Yorkers of a much-needed law to improve the flagging economy and clean up dangerous sites, but also facilitated passage of the wrong bill without any senators or staff noticing the error. 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.²⁶³
- **Rent Control.** After rent control was extended and modified in a law passed and signed in 1997, tenants' rights groups discovered an error in its language which caused the law to conflict with the stated agreement reached between the Governor and the two legislative leaders and to injure tenants significantly. Ironically, the provision had been drafted by Speaker Silver's staff during closed-door negotiations with the Majority Leader and the Governor. But because the legislative process in Albany precluded any of the tenants' advocates – or any rank-and-file legislators for that matter – from seeing the actual legislation before it was passed, the error was not caught until it was too late.²⁶⁴
- **Repeal of the New York City Commuter Tax.** In May of 1999, the Speaker used a message of necessity to rush through the Assembly a bill to repeal New York City's commuter tax on suburban residents who commute into the City. Published reports suggested that the Speaker did so, even though he represented Lower Manhattan, in an (ultimately unsuccessful) attempt to help a Democratic State Senate candidate in Rockland County, who was locked in

a close race and nevertheless lost a month later.²⁶⁵ According to some estimates, the repeal has cost the City approximately \$210 million each year in revenues.²⁶⁶ It is possible that the repeal would have occurred even if it had been subject to committee hearings, debate on the floor, public discussion, and review by legislators. But such a significant legislative change surely should have been subject to greater scrutiny and discussion of policy implications prior to its passage.

While such high-profile examples garner media attention that exposes errors – albeit after the laws are already on the books – it is reasonable to assume that the scores of laws that do not garner such attention when they are signed into law have as many, if not more, errors.

These examples demonstrate the need for reform to establish a process that allows and encourages scrutiny of legislation before it is passed. Specifically:

- A committee system that includes hearings to gather facts and specifically debate legislative solutions, meetings with significant policy debates and amendments to legislative language, and reports to document and consider the committee's work on a bill.
- Debate and amendment rules that facilitate and require legislators to read, consider, debate, and amend bills prior to a floor vote.
- Voting procedures that require legislators to be present to hear debate and to vote.
- Limits on the use of messages of necessity to ensure that legislators and members of the public have an opportunity to read and review legislation before votes are counted.
- Conference committees to reconcile the two chambers' bills and to catch errors before a final bill is approved.

If implemented together, these reforms will greatly increase the scrutiny legislation must pass before it becomes law – to the benefit of all New Yorkers.

■ INACCESSIBLE GOVERNMENT

In New York State, members of the public have few opportunities to comment upon or review legislation prior to its passage. As we have seen, committees generally do not hold public hearings on legislation. Nor do they hold open (or closed) sessions to mark up bills. There is no meaningful debate of any kind on the floor of either the Senate or the Assembly on bills prior to their passage. Finally, because the Speaker and Majority Leader control the final shape of legislation as well as the legislative calendar, members of the public have

extremely limited access to lobby meaningfully for legislation. Without an opportunity to convince the two leaders themselves, lobbying even other members of the Legislature is often inadequate to produce legislative action.

Members of the public also have limited access to information about the role of their representatives in the legislative process. As demonstrated from the research conducted for this report, for example, it is impossible for voters to determine, even from the written records kept of Senate committee meetings, whether their Senator physically attended a committee's vote or instead voted by proxy through the chairperson. Similarly, in the Assembly voters cannot know whether their Assemblyperson actually voted for a bill or whether their vote was "cast" automatically through the "empty seat" voting procedure. In both houses, the legislative party conferences – arguably the only locus of group discussion between members – remain entirely closed to public scrutiny and produce no publicly available records.

All of these barriers to public access obscure from public view not only specific actions of legislators but also, and perhaps most importantly, the systemic shortcomings addressed in this report. As a result, the voters do not possess the information necessary to hold their elected representatives accountable, either for specific legislative outcomes or for the inadequate legislative process itself. Without a better understanding of the current legislative process, voters cannot advocate for systemic rules reforms that would improve the Legislature's ability to represent voters' interests.

■ THE ABSENCE OF ACCOUNTABILITY

The current legislative process in Albany prevents voters from holding their elected representatives accountable both for their actions with respect to specific legislation and for the shortcomings of the legislative process itself. This deficit has two related sources.

First, most rank-and-file legislators are shut out of the legislative process and play an extremely limited role in developing and passing final legislation. They cannot hold committee hearings or produce committee reports on bills. They cannot control whether a bill reaches the floor for a vote. They cannot debate or amend a bill on the floor without contravening established practice and implicitly challenging party leaders. They play no role in reconciling bills from the two chambers because conference committees are virtually never used. In short, with few exceptions members of the Senate and Assembly are elected to legislate but cannot do so in any meaningful sense of the word. For this reason, voters cannot honestly hold their representatives accountable for the specific acts of the Legislature over which most legislators have little control.

In turn, legislators occupy the unenviable position of either objecting to the legislative process and alienating the leaders of their own party or short-changing

the people of New York State by acquiescing in the passage of legislation which they have neither developed, debated, amended, or in some cases, even read. Legislators cannot make clear to their constituents the extremely limited roles they are allowed to play in Albany without undermining their own political interests in touting their legislative achievements. These incentives preclude the type of honest dialogue with voters that could lead to systemic reforms. As a result, most voters do not obtain sufficiently accurate information about either their own representative's actions or the legislative process to hold the legislators in their districts properly accountable for either on Election Day. The current system thus deprives the voters of the public accountability promised by a popularly elected legislature.

■ INEFFICIENCY

At least one student of Albany's legislative process has suggested that New York's centralized legislative process efficiently handles legislation by organizing legislators' diverse interests and placing responsibility for a bill's passage in fewer hands.²⁶⁷ If such efficient results could be demonstrated – which they have not been to date – such evidence could conceivably outweigh the negative impact of the current process on the quality of legislation and its lack of public accessibility and accountability.

From the data analyzed in this report, however, it appears that Albany's current system is profoundly inefficient in any event. First, New York's system encourages legislators to introduce more bills than in any other state legislature. When combined with the Legislature's extremely low rate of enactment, this suggests a misallocation of resources – from both staff and legislators themselves – to developing, drafting, and advocating for legislation that will never even reach the floor much less become law.

Second, examples of bills that have enjoyed majority support but nevertheless failed to reach a floor vote argue that New York's current process is ineffective in identifying and prioritizing those bills that should receive the full attention and resources of a chamber. Many legislatures and Congress rely upon the momentum and support for a bill developed by a committee's work and public advocacy by its supporters to demonstrate that it deserves to reach the floor and absorb extensive staff and legislators' time and energies. By contrast, New York's Legislature must rely upon two individuals – the Speaker and the Majority Leader – to determine whether a bill should receive their individual attention to negotiate a final version with the governor and with each other and whether the full chamber should vote on it. Placing such a burden to develop, negotiate, and effectively pass all major legislation on two individuals inevitably, and through no fault of their own, produces unnecessary delays and inefficient allocations of resources.

This inefficient use of resources may help to explain why New York's Legislature

spends more than most, if not all, state legislatures on its staff and operations. In 2001, for example, New York appropriated more funds for its legislature's operations than all but two other states in the country.²⁶⁸ Not surprisingly, at least as recently as 1996, New York's Legislature had "by far the largest payroll, with 3,899 staffers," of any state legislature in the country.²⁶⁹ Far from enhancing efficiency, therefore, the current legislative process distorts the allocation of precious public resources and causes unnecessary and costly delays.

In addition, New York's legislature also features an inefficient use of resources in another respect. In essence, the legislative process is at once both too fast and too slow. As we have seen, that process speeds bills through the legislature far too quickly to allow adequate deliberation and consideration to occur. Yet because of the numerous barriers to obtaining the full chamber's consideration of legislation the Legislature cannot consider and address critical public policy problems in timely fashion. As a result, New Yorkers suffer needlessly from inefficient and inadequate legislative representation.

■ COURTS WITHOUT GUIDANCE

Federal and state courts routinely turn to legislative history for guidance in understanding the intentions of Congress and state legislatures in passing a law and the factual bases for such legislation. Transcripts of floor debates, committee reports, and testimony at public hearings on a specific bill often become critical to a court's understanding and faithful enforcement of a law.

Without any of these materials being produced in New York State, courts have that much less guidance to ensure that they interpret New York's laws faithfully and accurately. Ironically, the wording of the laws themselves – despite having been passed into law without careful review or correction by legislators – becomes all that is available to courts. The result is that New Yorkers are subject to potential injustices in their courts as judges attempt to interpret laws with limited assistance from the people's representatives.

RECOMMENDATIONS FOR REFORM

The reforms proposed here seek to make the New York State Legislature more faithful in its representation, more deliberative and effective in its exercise of legislative powers, more accessible and accountable to the voters, and more efficient in its legislative work.

Significantly, the proposed reforms require only changes to each chamber's rules, rather than legislation. For this reason, these reforms need not become the victim of the very legislative dysfunction they seek to repair. Each chamber may enact them separately, and the Governor need not be involved. Rules changes need not pass through a committee and thus will not be left to languish there. Most importantly, each chamber must vote to revise or maintain its existing rules every two years. For all these reasons, if reforms to the rules are not approved, it will only be because a majority of the members of a chamber expressly rejects them. The next regularly scheduled opportunity to approve such rules reforms will be in January of 2005, though a chamber could adopt such changes at any time before then.

The proposed reforms to the rules of the Assembly and Senate are as follows:

■■■ BILL INTRODUCTION

- Each member shall be limited to introducing 20 bills in the Assembly and 30 bills in the Senate in each session.²⁷⁰

■■■ COMMITTEES

- All standing committees shall meet on a bi-weekly basis throughout the legislative session without exception. Attendance at such meetings shall be mandatory, except that members may be excused upon good cause and the specific reasons therefor shall be recorded and maintained as a public record. All meetings of standing committees shall be recorded by a stenographer or by other means and transcripts of said meetings shall be available as public records.
- Proxy voting shall be prohibited in all committees. A certification that no such voting has been used in committee votes in the legislative session shall be executed under oath by each committee chair at the close of each legislative session.
- No member shall be assigned to more than three committees during a legislative session.
- All bills reported to the legislative floor must be accompanied by a public committee report that contains, at a minimum, purposes of the bill, change

in previous law, section-by-section analysis, procedural history, committee or subcommittee votes, and any members' views of the bill.

- Each committee shall be authorized to hire and fire its own professional staff. Adequate funding for professional staff, facilities and equipment shall be provided to each committee, and shall be allocated on a strictly proportional majority-minority split.
- If one fourth or more of the members of a committee petition for a public hearing on a bill, such hearing shall take place unless the petition is rejected by a majority vote of the committee. Such hearing shall address the proposed bill and its specific provisions, in addition to the general topic or problem to which it is devoted.
- If one fourth or more of the members of a committee petition for a public oversight hearing to receive testimony concerning the performance of an administrative agency over which the committee has statutory oversight responsibility and jurisdiction, such hearing shall take place unless the petition is rejected by a majority vote of the committee. In any event, committees with jurisdiction over an administrative agency shall hold at least one public hearing per year to hear testimony and gather evidence in order to review the performance of the agency.

■■■ REPORTING BILLS TO THE FLOOR BY COMMITTEE

- All bills must be considered and reported by a standing committee with jurisdiction over the bill's subject matter prior to being reported to the full chamber. For the purposes of this rule, the Rules Committee shall not be considered to have such jurisdiction over the bill.
- If three or more members of a committee petition for a vote on a bill, the chair shall schedule such vote as soon as practicable in the current legislative session and in any event no later than ten days before the end of the session.

■■■ DISCHARGING BILLS TO THE FLOOR BY MEMBERS

- Any elected member of the chamber may make a motion to discharge a bill from the committee to which it was referred, and the sponsor's agreement is not required.
- Bills must be discharged from a committee and placed on the calendar upon motion approved by a majority of the elected members of the chamber. Such vote shall be taken by slow roll call and the votes of each member recorded as a public record.

- Motions to discharge a bill may be made at any time after 20 days has passed since the bill was referred to the committee in question and until five days before the end of the legislative session.
- Debate on a motion to discharge shall not be limited in duration, except that such debate may be closed by a majority vote of the elected members of the chamber.
- There shall be no limit on the number of motions to discharge within a legislative session.

■■■ CONSIDERATION BY THE FULL CHAMBER

- Every bill that is voted out of committee shall be placed on the calendar in the order in which the bill was reported out of the committee and must be considered and voted upon by the full chamber within 60 days of being placed on the calendar, or prior to adjournment, whichever comes first.
- Debate on a bill shall not be limited to less than five hours and shall be so limited only by majority vote of the elected members of the chamber.

■■■ VOTING PROCEDURES

- A vote shall not be recorded for any member who is not physically present in the chamber at the time of the vote and personally indicates whether s/he wishes to vote “aye” or “nay.” Such votes shall be recorded either by slow roll call, or by electronic means triggered by the member’s individual selection. Members’ attendance and personally indicated vote shall be recorded as a public record.

■■■ MESSAGES OF NECESSITY

- No messages of necessity shall be requested of or approved by the Governor unless (a) at least two thirds of the elected members of the chamber in question have voted to request such message and (b) the Governor has personally reviewed and signed such message as intended by the Constitution.

■■■ CONFERENCE COMMITTEES

- When bills addressing the same subject have been passed by both chambers, a conference committee shall be convened at the request of the prime sponsor from each chamber or the Speaker and Majority Leader. Such conference committee shall include members from each chamber appointed by the Speaker and Majority Leader who shall represent in number the majority and minority in each chamber in proportional fashion. Such committee shall convene for a “mark up” session within two weeks of such a

request to reconcile the differences in the two chambers' bills before final passage. These sessions shall be open to the public and shall be transcribed.

■■■ LEGISLATIVE PARTY CONFERENCES

- When considering bills, legislative party conferences shall be convened and remain in open session unless closed with respect to a specific bill by a vote of four fifths of the elected members of the conference.

■■■ MEMBER FUNDING

- All members shall receive equal funding for the operating costs and staff of their individual offices, regardless of the member's party affiliation or seniority.

ENDNOTES

¹ See, e.g., *Albany's Addiction to Delay*, N.Y. TIMES, July 12, 1996, at B6; *Community Focus 2004: Challenging Albany*, DEMOCRAT & CHRONICLE (Rochester), Jan. 1, 2004, at 14A; *In Yet Another Late Budget, Albany's Disorder Goes On*, BUFFALO NEWS, Apr. 4, 1995, at B2; *Our Dysfunctional Government: Albany's Failure to Pass an On-Time Budget Is an Abdication of Responsibility*, BUFFALO NEWS, Mar. 31, 2003, at B6.

² See, e.g., *A Broken Legislature*, N.Y. TIMES, June 25, 2003, at A24; *A Broken System: Health-Care Bill Inequities Are a Product of Albany's Corrupt Process*, THE POST-STANDARD, Mar. 19, 2002, at A10; *Albany Needs Sunshine*, N.Y. DAILY NEWS, Jan. 8, 2001, at 36; *Albany-TV*, N.Y. DAILY NEWS, Dec. 11, 2000, at 38; *Don't Give Up On Fixing Albany Even Without a Constitutional Convention. . . .*, BUFFALO NEWS, Nov. 5, 1997, at B2; *The New York Process: How Not to Get Heard at a Legislative Hearing*, N.Y. TIMES, Feb. 7, 2003, at A24.

³ See, e.g., *EZ Voting in Albany*, N.Y. TIMES, Apr. 14, 2003, at A18; *Shadows at Albany*, N.Y. TIMES, Apr. 7, 1973, at 32.

⁴ See, e.g., *Albany, Capital of Inertia*, N.Y. DAILY NEWS, Oct. 26, 2002, at 24; *The Gang That Couldn't Legislate*, NEWSDAY (Melville, N.Y.), June 28, 1992, at 23; *It Wasn't Much of a Session in Gridlocked, Messy Albany*, BUFFALO NEWS, July 10, 1993, at C2; *Legislative Games*, TIMES UNION (Albany), June 19, 2001, at A6; *Looking for Mr. Fix-it: Reforming Albany Should Be No. 1 Issue in Governor's Race*, NEWSDAY (Melville, N.Y.), Sept. 15, 2002, at A25; *Outrageous Albany*, NEWSDAY (Melville, N.Y.), June 23, 2003, at A18; *Paralyzed, Again, in Albany*, N.Y. TIMES, Mar. 29, 1997, at A18.

⁵ See, e.g., *How to Hide Money in Albany*, N.Y. TIMES, Apr. 2, 2003, at A20; *Legislature Expense Report: \$180 Million Is Not a Bargain*, SYRACUSE HERALD-JOURNAL, Feb. 23, 1998, at A6.

⁶ See, e.g., *A Troubling Pattern*, DEMOCRAT & CHRONICLE (Rochester), Aug. 30, 2002, at 18A; *Fair Districts for New York State*, N.Y. TIMES, Apr. 12, 2002, at A24; *Map Fair Course for New York*, N.Y. DAILY NEWS, Jan. 2, 2001, at 26; *New York's Permanent Legislature*, N.Y. TIMES, Jan. 6, 2003, at A20; *Party Favors*, NEWSDAY (Melville, N.Y.), Dec. 8, 2002, at A25.

⁷ See, e.g., *A Broken System: Albany Rulers Cheerfully Ignore Repeated Calls for Reform*, POST-STANDARD (Syracuse), Jan. 8, 2003, at A10; *Albany's Back Rooms*, N.Y. TIMES, Apr. 20, 2000, at A28; *Fixing the Two-Man Legislature*, N.Y. TIMES, June 18, 1997, at A22; *Legislating on the Run*, TIMES UNION (Albany), Sept. 21, 2003, at D4; *Unsavory Albany*, NEWSDAY (Melville, N.Y.), June 17, 2003, at A24.

⁸ See, e.g., GERALD BENJAMIN, REFORM IN NEW YORK: THE BUDGET, THE LEGISLATURE, AND THE GOVERNANCE PROCESS (Background Paper Prepared for Citizen Budget Commission Conference on Fixing New York State's Fiscal Practices, Nov. 13-14, 2003), <http://cbcny.org/benjamin.pdf>; Eric Lane, *Albany's Travesty of Democracy*, CITY JOURNAL, Spring 1997, http://www.city-journal.org/html/7_2_albanys_travesty.html; Kenneth Silber, *New York's Nightmare Legislature*, CITY JOURNAL, Spring 1995, http://www.city-journal.org/html/5_2_new_yorks.html. For valuable overviews of the current legislative process, see ROBERT B. WARD, NEW YORK STATE GOVERNMENT: WHAT IT DOES, HOW IT WORKS 79-116 (2002); GOVERNING NEW YORK STATE (Jeffrey M. Stonecash ed., 2001).

⁹ In the words of one legislative director for an Assemblyman:

Generally, the major issue [] that we hear is that the Legislature is controlled by three men in a room (the Governor, the Speaker of the Assembly, and the Majority Leader of the Senate). This is for the most part correct. Many Assembly members do no[t] feel that they can make an impact until they have seniority, and even then, the Speaker and his staff retain control of most of the process.

E-mail Correspondence from B, Legislative Director for N.Y. State Assembly Member C (2003). Senator Liz Krueger has been the most vocal advocate for reform in recent years. See, e.g., SEN. LIZ KRUEGER, WAKING UP THE STATE SENATE: 34 PROPOSALS FOR REINVIGORATING DEMOCRACY

IN ALBANY THROUGH RULES REFORM (Oct. 2002) (on file with the Brennan Center).

¹⁰ Every year, the editors of *McKinney's Session Law News of New York* identify and publish a list of those laws enacted in the prior year and determined to be "major legislation." For the purposes of this study, we have analyzed the "major legislation" passed from 1997 through 2001. See MCKINNEY'S SESSION LAW NEWS OF NEW YORK (1997-2001). For a list of these laws, see Appendix A [hereinafter MAJOR LEGISLATION ANALYSIS 1997-2001]. Although 310 laws were identified by McKinney's, two of those laws (S70001 and S70002) were not listed in the Legislative Digest for the years in question. Accordingly, we did not include those two laws in our analysis of major legislation.

¹¹ To obtain information concerning committees' handling of each of the "major" laws passed from 1997 through 2001, we examined committee voting records from the Assembly Public Information Office and the Senate Journal Clerk's Office for all of the committees through which these bills passed. Those records reflect both attendance at those meetings at which the bills were voted out of committee and the vote tallies for each bill. Because the Senate permits proxy voting in committee, however, those records do not reflect actual attendance at any meeting. In addition, neither the Public Information Office nor the Journal Clerk's Office nor the committees themselves maintain any publicly available minutes of committee meetings. As a result, it is impossible without testimonial evidence to determine whether or how the committee addressed a specific bill during a committee meeting unless a vote on the bill occurred at that meeting. Similarly, records of committee hearings and reports, to the extent these are available, are not maintained in a central location. To supplement the committee voting records, therefore, where possible we interviewed both the legislative analysts from each of the relevant committees and staff members for the laws' sponsors to determine whether public hearings had been held and whether committee reports had been issued on the bills in question [hereinafter MAJOR LEGISLATION COMMITTEE ANALYSIS].

¹² Information on debate was collected from the floor transcripts for the day of each bill's passage, maintained by the Senate Microfilm/Microfiche Office and the Assembly Office of Public Information. The transcripts for the days on which each of the bills deemed "major legislation" by McKinney's from 1997 through 2001 were reviewed. Information on the message of necessity for the same bills was collected from the Legislative Bill Drafting Commission, STATE OF NEW YORK LEGISLATIVE DIGEST (1997-2001).

¹³ To complete this analysis, we examined the voting records of the Committee on Economic Development for the years 1997-2001 obtained from the Assembly Public Information Office. [hereinafter COMMITTEE ON ECONOMIC DEVELOPMENT ANALYSIS].

¹⁴ This historical survey covered specific legislative procedures and practices from 1777 to the present, but focused on the period since 1900. Sources included proceedings of the constitutional conventions, contemporary press accounts, contemporary studies of the New York State legislature and commission reports, secondary historical works on New York history, and political science literature on legislative procedure.

¹⁵ Using the most recent versions of state legislative rules available on-line, we analyzed their treatment of specific steps in the legislative process, including limitations on debate, discharge of bills from committee, committee hearings, voting, and Rules Committees. [hereinafter RULES ANALYSIS].

¹⁶ Interviews were conducted by telephone with the offices listed in Appendix B. A copy of the questionnaire is also included therein. Through this survey, we obtained complete information concerning 94 of the 97 state legislative chambers outside New York. [hereinafter NATIONAL TELEPHONE SURVEY].

¹⁷ Professional legislatures (California, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin) are defined through an index of legislative professionalism presented in SARAH MCCALLY MOREHOUSE & MALCOLM E. JEWELL, STATE POLITICS, PARTIES, AND POLICY 212-13 (2d ed. 2003). The use of this cohort as a benchmark against which to assess

the New York State Legislature was suggested to us by Gerald Benjamin, *Reform in New York: The Budget, the Legislature, and the Governance Process* (Background Document Prepared for a Citizens Budget Commission Conference, “Fixing New York State’s Fiscal Practices, Nov. 13-14, 2003), at <http://cbcny.org/>. See also Keith F. Hamm & Gary F. Moncreif, *Legislative Politics in the States*, in *POLITICS IN THE AMERICAN STATES* 157-58 (Virginia Gray & Russell L. Hanson eds., 8th ed. 2003).

¹⁸ See, e.g., ABNER J. MIKVA & ERIC LANE, *LEGISLATIVE PROCESS* 369-71, 595-97, 677 (2d ed. 2002) (summarizing relevant definitions of representativeness, deliberativeness, and accessibility). We have added the criteria of accountability and efficiency to this analysis.

¹⁹ The concept of representativeness embodies two potentially conflicting roles for legislators: to serve as their constituents’ agent to represent their views and interests, and to represent their constituents’ interests by acting and voting in the public interest as the legislators’ expertise and conscience dictate. Although this report focuses more consistently on the former aspect of representation, the authors do not seek to argue that one form of representation is more significant than the other. As this report demonstrates, the current legislative process in Albany facilitates neither aspect of representation because most legislators play such limited roles in that process.

²⁰ *Id.* at 678.

²¹ See generally ASS’N OF THE BAR OF THE CITY OF NEW YORK, *THE NEW YORK STATE BUDGET PROCESS AND THE CONSTITUTION: DEFINING AND PROTECTING THE “DELICATE BALANCE” OF POWER* (2003), <http://www.abcny.org/pdf/report/Budget%20Report%209-11.pdf>.

²² Each chamber approves its rules every two years when it convenes for the first time after the Assembly and Senate elections of the previous year. Accordingly, the next scheduled opportunity for such rules changes is January of 2005.

²³ MAJOR LEGISLATION ANALYSIS 1997-2001, *supra* note 10. Bill introduction and passage dates were obtained from LEGISLATIVE BILL DRAFTING COMM’N, STATE OF NEW YORK LEGISLATIVE DIGEST (1997-2001).

²⁴ The report addresses the introduction of bills and overall enactment rates after the other steps in the legislative process. See *infra* at 36-38.

²⁵ MIKVA & LANE, *supra* note 18, at 207.

²⁶ As two students of state legislatures explain:

In American state legislatures the achievement of an efficient committee system is of concern because of the enormous demand for legislative action. . . . Within the American constitutional context, the committee system appears to be the only way to process the large volume of legislation and yet encourage expertise and specialization.

Wayne L. Francis & James W. Riddlesperger, *U.S. State Legislative Committees: Structure, Procedural Efficiency, and Party Control*, 4 LEGIS. STUD. Q. 453, 453 (1982).

²⁷ See *infra* at 7-9.

²⁸ See *infra* at 11.

²⁹ See *infra* at 9-10.

³⁰ See *infra* at 18-20.

³¹ Keith E. Hamm & Ronand D. Hedlund, *Committees in State Legislatures*, in *ENCYCLOPEDIA OF THE AMERICAN LEGISLATIVE SYSTEM* 692 (Joel J. Silbey et al. eds., 1994). The authors conclude, from an 18-state legislator survey that did not include New York, “that committees are seen as an important mechanism for changing proposed legislation; they generally report out bills with a positive recommendation; and the chamber generally accepts committee recommendations.” *Id.* at 695.

³² N.Y. ASSEMB. R. IV, § 1(b); N.Y. SEN. R. VI, § 1.

³³ Hamm & Hedlund, *Committees in State Legislatures*, *supra* note 31, at 690; AM. SOC'Y OF LEGISLATIVE CLERKS AND SECRETARIES & NAT'L CONFERENCE OF STATE LEGISLATURES, *INSIDE THE LEGISLATIVE PROCESS* 3-18 to 3-29 tbls.96-3.5 & 96-3.8 (2001) [hereinafter NCSL, *INSIDE THE LEGISLATIVE PROCESS*]. For information on Congressional procedure, see CHARLES TIEFER, *CONGRESSIONAL PRACTICE AND PROCEDURE: A REFERENCE, RESEARCH, AND LEGISLATIVE GUIDE* 110-14 (1989). In Congress, while the Presiding Officer officially refers bills, the Parliamentarian's office bears much of the real responsibility for suggesting referrals. Each chamber may overrule the referral decision, but "motions or appeals of this kind virtually never occur in the House and are rare in the Senate." *Id.* at 114.

³⁴ MIKVA & LANE, *supra* note 18, at 215. This report does not include an analysis of committee oversight activities in New York State. Every indication suggests, however, that the dearth of committee hearings on legislation is mirrored by a dearth of regular committee oversight hearings. The failure to hold such oversight hearings deprives New Yorkers of a critical check on the activities of the executive branch which could improve its performance and avoid abuses of authority. Accordingly, we have addressed this legislative failure in the reforms proposed in this report.

³⁵ RULES ANALYSIS, *supra* note 15. The relevant rules are: ALA. H. R. 74; CAL. H. R. 56.1; CONN. JOINT R. 6(a); DEL. H. R. V, § 34(a); GA. SEN. R. 187(h); ILL. H. R. 26(a); LA. H. R. 6.9(A); LA. SEN. R. 10.11; MASS. JOINT R. 1B; MINN. H. R. VI, § 22; MO. H. R. 27; NEB. UNICAMERAL R. 3, § 13; N.H. SEN. R. 24; N.J. SEN. R. 12:3(a); N.C. H. R. V, § 29.1(a); N.C. SEN. R. VIII, § 74; OHIO H. R. 36; R.I. H. R. 26(d); R.I. SEN. R. 5.6; TEX. SEN. R. 11.18(a); VT. H. R. 28; VT. SEN. R. 28; W. VA. H. R. 79. Tommy Neal reports that an additional two senates and one house generally hear all bills, without any explicit requirement. TOMMY NEAL, *LAWMAKING AND THE LEGISLATIVE PROCESS: COMMITTEES, CONNECTIONS, AND COMPROMISES* 100-01 tbl.7.1 (1996).

³⁶ TIEFER, *supra* note 33, at 149.

³⁷ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11. We were able to obtain information concerning hearings for 152 of the 308 major laws from the Senate sponsors' offices. For the remaining laws, the sponsors either could not be identified or did not have any information concerning the law in question.

³⁸ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11. A public hearing was held specifically to address S2862 of 1999. Telephone Interview with Amy Schnauber, Committee Clerk. According to McKinney's, the bill "amend[ed] the education law to require colleges and universities to implement plans for missing student reports and the investigation of violent felonies occurring on campuses." MCKINNEY'S SESSION LAW NEWS OF NEW YORK (1999), *supra* note 10, at IV. Majority Leader Joseph Bruno sponsored the bill, and his office issued a report covering the legislation.

³⁹ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11. Hearings were held concerning the general topics covered by bills S1663 (prohibition of "ultimate fighting"), Telephone Interview with Sara Benson, Legislative Director for N.Y. State Assembly Member Stephen Kaufman, (May 2003); S8181 (Cigarette Fire Safety Act), Telephone Interview with Kevin Webb, Legislative Director for N.Y. State Senator Padavan (May 28, 2003); S7838 (Teachers of Tomorrow Recruitment and Retention Program), *id.*; S8234 (gun control), *id.*; S1031 (prevention of child abuse in schools), Telephone Interview with Maryann, Legislative Aide to N.Y. State Senator Saland, (May 29, 2003); S6137 (MTBE and oil), Telephone Interview with Deborah Peck-Kelleher, Environmental Conservation Committee Aide to N.Y. State Senator Marcellino (Nov. 5, 2003); S8233 (pesticide notification), *id.*, and S6146 (Clinic Access and Anti-Stalking Act), Telephone Interview with Legislative Director for N.Y. State Senator Rath (June 2, 2003). In none of these cases was the bill itself the subject of testimony or debate.

⁴⁰ *Quoted in* Joyce Purnick, *A Monopoly of 3 in Albany*, N.Y. TIMES, June 27, 2002, at B1 (emphasis added).

⁴¹ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11. We were able to obtain information concerning hearings for 202 of the 308 major laws from the Assembly sponsors' offices. For the remaining laws, the sponsors either could not be identified or, when contacted, did not have any information concerning the law in question.

⁴² A public hearing was held in 2000 to consider A10817-B (statewide no-call registry for telemarketing calls). Telephone Interview with Todd Gold, Legislative Analyst, Consumer Affairs & Protection Committee (May 2003); *see also* MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

⁴³ In the following cases the relevant Assembly committees held hearings on the general topic addressed by the bill: A5203 (increased penalties for firearms crimes), Telephone Interview with Veronica Ebhuoma, Legislative Analyst, Codes Committee (2003); A10096 (prohibited Con Ed from recovering costs of Indian Point 2 nuclear facility outage), Telephone Interviews with Legislative Director Tom Lynch and Legislative Analyst Graham Ennis (May 2003); A10239 (amended environmental conservation law by requiring study of the striped bass fishery in the Hudson River), Telephone Interview with Alex Roth, Legislative Analyst, Environmental Conservation Committee (May 2003); A4511B (alleviated unintended effects of earlier legal restrictions on genetic testing and research), Telephone Interview with Legislative Analyst Cheryl Couser (May 19, 2003); A8408B (expanded allowable damage awards to include counseling for families of crime victims), Telephone Interview with Cheryl Couser, Legislative Analyst, Governmental Operations Committee (May 19, 2003); A8346 (extending and modifying rent regulations), Telephone Interview with Jonathan Harkavy, Chief of Staff to N.Y. State Assembly Member Vito Lopez (May 20, 2003); A1624 (amended environmental conservation law by eliminating requirement that hazardous substances be released "to the environment" to constitute an endangerment to public health and safety), Telephone Interview with Chris Duryea, Chief of Staff to N.Y. State Assembly Member Richard Brodsky (May 2003); A8116 (Telemarketing and Consumer Fraud and Abuse Prevention Act), Telephone Interview with Isobel Duffy, Chief of Staff to N.Y. State Assembly Member Barbara Clark (May 2003). Significantly, the hearing on increasing penalties for crimes relating to firearms occurred in 1991 – eight years before the bill in question (A5203) was even referred to committee. MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

⁴⁴ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

⁴⁵ N.Y. SEN. R. VII, § 3(b) provides:

(1) Minutes shall be taken at all open meetings of committees which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

(2) Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary shall not include any matter which is not required to be made public by "the freedom of information law" as added by Article six of the Public Officers Law.

(3) Minutes of meetings of all committees shall be available to the public in accordance with the provisions of Article six of the Public Officers Law, "the freedom of information law;" and at such time and place as prescribed by the Temporary President, provided, however, that minutes for executive session meetings shall be available to the public within one week from the date of such executive session.

⁴⁶ Telephone Interview with Kate Balassie, Law Librarian, New York State Legislative Library, Feb. 17, 2004; *see also* MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

⁴⁷ Telephone Interview with Cathy Bockis, N.Y. State Assembly Public Information Office (Feb. 17, 2004); MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

⁴⁸ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

⁴⁹ E-Mail Correspondence from N.Y. State Sen. D (Nov. 17, 2003) (on file with the Brennan Center).

⁵⁰ For example, in the Spring 2003 legislative session that lasted from January through June, the Senate's published schedule listed 600 meetings. That total represents 17 standing committees meeting once every week and 16 standing committees meeting every other week over the course of the 24-week session. In the Assembly, 888 committee meetings were listed on the published schedule, which represents 37 standing committees meeting once every week.

⁵¹ E-Mail Correspondence from N.Y. State Sen. D (Nov. 17, 2003) (on file with the Brennan Center).

⁵² Jeffrey Schmalz, *In Land of 'Oz,' A State Senator Breaks the Rules*, N.Y. TIMES, Jan. 11, 1988, at B1.

⁵³ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

⁵⁴ Telephone Interview with N.Y. State Assembly Member A (Dec. 15, 2003).

⁵⁵ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

⁵⁶ In New York, notation of proxy votes in a committee is left to the discretion of the committee clerk and the computer program that records committee votes does not provide any way to indicate proxy votes. Interview with Sheillagh Dare, N.Y. State Senate Journal Clerk's Office (May 29 & June 9-13, 2003).

⁵⁷ E-mail Correspondence from N.Y. State Sen. D (Oct. 21, 2003) (on file with the Brennan Center).

⁵⁸ E-mail Correspondence from N.Y. State Sen. D (Nov. 17, 2003) (on file with the Brennan Center).

⁵⁹ E-mail Correspondence from B, Legislative Director for N.Y. Assembly Member C (Oct. 10, 2003) (on file with the Brennan Center); Telephone Interview with N.Y. State Assembly Member A (Dec. 15, 2003).

⁶⁰ N.Y. SEN. R. VII, § 1(5).

⁶¹ RULES ANALYSIS, *supra* note 15. The five chambers outside New York that expressly allow proxy voting in committee are the Indiana House, the Montana House and Senate, the Pennsylvania Senate, and the Virginia Senate. The relevant rules are as follows [hereinafter RULES ANALYSIS PROXY RULES]: ARK. H. R. 64; CAL. ASSEMB. R. 58.5; COLO. H. R. 25(j)(1)(H)(2); COLO. SEN. R. 22(c); CONN. JT. R. 5(e); FLA. H. R. 7.17; FLA. SEN. R. 2.27(4); GA. SEN. R. 187(m); IND. H. R. 63 & 63.5; IND. SEN. R. 60(c); IOWA SEN. R. 40; KAN. H. R. 1307 & 2504; KAN. SEN. R. 10; KY. H. R. 49 & 69; KY. SEN. R. 49 & 67; LA. SEN. R. 13.89; ME. JOINT R. 310(5); MICH. H. R. 36(3)(b); MONT. H. R. H30-50(15)(f); MONT. SEN. R. S30-70(13)(f); NEV. ASSEMB. R. 42(7); NEV. SEN. R. 53(7); N.H. H. R. 102; N.J. H. R. 10:13; N.M. H. R. 9-5-2; N.Y. ASSEMB. R. IV, § 2(d); N.Y. SEN. R. VII, § 5; N.C. SEN. R. 27; OHIO H. R. 40; OHIO SEN. R. 24; OR. H. R. 8.25; PA. H. R. 45; PA. SEN. R. XVII, § 1; S.C. H. R. 4.14; S.D. H. R. H5-9; TENN. SEN. R. 83(10); TEX. SEN. R. 11.15; UTAH H. R. HR-24.26; UTAH SEN. R. SR-24.26; VA. H. R. 18(c); VA. SEN. R. 20(e); WASH. H. R. 24(D)(5); WASH. SEN. R. 22(7); WIS. ASSEMB. R. 11(4). An earlier survey of 79 chambers conducted by the National Conference of State Legislatures found that eight chambers allowed proxy voting in committee. BRENDA ERICKSON, NAT'L COUNCIL OF STATE LEGISLATURES, REMOTE VOTING IN LEGISLATURES 4 (n.d.) (on file with the Brennan Center). Twenty chambers (including the New York State Senate) were not covered by that survey.

⁶² RULES ANALYSIS PROXY RULES, *supra* note 61.

⁶³ TIEFER, *supra* note 33, at 179.

⁶⁴ *See, e.g.*, Cal. Dep't of Health Servs. v. Superior Court, 79 P3d 556, 563 (Cal. 2003) (relying upon conference committee report to determine legislative intent); Tappin v. Homecomings

Fin. Network, Inc., 830 A.2d 711, 724 (Conn. 2003) (relying upon committee report); *Beaulieu v. The Aube Corp.*, 796 A.2d 683, 688-89 (Me. 2002) (same); *Price v. State*, 835 A.2d 1221, 1229 (Md. 2003) (same); *In re P.A.F.*, 822 A.2d 572, 575 (N.J. 2003) (same); *Columbus Park Hous. Corp. v. City of Kenosha*, 671 N.W.2d 633, 644 (Wis. 2003) (same); *State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 69 P.3d 1087, 1093 (Kan. 2003) (relying upon committee hearings and meeting minutes); *Guthery v. Taylor*, 112 S.W.3d 715, 723 (Tex. App. 2003) (relying upon committee bill analysis). Significantly, a preliminary search of Westlaw suggests that New York State's courts cite legislative history for state laws much less frequently than courts in other states.

⁶⁵ U.S. SEN. R. XVII, § 5; *Senate Legislative Process*, http://www.senate.gov/legislative/common/briefing/Senate_legislative_process.htm; U.S. H.R. VIII §§ 2-6; Judy Schneider, *House Committee Organization and Process: A Brief Overview*, in CRS REPORT FOR CONGRESS 4 (2001).

⁶⁶ MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11. Data were obtained for 152 of the 294 pieces of major legislation passed by the Senate from 1997 through 2001. Gaps in the available data for the remaining bills result from changes in members or committee staff that made it impossible to confirm whether committee reports were prepared for a bill.

⁶⁷ *Id.* Data were obtained for 181 of the 294 pieces of major legislation passed by the Assembly from 1997 through 2001.

⁶⁸ *Id.* Reports on the following bills were produced: A10817-B (amended the general business and state finance laws to establish a statewide "no call" registry), Telephone Interview with Todd Gold, Legislative Analyst, Consumer Affairs & Protection Committee (May 2003); A10239 (amended environmental conservation law by requiring study of the striped bass fishery in the Hudson River), Telephone Interview with Alex Roth, Legislative Analyst, Environmental Conservation Committee (May 2003).

⁶⁹ E-mail Correspondence with B, Legislative Director to N.Y. State Assembly Member C (Feb. 12, 2004) (on file with the Brennan Center).

⁷⁰ GERALD BENJAMIN & ROBERT T. NAKAMURA, *THE MODERN NEW YORK STATE LEGISLATURE: REDRESSING THE BALANCE* 44 (1991).

⁷¹ Chao-Chi Shan & Jeffrey M. Stonecash, *Legislative Resources and Electoral Margins: New York State Senate, 1950-1990*, 19 LEG. STUD. Q. 79, 81 (1994).

⁷² ALAN G. HEVESI, *LEGISLATIVE POLITICS IN NEW YORK STATE: A COMPARATIVE ANALYSIS* 20, 61 (1975).

⁷³ E-mail Correspondence from N.Y. State Sen. D (Oct. 21, 2003) (on file with the Brennan Center).

⁷⁴ E-mail Correspondence from B, Legislative Director for N.Y. Assemblymember C (Oct. 10, 2003) (on file with the Brennan Center).

⁷⁵ E-mail Correspondence from N.Y. State Sen. D (Oct. 21, 2003) (on file with the Brennan Center).

⁷⁶ N.Y. ASSEMB. R. I, § 3(a) ("The use of the Assembly Chamber, lobbies, rooms and property shall be controlled by the Speaker."); N.Y. SEN. R. II, § 6 ("[The majority leader] shall have general control, except as otherwise provided by law or in these rules, of the Senate Chamber and the lobbies and galleries thereof, and of the rooms, corridors and passages in that part of the Capitol and Legislative Office Building assigned to the use of the Senate, and any other property leased or utilized by the Senate.").

⁷⁷ Telephone Interview with B, Legislative Director to N.Y. State Assembly Member C (Oct. 10, 2003).

⁷⁸ E-mail Correspondence from B, Legislative Director for N.Y. Assembly Member C (Oct. 10, 2003) (on file with the Brennan Center).

⁷⁹ JOHANNA M. DONLIN & BRIAN J. WEBER, NAT'L COUNCIL OF STATE LEGISLATURES, *LEGISLATIVE STAFF SERVICES: PROFILES OF THE 50 STATES AND TERRITORIES 2* (1999).

⁸⁰ ALAN ROSENTHAL, *THE DECLINE OF REPRESENTATIVE DEMOCRACY* 139 (1998).

⁸¹ COUNCIL ON STATE GOVERNMENTS, *BOOK OF THE STATES* 158 tbl.3.22 (2003) [hereinafter *BOOK OF THE STATES*].

⁸² The legislative director for one Assembly member notes that it is the committee staff members who “propose the committee meeting agenda to the Chair, who then approves the agenda.” E-mail Correspondence from B, Legislative Director for N.Y. Assemblymember C (Oct. 10, 2003) (on file with the Brennan Center).

⁸³ Telephone Interview with B, Legislative Director to N.Y. State Assembly Member C, Oct. 10, 2003; E-mail Correspondence from N.Y. State Sen. D (Oct. 21, 2003) (on file with the Brennan Center).

⁸⁴ Telephone Interview with B, Legislative Director to N.Y. State Assembly Member C, Oct. 10, 2003.

⁸⁵ *BOOK OF THE STATES*, *supra* note 81, at 160 tbl. 3.23. Connecticut, Maine, and Massachusetts were not included in these comparisons because those three states use a joint committee system that is not directly comparable to that of New York.

⁸⁶ See Congressional Committee Listings, at <http://www.house.gov/house/CommitteeWWW.html> (last visited Jan. 14, 2004) & http://www.senate.gov/pagelayout/committees/d_three_sections_with_tasers/committees_home.htm, (last visited Jan. 14, 2004).

⁸⁷ As Alan Rosenthal notes: “The more committees, the more opportunities for chairmanships. It is not unusual, therefore, for committees to proliferate during a tight race for leadership, when rivals make promises in return for support, or in an effort by an incumbent leader to consolidate his or her position.” ROSENTHAL, *supra* note 80, at 134. Section 5 of the Legislative Law establishes the uniform annual salary of all legislators (\$79,500), N.Y. LEG. § 5, but that is just the baseline for members’ compensation. Section 5-a, which is amended every two years, provides a “schedule” of special “allowances” for members who serve in various official special capacities. The Senate includes 61 Senators; there are 87 special allowances for those Senators. The Assembly includes 150 members; there are 116 special allowances for those members. No legislator may receive more than one special allowance at any time, so all Senators and very nearly all Assembly members receive some kind of special allowance above and beyond their base salaries. See N.Y. LEG. § 5-a(2)(a).

⁸⁸ Winnie Hu, *Legislature’s Second Fiddles Take Lead Roles in Budget Fight*, N.Y. TIMES, May 19, 2003, at B1.

⁸⁹ John J. Pitney Jr., *Leaders and Rules in the New York State Senate*, 7 LEGIS. STUD. Q. 491, 494 (1982) (citing Peter A. Berle, DOES THE CITIZEN STAND A CHANCE? 31-32 (1974)).

⁹⁰ See N.Y. ASSEMB. R. I, § 1(c)(3) (“The Speaker . . . shall appoint the chairpersons and members of all committees thereof, except where the House shall otherwise order[.]”); N.Y. SEN. R. II, § 2 (“[The majority leader] shall appoint . . . the chair, vice-chair and members of all committees and sub-committees, except when the Senate shall otherwise order.”). The speaker plays a major role in appointing members of committees in 44 (of 49) state houses and appointing committee chairs in 43 (of 49) state houses. State senates are more divided. In 10 (of 50, including New York) states, the president pro tem has member and chair appointment power, though New York is the only state in this group where the president pro tem is also the majority leader. In five other states, the majority leader possesses such appointment powers. The senate president (in four cases, the same as the lieutenant governor) has the power to appoint members in 19 (of 50) senates and chairs in 18 (of 50) senates. *BOOK OF THE STATES*, *supra* note 81, at 160 tbl 3.23. Hamm and Hedlund provide a more anecdotal perspective: “In more than two-thirds of the 99 state legislative cham-

bers, the committee chair and majority-party committee members are appointed by the presiding officer or another leader. In roughly one-half of these 99 chambers, minority-party members on the committee are recommended by the minority-party leader.” Hamm & Hedlund, *supra* note 31 at 687.

⁹¹ ROSENTHAL, *supra* note 80, at 134.

⁹² NCSL, INSIDE THE LEGISLATIVE PROCESS, *supra* note 33, at tbl.96-4.6. As noted already, the survey does not contain information on the New York Senate. This information was obtained by dividing the number of committee seats for the 2003 session (510) by the number of senators (62). At approximately 8 committees per senator (rounded down) this exceeds the Alabama Senate, which ranked at the top of the NCSL survey with 6 committees per senator.

⁹³ Hamm & Hedlund, *supra* note 31, at 675, 682.

⁹⁴ RULES ANALYSIS, *supra* note 15. The rules on discharge motions in the states are as follows [hereinafter RULES ANALYSIS DISCHARGE RULES]: ALA. H. R. 69; ALA. SEN. R. 59; ALASKA UNIFORM R. 48; ARIZ. H. R. 37; ARIZ. SEN. R. 2(J); ARK. H. R. 69; ARK. SEN. R. 7.05(k); CAL. ASSEMB. R. 96; CAL. SEN. R. 28; CONN. JT. R. 19; DEL. H. R. 25; FLA. H. R. 11.11; FLA. SEN. R. 4.10; GA. H. R. 58; HAW. H. R. 37.1 & 37.2; HAW. SEN. R. 52; IDAHO H. R. 45; IDAHO SEN. R. 14(E); ILL. H. R. 19 & 58; ILL. SEN. R. 3-9 & 7-9; IOWA H. R. 43 & 60; IOWA SEN. R. 13 & 42; KAN H. R. 1309; KAN. SEN. R. 11(b)-(c); KY. H. R. 48; KY. SEN. R. 48; LA. H. R. 6.13; LA. SEN. R. 13.11; ME. H. R. 517; ME. SEN. R. 511; ME. JOINT R. 309; MASS. H. R. 28; MASS. SEN. R. 27(C) & 32(A); MICH. H. R. 45(3); MICH. SEN. R. 3.203(e); MINN. H. R. 4.30 & 4.31; MINN. SEN. R. 5; MISS. H. R. 95; MISS. SEN. R. 87 & 89; MO. H. R. 34; MO. SEN. R. 50; MONT. H. R. H30-50(7) & H40-90; NEB. UNICAMERAL R. 3 § 19; NEV. SEN. R. 50; N.J. H. R. 10:23; N.J. SEN. R. 12.6; N.Y. ASSEMB. R. IV, § 7; N.Y. SEN. R. XI, § 2; N.C. H. R. 39; N.C. SEN. R. 47; N.D. H. R. 508 & 509; N.D. SEN. R. 508 & 509; OHIO H. R. 85 & 86; OHIO SEN. R. 32; OR. H. R. 9.30; OR. SEN. R. 8.20 & 8.42; PA. H. R. 53; PA. SEN. R. XV, § 17; R.I. H. R. 26(e)-(g) & 48; R.I. SEN. R. 6.10 & 6.11; S.C. SEN. R. 22; S.D. JOINT R. 7-1.2 & 7-7; TENN. H. R. 53; TENN. SEN. R. 63; UTAH H. R. HR-27.17; VA. CONST. ART. IV, § 11; WASH. SEN. R. 48; W.VA. H. R. 82; W.V. SEN. R. 34; WIS. ASSEMB. R. 15; WIS. SEN. R. 41; WYO. H. R. 4-4; WYO. SEN. R. 7-4.

⁹⁵ Although one Assembly member reports that the Health Committee enjoys considerable debate and frequent challenges to the chair, that member indicated a belief that that committee is unique. The same member also noted that many members feel pressured to vote with the chair to avoid giving offense. Telephone Interview with Assembly Member A (Dec. 15, 2003) (on file with the Brennan Center).

⁹⁶ E-mail Correspondence from B, Legislative Director for N.Y. Assemblymember C (Oct. 10, 2003) (on file with the Brennan Center).

⁹⁷ ROBERT RIENOW, N.Y. STATE EDUC. DEP'T, OUR STATE AND LOCAL GOVERNMENT 122 (1953); *see also* FINAL REPORT OF THE NEW YORK STATE JOINT LEGISLATIVE COMMITTEE ON LEGISLATIVE METHODS, PRACTICES, PROCEDURES AND EXPENDITURES 110-11 (1946).

⁹⁸ Laymond Robinson, *New Era Dawns on Legislature*, N.Y. TIMES, Jan. 10, 1964, at 15.

⁹⁹ R.W. Apple Jr., *Revolt Dies Out in Legislature*, N.Y. TIMES, Feb. 9, 1965, at A1. A *New York Times* editorial the following year again called for this reform. *Modernize the Legislature*, N.Y. TIMES, Dec. 28, 1966, at 36; *see also* Sydney H. Schanberg, *Reform Drive Opens in Albany, But Leaders Sidetrack It*, N.Y. TIMES, Jan. 5, 1967, at 22.

¹⁰⁰ *Rebuff to Travia . . .*, N.Y. TIMES, Mar. 6, 1968, at 46.

¹⁰¹ ROSENTHAL, *supra* note 80, at 142. The chambers that require committees to report all bills are: Arkansas House, California House, Colorado House and Senate, Idaho Senate, Illinois Senate, Indiana House, Maine House and Senate, Maryland Senate, Massachusetts House and Senate, New Hampshire House and Senate, North Carolina House, North Dakota House and

Senate, South Dakota House and Senate, and Utah House and Senate. No data were available for the California Senate, Idaho House, North Carolina Senate, and Rhode Island House and Senate.

¹⁰² The National Conference of State Legislatures found that 47 of 91 chambers impose a deadline. NCSL, *INSIDE THE LEGISLATIVE PROCESS*, *supra* note 33, at 3-7 to 3-9 tbl.96-3.2. Wayne L. Francis also estimates that half of the chambers impose deadlines. Wayne L. Francis, *Floor Procedures and Conference Committees in State Legislatures*, in *ENCYCLOPEDIA OF THE AMERICAN LEGISLATIVE SYSTEM* 721, *supra* note 31, at 723.

¹⁰³ ROSENTHAL, *supra* note 80, at 142. *See also* N.Y. ASSEMB. R. IV, § 5.

¹⁰⁴ For the Senate, see Sen. Liz Krueger, *Waking Up the State Senate: 34 Proposals for Reinvigorating Democracy in Albany through Rules Reform* (Oct. 2002) (on file with the Brennan Center). In the Assembly, committee members may file a “Form 99” to request that the chair have the committee act on the bill within the legislative session by placing it on the agenda and either reporting or holding it. In practice, however, this tool is ineffective for several reasons. First, in practice, the time-frame in which a committee chair must act frequently extends over two years. Second, in practice, if the committee chair or Speaker’s committee staff do not support the bill, the chair simply asks the sponsor to remove the “99” request or else the bill will be held by the committee rather than reported to the floor. This threat effectively eviscerates the members’ power to force a committee to report a bill. Telephone Interview with E, Chief of Staff to N.Y. State Assembly Member F, Oct. 10, 2003; Telephone Interview with B, Legislative Director to N.Y. State Assemblyman C (Oct. 10, 2003); E-mail Correspondence with B, Legislative Director to N.Y. State Assembly Member C (Feb. 12, 2004) (on file with the Brennan Center).

¹⁰⁵ RULES ANALYSIS DISCHARGE RULES, *supra* note 94; *see also* NAT’L CONFERENCE OF STATE LEGISLATURES, *EXAMPLES OF CHAMBER RULES ON THE RECALL, WITHDRAWAL OR DISCHARGE OF A BILL FROM COMMITTEE* (n.d.) (on file with the Brennan Center); NAT’L CONFERENCE OF STATE LEGISLATURES, *DISCHARGE, WITHDRAWAL OR RECALL OF A BILL FROM COMMITTEE* (Oct. 2002) (on file with the Brennan Center) (containing responses to an electronic discussion group questionnaire covering procedures in 67 chambers).

¹⁰⁶ ROSENTHAL, *supra* note 80, at 142.

¹⁰⁷ N.Y. ASSEMB. R. IV, § 7(b); N.Y. SEN. R. XI, § 2(b).

¹⁰⁸ These chambers include the Hawaii Senate and House, the Idaho Senate, the Missouri Senate and House, and the South Dakota Senate and House. RULES ANALYSIS DISCHARGE RULES, *supra* note 94.

¹⁰⁹ TIEFER, *supra* note 33, at 314-15. The rule is U.S. H. R. XV(2).

¹¹⁰ N.Y. ASSEMB. R. IV, § 7(c)(2); N.Y. SEN. R. VI, § 2(b).

¹¹¹ N.Y. ASSEMB. R. IV, § 7(b); N.Y. SEN. R. XI, § 2(b); RULES ANALYSIS DISCHARGE RULES, *supra* note 94.

¹¹² N.Y. ASSEMB. R. IV, § 7(b); N.Y. SEN. R. XI, § 2(b).

¹¹³ RULES ANALYSIS DISCHARGE RULES, *supra* note 94.

¹¹⁴ N.Y. ASSEMB. R. IV, § 7(b); N.Y. SEN. R. XI, § 2(e).

¹¹⁵ In two chambers, there is a blackout at the end of the session: the Nevada Senate (2 days) and the Pennsylvania House (6 days). In the Utah House, discharge requires a 2/3 rather than majority vote in the last three days. In the Arizona Senate, the President does not have to act on petitions to discharge in the last 7 legislative days, though he or she may choose to do so. In the Mississippi House, deadlines apply only to discharge motions to withdraw revenue or appropriation bills from the House Appropriations or Ways and Means Committees. Those deadlines are: for House appropriation or revenue bills, the 50th day of a 90-day session and the 85th day of a 125-day session; and, for Senate appropriation or revenue bills referred to the House, the 70th day of a

90-day session and the 105th day of a 125-day session. RULES ANALYSIS DISCHARGE RULES, *supra* note 94.

116 The chambers are the Arkansas Senate, the Illinois Senate and House, the Iowa Senate, the Massachusetts Senate, the Minnesota Senate, the Mississippi Senate, the Pennsylvania Senate, the Rhode Island House, and the South Carolina Senate. RULES ANALYSIS DISCHARGE RULES, *supra* note 94.

117 N.Y. ASSEMB. R. IV, § 7(d); N.Y. SEN. R. XI, § 2(d). The Massachusetts House imposes a waiting period of seven days only for those bills referred to the Ways & Means or Counties Committees. *See* MASS. H. R. 28.

118 The Senate Majority Leader is also the President Pro Tem. *See* N.Y. SEN. R. II, § 1.

119 RULES ANALYSIS DISCHARGE RULES, *supra* note 94.

120 The Oregon Senate does not permit debate on motions to discharge, but is not otherwise restrictive of motions to discharge. “A motion to request the return of a measure [from committee] shall be acted upon immediately and without debate.” OREGON SEN. R., § 10.10.

121 N.Y. SEN. R. XI, § 2(e).

122 RULES ANALYSIS DISCHARGE RULES, *supra* note 94. The Assembly also apparently restricts the minority from making more than 15 motions to discharge per session. E-mail Correspondence from B, Legislative Director for N.Y. Assemblymember C (Oct. 10, 2003) (on file with the Brennan Center).

123 Pitney, *supra* note 89, at 494 (citing *A Lexicon of Legislative Lingo*, EMPIRE STATE REP., Jan. 1995, at 42-43).

124 N.Y. ASSEMB. R. IV, § 6(a).

125 Significantly, the Rules of the Senate do not provide for any of these options. Indeed, the Rules address only certain procedural requirements for reporting bills rather than any substantive reporting options given to committees. *See* N.Y. SEN. R. VII, § 5. Senators can attach “recommendations” to a bill when it is reported out of committee, but such recommendations reflect only an individual member’s concerns rather a committee’s proposed amendments and carry no formal weight of any kind. E-mail Correspondence with B, Legislative Director to N.Y. State Assembly Member C (Feb. 12, 2004) (on file with the Brennan Center).

126 NEAL, *supra* note 35, at 85-86 tbl.6.1. Data on the two chambers of the Rhode Island Legislature are from RULES ANALYSIS, *supra* note 15. *See* R.I. H. R. 26(e) and R.I. SEN. R. 6.5(e). Wayne Francis reports that in 70% of chambers, members receive committee amendments along with committee recommendations and reports. Francis, *supra* note 102, at 725.

127 COMMITTEE ON ECONOMIC DEVELOPMENT ANALYSIS, *supra* note 13.

128 Telephone Interview with E, Chief of Staff to N.Y. State Assembly Member F (Oct. 10, 2003).

129 MAJOR LEGISLATION COMMITTEE ANALYSIS, *supra* note 11.

130 Telephone Interview with E, Chief of Staff to N.Y. State Assembly Member F (Oct. 10, 2003).

131 E-mail Correspondence from N.Y. State Sen. D (Oct. 10, 2003) (on file with the Brennan Center).

132 N.Y. ASSEMB. R. I, § 1(c)(8); N.Y. SEN. R. II, § 3.

133 N.Y. ASSEMB. R. IV, § 10(b); N.Y. SEN. R. VIII, § 7, V, § 6(c).

134 N.Y. ASSEMB. R. IV, § 10(a)

¹³⁵ N.Y. SEN. R. VII, § 5(a).

¹³⁶ The Assembly Rules allow standing committees to refer bills to the Committee on Rules for calendaring without complying with the requirement of the same subsection that no bill shall be considered by a standing committee unless it has been available to the members for at least seven days. See N.Y. ASSEMB. R. IV, § 5(b).

¹³⁷ N.Y. SEN. R. VII, § 5(a).

¹³⁸ Telephone Interview with Senate Minority Counsel Michael Fallon (Dec. 5, 2003).

¹³⁹ See N.Y. ASSEMB. R. IV, § 2(a-c); compare N.Y. SEN. R. VII, § 2 (allowing Committee on Rules to sit “at any time”), with N.Y. SEN. R. VII, § 3 (prescribing notice and scheduling requirements for other committees).

¹⁴⁰ RULES ANALYSIS, *supra* note 15; NCSL, INSIDE THE LEGISLATIVE PROCESS, *supra* note 33, at 4-63. The rules on notice requirements and Rules Committee exemptions are as follows [hereinafter RULES ANALYSIS RULES COMMITTEE NOTICE]: ALA. H. R. 71 & 73; ALA. SEN. R. 62; ALASKA UNIFORM R. 23; ARIZ. H. R. 9(C)(7); ARIZ. SEN. R. 7(B)(4); ARK. H. R. 58(a)-58(b); ARK. SEN. R. 7.02(i); CAL. ASSEMB. R. 56; CAL. SEN. R. 21.5(e); COLO. H. R. 25(j)(1)(A) & 25(j)(1)(B); COLO. SEN. R. 22(a)(1)-(2); CONN. JT. R. 5(f)-(g); DEL. H. R. 33; FLA. H. R. 7.10; FLA. SEN. R. 2.6 & 2.9(3); GA. SEN. R. 187(a); IDAHO H. R. 55; ILL. H. R. 10(e), 21 & 15(c)-(e); ILL. SEN. R. 3-1(e), 3-5(d)-(e) & 3-11(e); IND. H. R. 59 & 68; IND. SEN. R. 53; IOWA H. R. 49 & 57; IOWA SEN. R. 39(7) & 41; KAN. H. R. 1301 & 1302; KY. H. R. 45; KY. SEN. R. 41. & 45; LA. SEN. R. 13.73, 13.74 & 13.75; ME. JOINT R. 305; MASS. JOINT R. 1(D); MICH. H. R. 35(6), 36(7)(g); MICH. SEN. R. 2.107; MINN. H. R. 6.20; MINN. SEN. R. 12.3; MISS. H. R. 77, 91, & 104(A); MISS. SEN. R. 46 & 47; MO. H. R. 23 & 29; MO. SEN. R. 35; MONT. H. R. H30-40; MONT. SEN. R. S30-60 & S30-120; NEB. UNICAMERAL R. 3, § 6(a); NEV. ASSEMB. R. 42(1); NEV. SEN. R. 53(4); N.H. H. R. 31; N.J. H. R. 10:8 & 10:9; N.J. SEN. R. 12:3(b); N.M. H. R. 9-6 & 9-8; N.M. SEN. R. 9-6 & 9-8; N.Y. ASSEMB. R. IV § 2; N.Y. SEN. R. VII, § 2; N.C. H. R. 28(f)-(g) & 29; N.C. SEN. R. 33; N.D. H. R. 504 & 506; N.D. SEN. R. 504 & 506; OHIO H. R. 35; OHIO SEN. R. 21; OR. H. R. 8.15(5); OR. SEN. R. 8.15; PA. H. R. 45 & 46; PA. SEN. R. XXV §§ 6, 7; R.I. H. R. 26(c); R.I. SEN. R. 6.1, 6.2 & 6.8; S.C. H. R. 4.4; S.C. SEN. R. 19(16); S.D. JOINT R. 7-1.4; TEX. H. R. 4, § 8; TEX. SEN. R. 11.10; UTAH H. R. HR-24.07; UTAH SEN. R. SR-24.07; VT. H. R. 27; VT. SEN. R. 26 & 27; VA. SEN. R. 20(c); WASH. H. R. 24(A); WASH. SEN. R. 24(A); W.VA. H. R. 83; WIS. ASSEMB. R. 11(3) & 11(10); WIS. SEN. R. 26; WYO. H. R. 9-2I; WYO. SEN. R. 10-3.

¹⁴¹ The notice requirements are: reasonable notice (California, Illinois); following a regular schedule (Massachusetts); written notice to clerk or secretary (Michigan); five days (New Jersey, Ohio House); one week (New York); two days (Ohio Senate); publication in daily calendar (Pennsylvania House); 24 hours (Pennsylvania Senate); and Monday of the same week (Wisconsin Senate). RULES ANALYSIS RULES COMMITTEE NOTICE, *supra* note 140.

¹⁴² E-mail Correspondence with B, Legislative Director to N.Y. State Assembly Member C (Feb. 12, 2004) (on file with the Brennan Center).

¹⁴³ Pitney, *supra* note 89, at 495 (citing NEWSDAY, May 27, 1971, at 11).

¹⁴⁴ *Wadsworth's First Day Brings Fight on Rules*, N.Y. TIMES, Jan. 4, 1906, at 5.

¹⁴⁵ Chester Lloyd Jones, *The Improvement of Legislative Methods and Procedure*, 10 PROC. OF THE AM. POL. SCI. ASS'N 195 (1913). The State Legislative Voters Association also criticized the Rules Committee's powers. *Condemns Quick Roll Call*, N.Y. TIMES, Aug. 12, 1909, at 3.

¹⁴⁶ LYNTON K. CALDWELL, *THE GOVERNMENT AND ADMINISTRATION OF NEW YORK* 67 (1954). See also RIENOW, *supra* note 97, at 123-24.

¹⁴⁷ NCSL, INSIDE THE LEGISLATIVE PROCESS, *supra* note 33, at 5-39. In Congress, bills reported by committees are generally placed automatically onto the calendar. See TIEFER, *supra* note 33,

at 244, 547-48.

¹⁴⁸ Aubrey Jewett, *Evaluating Changes in Florida's Legislative Process: Innovative Rules and Conservative Norms*, 30 POL. & POL'Y 40, 46 (2002).

¹⁴⁹ Most state legislative chambers require bills to be read three times. A “reading” does not necessarily require that the entire text of the bill be read aloud in the chamber each time it is considered – very few states require this, and New York is not one of them. Generally, first reading occurs at bill introduction; second reading occurs when bills are reported out of committee and onto the floor for consideration and amendment; and third reading is the time when a vote is taken on final passage. New York is typical of most states in this regard. In most states, however, readings must generally occur on separate days, usually with two or three days between readings. While the New York Assembly follows this pattern, the New York Senate is one of only seven upper chambers that permit all three readings to occur on the same day. See NEAL, *supra* note 35, at 90.

¹⁵⁰ N.Y. SEN. R. V, § 6(c).

¹⁵¹ N.Y. SEN. R. VIII, § 2(b).

¹⁵² NCSL, *INSIDE THE LEGISLATIVE PROCESS*, *supra* note 33, at 5-40.

¹⁵³ N.Y. SEN. R. VIII, § 7.

¹⁵⁴ *Id.*

¹⁵⁵ JOSEPH F. ZIMMERMAN, *THE GOVERNMENT AND POLITICS OF NEW YORK STATE* 141 (1981).

¹⁵⁶ Pitney, *supra* note 89, at 495. “[O]rdinarily, a member delays passage of his measure either to wait for agreement or compromise, or because a companion bill is on the way from the other house and he wants to move its substitution.” RIENOW, *supra* note 97, at 126.

¹⁵⁷ Pitney, *supra* note 89, at 494 (quoting Senator Leichter).

¹⁵⁸ See ZIMMERMAN, *supra* note 155, at 141.

¹⁵⁹ See N.Y. ASSEMB. R. III, § 7.

¹⁶⁰ The bill’s sponsor alone may remove the bill from the calendar. N.Y. ASSEMB. R. III, § 7(e).

¹⁶¹ RULES ANALYSIS, *supra* note 15.

¹⁶² See NCSL, *INSIDE THE LEGISLATIVE PROCESS*, *supra* note 33, at 5-48 tbl.98-5.14. See also ROSENTHAL, *supra* note 80, at 146.

¹⁶³ See NCSL, *INSIDE THE LEGISLATIVE PROCESS*, *supra* note 33, at 5-49 to 5-50 tbl.98-5.15. In the U.S. Senate, the Majority Leader “may bring reported bills up immediately; may leave them on the calendar for longer periods of time; and may ... leave some there till they die at the end of the session.” TIEFER, *supra* note 33, at 559. In the U.S. House of Representatives, bills are placed automatically on the calendar. *Id.* at 244, 252.

¹⁶⁴ *Id.* at 244, 252, 584.

¹⁶⁵ See *supra* note 166. NEAL, *supra* note 35, at 92. Tommy Neal reported in 1996 that 14 chambers did not limit debate.

¹⁶⁶ RULES ANALYSIS, *supra* note 15. The rules of debate are as follows [hereinafter RULES ANALYSIS DEBATE RULES]: ALA. H. R. 52; ALA. SEN. R. 20 & 39(a); ALASKA UNIFORM R. 26; ARIZ. H. R. 18(E)-18(G); ARK. H. R. 83 & 84; ARK. SEN. R. 9.04 & 9.08; CAL. ASSEMB. R. 108; CAL. SEN. R. 35(b); COLO. H. R. 13(d) & 14(a); COLO. SEN. R. 9(c); CONN. H. R. 17; CONN. SEN. R. 14; FLA. H. R. 8.7 & 11.9; FLA. SEN. R. 8.5 & 8.6; GA. H. R. 78, 79, & 80; GA. SEN. R. 50(b)-(c); HAW. H. R. 50.1; HAW. SEN. R. 70; IDAHO H. R. 22; ILL. H. R. 52; ILL. SEN. 7-3(g); IND. H. R. 42; IND. SEN.

R. 12(d)-(f); IOWA H. R. 11; IOWA SEN. R. 9; KAN. H. R. 1704; KY. H. R. 24; KY. SEN. R. 13 & 24; LA. H. R. 5.7; LA. SEN. R. 6.7; ME. H. R. 401(5); MASS. H. R. 61; MASS. SEN. R. 41; MICH. H. R. 30; MICH. SEN. R. 3.902(3); MINN. H. R. 2.32; MINN. SEN. R. 36.4 & 36.5; MISS. H. R. 23; MISS. SEN. R. 71; MO. H. R. 83; MO. SEN. R. 79; MONT. H. R. H40-170; MONT. SEN. R. S50-30; NEB. UNICAMERAL R. 2, § 10; NEV. ASSEMB. R. 80; NEV. SEN. R. 80(2); N.H. H. R. 13; N.H. SEN. R. 4; N.J. H. R. 7:3; N.J. SEN. R. 7:3; N.M. H. R. 7-9; N.M. SEN. R. 7-9; N.Y. ASSEMB. R. V § 6(b); N.Y. SEN. R. IX, §§ 3(d), 4(6); N.C. H. R. 10; N.C. SEN. R. 14(a); N.D. H. R. 306; N.D. SEN. R. 306; OHIO H. R. 49; OHIO SEN. R. 68; OR. H. R. 6.25 & 6.30; OR. SEN. R. 6.25 & 6.30; PA. H. R. 10; PA. SEN. R. XI, § 3; R.I. H. R. 10; R.I. SEN. R. 7.1; S.C. H. R. 3.8; S.C. SEN. R. 8; S.D. JOINT R. 1-5; TENN. H. R. 21; TENN. SEN. R. 12; TEX. H. R. 5, § 28 & 29; TEX. SEN. R. 4.05; UT. H. R. 28.01; UT. SEN. R. 28.01; VT. H. R. 64; VT. SEN. R. 65; VA. H. R. 61; VA. SEN. R. 42; WASH. SEN. R. 29; WASH. H. R. 16(C); W.VA. H. R. 38; W.VA. SEN. R. 12; WIS. ASSEMB. R. 59; WIS. SEN. R. 59; WYO. H. R. 14-1 & 15-1; WYO. SEN. R. 15-1 & 15-2.

¹⁶⁷ TIEFER, *supra* note 33, at 236-37.

¹⁶⁸ *Id.* at 691-92.

¹⁶⁹ RULES ANALYSIS DEBATE RULES, *supra* note 166.

¹⁷⁰ NEAL, *supra* note 35, at 102-03 tbl.7.3. N.Y. ASSEMB. R. V, § 6(b) provides:

Unless otherwise provided by these Rules, no member shall speak, except in his or her place, nor more than twice on any question, without leave of the House. No member shall speak for more than fifteen minutes at a time except by consent of two-thirds of the members present, except that a member desiring to explain his or her vote upon the final passage of a bill or upon the passage of a resolution requiring the expenditure of money may make a brief statement, not to exceed two minutes, in explanation of such vote.

¹⁷¹ N.Y. SEN. R. IX, §§ 3(a) & 4(b).

¹⁷² N.Y. SEN. R. IX, § 3 provides, in pertinent part:

a. Debate shall only be in order when it is germane to the question under discussion. . . .

d. . . . When any bill or concurrent resolution shall have been under consideration for two hours, including all amendments thereto, it shall be in order for any Senator to move to close debate, and the Presiding Officer shall recognize the Senator who wishes to make such motion. Such motion to close debate shall not be amendable or debatable and shall be immediately put, and if it shall receive the affirmative vote of a majority of the Senators present, the pending measure shall take precedence over all other business.

e. The vote or canvass of agreement shall thereupon be taken upon such bill, resolution or motion with such amendments as may be pending at the time of such motion, according to the Rules of the Senate, but without further debate, except that upon the roll call any Senator may speak not to exceed two minutes in explanation of his or her vote; however no explanation of a canvass of agreement shall be in order.

See also Krueger, *supra* note 9, at Proposal 5.

¹⁷³ MAJOR LEGISLATION ANALYSIS 1997-2001, *supra* note 10.

¹⁷⁴ *Id.* When asked about the prevalence of debate in the Assembly, a legislative director to an Assembly member replied that it occurs “not often, occasionally on the more controversial issues.” E-mail Correspondence from B, Legislative Director for N.Y. Assemblymember C (Oct. 10, 2003) (on file with the Brennan Center).

175 MAJOR LEGISLATION ANALYSIS 1997-2001, *supra* note 10.

176 NATIONAL TELEPHONE SURVEY, *supra* note 16.

177 The Ohio Senate was reported to debate approximately one third of all bills that reach the floor. California's Senate and Assembly were both reported to debate bills routinely in committees, while on the floor legislators generally read prepared statements on legislation. In Michigan's Senate and House, the respondent reported that legislators debated significant legislation on the floor, but could not provide any additional data about debate on the full universe of bills. NATIONAL TELEPHONE SURVEY, *supra* note 16.

178 ROSENTHAL, *supra* note 80, at 147.

179 MAJOR LEGISLATION ANALYSIS 1997-2001, *supra* note 10. To determine whether an amendment to a bill was debated on the floor, we requested and reviewed this information for each of the major bills passed from the Senate Microfilm and Records Office and the Assembly Public Information Office. Even New York's formal rules regarding floor amendments reflects their lack of importance in shaping legislation. While allowing amendments on the third reading (like 40 other chambers), New York's chambers are not among the 33 that provide written analysis of some or all floor amendments. NCSL, INSIDE THE LEGISLATIVE PROCESS, *supra* note 33, at 5-6 tbl.96-5.2. Wayne Francis notes that "[a]bout three-fourths of the chambers attempt to confine amendments, usually to the second-reading stage, the committee of the whole, or possibly a third reading," providing indirect evidence that a glut of amendments, rather than their complete absence, is a concern in other states. Francis, *supra* note 102, at 723.

180 N.Y. CONST. art. III, § 14. The Senate rules contain a parallel requirement. *See* N.Y. SEN. R. VIII.

181 *See* ROSENTHAL, *supra* note 80, at 147.

182 RULES ANALYSIS, *supra* note 15. The rules on aging and reading requirements are as follows [hereinafter RULES ANALYSIS AGING RULES]: ALASKA UNIFORM R. 39(a); ARIZ. H. R. 8(A); ARIZ. SEN. R. 8(A); ARK. H. R. 37(a) & 39; ARK. SEN. 14.05; CAL. CONST. ART. IV, § 8(b); COLO. SEN. R. 25(b); CONN. H. R. 11; DEL. H. R. 22(b); FLA. H. R. 10.7; FLA. SEN. R. 4.12; GA. SEN. R. 31; HAW. H. R. 36.1; HAW. SEN. R. 47; IDAHO H. R. 29; IDAHO SEN. 10(A); ILL. H. R. 38; ILL. SEN. 5-2; IND. H. R. 83; IND. SEN. R. 69(a)-(b); IOWA H. R. 30; IOWA SEN. R. 28; KAN. H. R. 2705; KAN. SEN. R. 48; KY. H. R. 56; KY. SEN. R. 56; LA. H. R. 8.9; LA. SEN. R. 10.6; ME. H. R. 516; MASS. H. R. 39; MASS. SEN. R. 28; MICH. H. R. 46; MICH. SEN. R. 3.201 & 3.207; MINN. H. R. 1.04; MINN. SEN. R. 2.1; MISS. H. R. 96; MISS. SEN. R. 76; MO. CONST. ART. III, § 21; MONT. H. R. H40-60; MONT. SEN. S40-40; NEB. UNICAMERAL R. 6, § 7; NEV. ASSEMB. R. 109 & 110; NEV. SEN. R. 109; N.H. H. R. 41; N.H. SEN. R. 21; N.J. H. R. 15:10 & 15:11; N.J. SEN. R. 17:4 & 17:5; N.M. H. R. 11-2; N.M. SEN. R. 11-2; N.Y. CONST. ART. III, § 14; N.Y. SEN. R. V, § 6(c); N.Y. H. R. III, § 7(a); N.C. H. R. 41; N.C. SEN. R. 43 & 44; OHIO SEN. R. 42 & 43; OR. H. R. 3.50; OR. SEN. R. 3.50; PA. CONST. ART. III, § 4; R.I. H. R. 7; R.I. SEN. R. 4.10; S.C. H. R. 5.10; S.C. SEN. R. 37; S.D. CONST. ART. III, § 17; TEX. H. R. 8, § 15; TEX. SEN. R. 7.18; UTAH H. R. HR-25.03; UTAH SEN. R. SR-25.06; VT. H. R. 33 & 45; VT. SEN. R. 34 & 43; VA. H. R. 71; VA. SEN. R. 28(a); WASH. H. R. 10; WASH. SEN. R. 62; W.VA. H. R. 102; W.VA. SEN. R. 19; WIS. ASSEMB. R. 40(1); WIS. SEN. R. 35; WYO. H. R. 7-1; WYO. SEN. R. 8-4.

183 *Id.*

184 *Id.*

185 E-mail Interview with Evan Davis, Former Counsel to the Governor of New York State (Feb. 5, 2004). According to Mr. Davis, "[a] typical reason for granting a message of necessity is that the Legislature will otherwise leave town without voting on the bill. They are often urgently sought by the legislative leadership in the small hours of the morning during the end of session." *Id.*

186 MAJOR LEGISLATION ANALYSIS 1997-2001, *supra* note 10.

187 E-mail Interview with Evan Davis, Former Counsel to the Governor of New York State (Feb. 5, 2004).

188 James C. McKinley, Jr., *Before Bills Move in Albany, 3 Leaders Cut Deals*, N.Y. TIMES, Oct. 21, 2002, at A1.

189 *Id.*

190 See GREATER UPSTATE LAW PROJECT, THE GOOD, THE BAD, AND THE VERY UGLY: NYS HEALTH CARE AND MEDICAID FUNDING, 2002-03, at http://www.gulpny.org/Health/health_Medicaid_fund.htm.

191 *Don't Evade the Requirement*, N.Y. TIMES, Mar. 8, 1895, at 4.

192 CHARLES T. SAXTON ET AL., REPORT OF THE COMMISSION TO RECOMMEND CHANGES IN METHODS OF LEGISLATION, APPOINTED BY THE GOVERNOR OF THE STATE OF NEW YORK, PURSUANT TO CHAPTER 1025, LAWS OF 1895, at 4, 9 (Nov. 30, 1895).

193 NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, PROBLEMS RELATING TO LEGISLATIVE ORGANIZATION AND POWERS 64-65 (1938).

194 THOMAS SCHICK, THE NEW YORK STATE CONSTITUTIONAL CONVENTION OF 1915 AND THE MODERN STATE GOVERNOR 119-21 (1978).

195 NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, *supra* note 193, at 65-66.

196 2 REVISED RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, APRIL FIFTH TO AUGUST TWENTY-SIXTH 1938, at 1436 (1938).

197 *Id.* at 975-80.

198 *Id.* at 976, 1435.

199 LEIGH STELZER & JAMES A. RIEDEL, CAPITOL GOODS: THE NEW YORK STATE LEGISLATURE AT WORK 14 (1975) (manuscript on file at New York Public Library).

200 HEVESI, *supra* note 72, at 10.

201 Alfonso A. Narvaez, *Reforms Begun in Legislature*, N.Y. TIMES, Jan. 21, 1973, at 39.

202 Alan Rosenthal estimates that four out of five chambers across the country require a roll-call vote of some kind. ROSENTHAL, *supra* note 80, at 152.

203 NEAL, *supra* note 35, at 93.

204 See N.Y. ASSEMB. R. V, § 2(c). In the Senate, the fast roll call is used but not embodied in its Rules.

205 See *id.*; N.Y. SEN. R. VIII, § 6. See also Pitney, *supra* note 89, at 496; ZIMMERMAN, *supra* note 155, at 140.

206 ZIMMERMAN, *supra* note 155, at 142. Empty seat voting has proved decisive on certain legislative measures in the past: "One day in 1981, Senator Howard Nolan (D-Albany) cast a crucial vote for a mass transit bill, even though he had left the chamber several hours earlier for a hernia operation." Pitney, *supra* note 89, at 496 (citing SCHENECTADY GAZETTE, July 11, 1981, at 1).

207 N.Y. CONST. art. III, § 14 (emphasis added).

208 Telephone Interview with N.Y. State Assembly Member A (Dec. 15, 2003).

209 E-mail Correspondence with B, Legislative Director to N.Y. State Assembly Member C (Feb. 12, 2004) (on file with the Brennan Center).

²¹⁰ S4422B passed the Senate on June 18, 1998, and S5594-B passed the Senate on May 6, 1999. This analysis is based upon review of the Journal of the Senate of the State of New York entries for each of the major laws passed during this period. MAJOR LEGISLATION ANALYSIS 1997-2001, *supra* note 10.

²¹¹ The bill, S7873, passed the Senate on December 2, 1998.

²¹² Many chambers rely on electronic voting (which records each member's vote separately but simultaneously). Chambers that use electronic voting to record each member's vote separately and that did not report any instances of empty seat voting were considered not to use a fast roll call. In addition, NCSL reports, and our telephone survey confirms, that at least 39 chambers use a consent calendar for certain bills on which there is not significant disagreement. NCSL, *INSIDE THE LEGISLATIVE PROCESS*, *supra* note 33, at tbl. 98-5.12 (on file with the Brennan Center). (The NCSL last surveyed states on the types of calendars used in 1998.) For purposes of this analysis, the tally of chambers that use fast roll calls includes those chambers that do so with respect to bills on their consent calendars. NATIONAL TELEPHONE SURVEY, *supra* note 16.

²¹³ *Id.*

²¹⁴ TIEFER, *supra* note 33, at 353.

²¹⁵ *Id.* at 526-38.

²¹⁶ NATIONAL TELEPHONE SURVEY, *supra* note 16; RULES ANALYSIS, *supra* note 15. The rules on empty seat voting are as follows: ALA. SEN. R. 38(a); ALA. H. R. 32, 53, & 54; ALASKA UNIFORM R. 34(c)(5); ARIZ. SEN. 15.1(H); ARIZ. H. R. 14(B); ARK. SEN. R. 10.03 & 10.04; ARK. H. R. 97(a)-97(e); CAL. SEN. R. 44; CAL. ASSEMB. R. 104; COLO. SEN. R. 16(a) & 20(f); COLO. H. R. 18; CONN. SEN. R. 24 & 27; CONN. H. R. 39 & 40; DEL. H. R. 26(b); FLA. SEN. R. 1.23, 5.3 & 5.4; FLA. H. R. 9.1 & 9.5; GA. SEN. R. 176; GA. H. R. 135 & 136; HAW. SEN. 72(1); HAW. H. R. 52.1 & 52.4; IDAHO SEN. R. 39 & 40; IDAHO H. R. 38 & 41; ILL. SEN. 7-1; ILL. H. R. 49; IND. SEN. R. 37(a); IND. H. R. 50; IOWA SEN. R. 22; IOWA H. R. 74; KAN. SEN. R. 20; KAN. H. R. 2504; KY. SEN. R. 25; KY. H. R. 25; LA. SEN. R. 12.3; LA. H. R. 10.3 & 10.7; ME. SEN. R. 401(3) & 401(6); ME. H. R. 401(12); MASS. SEN. R. 57; MASS. H. R. 49; MICH. SEN. R. 1.205(a); MICH. H. R. 31(3) & 34(2); MINN. SEN. R. 40.2; MINN. H. R. 2.05; MISS. SEN. R. 117; MISS. H. R. 97 & 98; MO. SEN. R. 7; MO. H. R. 88; MONT. SEN. R. S50-180, S50-190 & S50-200; MONT. H. R. H50-190(4), H50-200 & H50-210; NEB. UNICAMERAL R. 2, § 3(H); NEV. SEN. R. 30(1); NEV. ASSEMB. R. 30(7)-(8); N.H. SEN. R. 12; N.H. H. R. 22; N.J. SEN. R. 9:1; N.J. H. R. 12:2; N.M. SEN. R. 7-1; N.M. H. R. 21-2; N.Y. SEN. R. IX, § 1; N.Y. H. R. V, § 2(a); N.C. SEN. R. 25(d); N.C. H. R. 20(d); N.D. SEN. R. 102 & 321; N.D. H. R. 102 & 321; OHIO SEN. R. 61; OHIO H. R. 56 & 58; OR. SEN. R. 3.20; OR. H. R. 3.20; PA. SEN. R. XXI, § 1(a); PA. H. R. 64; R.I. SEN. R. 8.3; R.I. H. R. 21; S.C. SEN. R. 16; S.C. H. R. 3.1; S.D. JOINT R. 12-1 & 12-2; TENN. SEN. R. 59; TENN. H. R. 29; TEX. SEN. R. 5.03; TEX. H. R. 5, § 45; UTAH SEN. R. SR-30.02; UTAH H. R. HR-30.02; VT. SEN. R. 69 & 70; VT. H. R. 73; VA. SEN. R. 36; VA. H. R. 33; WASH. SEN. R. 22(1); WASH. H. R. 19(B); W.VA. SEN. R. 43; W.VA. H. R. 26; WIS. ASSEMB. R. 76(5); WIS. SEN. R. 73(1); WYO. SEN. R. 14-1 & 14-2; WYO. H. R. 13-1 & 13-2.

²¹⁷ NATIONAL TELEPHONE SURVEY, *supra* note 16.

²¹⁸ Raphael Lewis, *Finneran Says House Voting Reform Is Before Committee*, BOSTON GLOBE, May 7, 2000, at B6; *House Reforms, Not Birmingham*, BOSTON HERALD, May 18, 2000, at 28.

²¹⁹ TIEFER, *supra* note 33, at 172 n.80.

²²⁰ *Letter to the Editor*, N.Y. TIMES, June 21, 1907, at 6.

²²¹ Paraphrased in *Condemns Quick Roll Call*, N.Y. TIMES, Aug. 12, 1909, at 3.

²²² Jones, *supra* note 145, at 214.

²²³ *Would Abolish Roll Calls*, N.Y. TIMES, Dec. 20, 1920, at 25.

²²⁴ *Walker Is Praised by Citizens Union*, N.Y. TIMES, Aug. 13, 1925, at 2.

²²⁵ For 1946, see FINAL REPORT OF THE NEW YORK STATE JOINT LEGISLATIVE COMMITTEE ON LEGISLATIVE METHODS, PRACTICES, PROCEDURES AND EXPENDITURES 78 (1946). For 1953, see RIENOW, *supra* note 97, at 124.

²²⁶ RIENOW, *supra* note 97, at 125.

²²⁷ Letter to the Editor, *Legislative Reform Asked*, N.Y. TIMES, July 7, 1950, at 18.

²²⁸ WARREN MOSCOW, *POLITICS IN THE EMPIRE STATE* 173 (1948).

²²⁹ John Sibley, *Albany Warily Welcomes Electric Voting as Travia Shouts ‘Snake Eyes’*, N.Y. TIMES, Apr. 7, 1968, at 5. Press accounts differ as to whether the machines were designed to record absences, or whether they could be set to record ‘yes’ automatically.

²³⁰ Francis X. Clines, *Assembly Democrats Lose Bid to Put End to Phantom Voting*, N.Y. TIMES, Jan. 12, 1971, at 44.

²³¹ *State Senate Scraps Its Electronic Voting*, N.Y. TIMES, Oct. 3, 1971, at 23. HEVESI, *supra* note 72, at 9.

²³² Lynn, Frank, *Legisdemain in Albany*, N.Y. TIMES, May 10, 1971, at 39. A letter to the editor from the Policy Committee of the Senate Democratic Conference defended the Democrats, noting that demanding slow roll calls in such instances would, given the Republican majority, “only be a public exercise in futility at the taxpayer’s expense.” *Who Runs the Legislature?*, Letter to the Editor, N.Y. TIMES, June 5, 1971, at 28.

²³³ Clines, *supra* note 241; *see also Transcript, Anyone?*, N.Y. TIMES, Jan. 27, 1972, at 36.

²³⁴ Harvey J. Tucker, *Legislative Logjams: A Comparative State Analysis*, 38 W. POL. Q. 432 (1985).

²³⁵ NCSL, *INSIDE THE LEGISLATIVE PROCESS*, *supra* note 33, at 6-16.

²³⁶ Tucker, *supra* note 234, at 436-37 tbl.1.

²³⁷ MAJOR LEGISLATION ANALYSIS 1997-2001, *supra* note 10.

²³⁸ *See* JOURNAL OF THE SENATE OF THE STATE OF NEW YORK (1997-2001) (appendices); JOURNAL OF THE ASSEMBLY OF THE STATE OF NEW YORK (1997-1999) (roll calls). Assembly data were unavailable for 2000 and 2001.

²³⁹ *See* TIEFER, *supra* note 33, at 767-69, for an overview that emphasizes the importance of conference committees in Congress’s work.

²⁴⁰ NCSL, *INSIDE THE LEGISLATIVE PROCESS*, *supra* note 33, at 4-39.

²⁴¹ NAT’L CONFERENCE OF STATE LEGISLATURES, *CONFERENCE COMMITTEE USAGE* (July 1999 & July 2003 update) (on file with the Brennan Center). A similar query went out in July 2003, seeking an update from 1999; fewer chambers responded, but the overall pattern was similar.

²⁴² *Id.*

²⁴³ WARD, *supra* note 8, at 109-10.

²⁴⁴ *See*, for example, then-Senate Minority Leader Connor’s assessment of the conference committees as “window dressing,” available at <http://www.sendem.com/archive/99/mc-teeth.html>.

²⁴⁵ *See* <http://assembly.state.ny.us/Press/20040402/>.

²⁴⁶ *See, e.g.*, MOSCOW, *supra* note 228, at 174.

²⁴⁷ The vote tallies shown in the Journal of the Senate of the State of New York and in the Journal of the Assembly of the State of New York for *all* bills on which the Senate and Assembly

voted from 1997 through 2001 were analyzed to determine how often bills were rejected by either chamber and whether a bill was enacted into law [hereinafter ALL BILLS ANALYSIS].

248 BOOK OF THE STATES, *supra* note 81, at 152-53 tbl.3.19.

249 *Id.*

250 *Id.*

251 *Id.*

252 *The Legislative Orgy*, N.Y. TIMES, May 27, 1919, at 14.

253 See ROSENTHAL, *supra* note 80, at tbl.4.1. The number of bills introduced in the New York Senate increased by 500% from 1910 to 1975. Alan Rosenthal, *The Assembly Line: Law Production in the American States*, 3 LEGIS. STUD. Q. 265, 268 (1978) (citing Albert J. Abrams, *The Legislative Administrator*, 35 PUB. ADMIN. REV. 497 (1975)).

254 Almost all state legislatures have deadlines for bill introduction, in at least one of the legislative chambers, if not both. NCSL, *INSIDE THE LEGISLATIVE PROCESS*, *supra* note 33, at 3-1 to 3-9 tbl.96-3.2.

255 Telephone Interview with N.Y. State Assembly Member A (Dec. 15, 2003).

256 See Fred LeBrun, *Time to Catch Up, at a Minimum*, TIMES UNION (Albany), March 30, 2004, at <http://www.timesunion.com/AspStories/story.asp?storyID=233530&category=LEBRUN&BCCode=&newsdate=3/30/2004>; *Your Move, Mr. Bruno*, TIMES UNION (Albany), March 17, 2004, at <http://www.timesunion.com/AspStories/story.asp?storyID=229388&category=OPINION&BCCode=&newsdate=3/17/2004>.

257 See Mark S. Abele, *Mental Health Advocates Call for Parity*, TIMES UNION (Albany), June 12, 1998, at B2; John Caher, *Delivering Their Message as Easy as Pie*, TIMES UNION (Albany), Apr. 14, 1999, at B2; John Caher, *Parity Health Bill Unlikely in New York*, TIMES UNION (Albany), Aug. 3, 1999, at B2; Richard Gallo, *Albany Report*, THE BULLETIN (N.Y. State Psychiatric Ass'n, Garden City, NY), Fall 2003, at 1, 7, <http://www.nyspsych.org/pdf/bulletin/Bull0903.pdf>; Kate Gurnett, *Timothy's Law Seeks Parity for Mental Health Patient*, TIMES UNION (Albany), May 18, 2003, at B4; Jeff Keller, *Timothy's Law: Onward to Victory!*, NAMI-NYS NEWS (Nat'l Alliance for the Mentally Ill – NYS, Albany, NY), July 2003, at 5, http://www.naminys.org/July2003newsletter_final.pdf; Rudy Nydegger, *Studies Show Mental Health Parity is an Affordable Option*, TIMES UNION (Albany), May 26, 2003, at A6; *Timothy's Law Sought to End Insurance Discrimination*, NAMI-NYS NEWS (Nat'l Alliance for the Mentally Ill – NYS, Albany, NY), Apr. 2003, at 1, 6.

258 See Rick Karlin, *Reform of Wicks Law Gets New Push: State Fiscal Woes Make Time Ripe to Change Bidding Rules, Some Say*, TIMES UNION (Albany), Mar. 26, 2003, at B5; Matthew Phillips, *Wicks Law at Last May Be Ripe for Repeal This Year*, BUSINESS REVIEW, Apr. 3, 2003, at <http://albany.bizjournals.com/albany/stories/2003/03/31/daily44.html>; *Save Money and Time Without Wicks*, JOURNAL NEWS, Jan. 21, 2003, <http://www.thejournalnews.com/newsroom/012103/21edwickslaw.html>; Joel Stashenko, *Debate Builds Over Bidding Law's Cost: Pataki's Call for End to Wicks Law Heartens Foes, Galvanizes Unions*, TIMES UNION (Albany), Feb. 11, 2003, at E1; Telephone Interview with Robert Ward, Director of Research, Business Council of New York State (Dec. 2003); Bill Search & Legislative Information Services, New York State Assembly Website, <http://assembly.state.ny.us/leg/?bn=S01607> & <http://assembly.state.ny.us/leg/?bn=A03176> (last visited Dec. 5, 2003); N.Y. State Sch. Bd. Assoc'n, *Sample Resolution on Wicks Law Reform*, at <http://www.nyssba.org/advocacy/2003wickssamplers.htm> (last visited Feb. 5, 2004); N.Y. State Sch. Bd. Assoc'n, *Wicks Law Bill Squeaks Out of Committee* (Mar. 3, 2003), at <http://www.nyssba.org/adnews/albany/albany030303-2.htm>.

259 See Empire State Pride Agenda, *Sexual Orientation Non-Discrimination Act Chronology*, at <http://www.prideagenda.org/sonda/SONDACHronology.PDF> (last visited Jan. 2004).

²⁶⁰ McKinley, *supra* note 188, at A1.

²⁶¹ Al Baker, *Senate Approves Plan to Clean Polluted Sites, Ending 10-Year Impasse*, N.Y. TIMES, Sept. 17, 2003, at B6.

²⁶² The *New York Times* summarized the debacle as follows: “The deal was never sealed because the Legislature, unlike Congress, does not have an automatic procedure to resolve conflicting bills. For a bill to become law, the Assembly and Senate must pass the same version. Until then, there are just two different bills and plenty of filing cabinets in the Capitol filled with such near misses.” Winnie Hu, *A Sure Deal on Brownfields? Don’t Forget, This Is Albany*, N.Y. TIMES, June 24, 2003, at B1.

²⁶³ Al Baker, *Senate Approves Plan to Clean Polluted Sites, Ending 10-Year Impasse*, N.Y. TIMES, Sept. 17, 2003, at B6; Winnie Hu, *A Sure Deal on Brownfields? Don’t Forget, This Is Albany*, N.Y. TIMES, June 24, 2003 at B1; Michael Virtanen, *State Senate Passes Pollution Cleanup Bill*, ITHACA J., Sept. 17, 2003, at <http://www.ithacajournal.com/news/stories/20030917/localnews/272150.html>; Bill Search & Legislative Information Services, New York State Assembly Website, <http://assembly.state.ny.us/leg>.

²⁶⁴ See James Dao, *Rank and File of Albany Chafing at Their Bit Parts*, N.Y. TIMES, Jan. 3, 1998, at A1.

²⁶⁵ See *Mr. Bloomberg Goes to Washington*, THE NEW YORK OBSERVER, April 14, 2003.

²⁶⁶ H. Carl McCall, *Review of the Four-year Financial Plan for the City of New York: Fiscal Years 2000 Through 2003* (July 1999), at <http://www.osc.state.ny.us/osdc/rpt400/rpt400.htm>.

²⁶⁷ See, e.g., Jeffrey M. Stonecash, *The Legislature: The Emergence of an Equal Branch*, in GOVERNING NEW YORK STATE 144, 150-51 (John Kenneth White & Peter W. Colby eds., 1994).

²⁶⁸ NAT’L CONFERENCE OF STATE LEGISLATURES, LEGISLATIVE BRANCH EXPENDITURES FOR FY 2001 WITH RANKINGS BY LEGISLATIVE BRANCH EXPENDITURE, PER CAPITA, AND PERCENTAGE OF GENERAL GOVERNMENT EXPENDITURES (2003) (on file with the Brennan Center). Among states that pay legislators an annual salary, moreover, New York’s 2003 salary of \$79,500 was higher than all states but California’s, at \$99,000. NAT’L CONFERENCE OF STATE LEGISLATURES, 2003 STATE LEGISLATOR COMPENSATION AND LIVING EXPENSE ALLOWANCES DURING SESSION (2003) (on file with the Brennan Center).

²⁶⁹ WARD, *supra* note 8, at 108..

²⁷⁰ This limitation would apply only to introductions as sole or prime sponsor, and would not apply to: resolutions, floor amendments, or budget bills; emergency introductions at the request of the Governor; bills requested to be brought to the floor for “same as” bill consideration; departmental bills; or to “local bills” submitted through a member at the request of a county or municipal government.

METHODOLOGY

The research for this report included nine principal analyses, focusing primarily on the set of laws passed from 1997 through 2001 that were considered “major legislation” by *McKinney’s Session Law News of New York*. Every year, the editors of *McKinney’s* identify and publish a list of those laws enacted in the prior year and determined to be such “major legislation.” See MCKINNEY’S SESSION LAW NEWS OF NEW YORK (1997-2001). For a list of these laws, see Appendix A. Although 310 laws were identified by *McKinney’s*, two of those laws (S70001 and S70002) from 2001 were not listed in the Legislative Digest. Accordingly, we did not include those two laws in any of our analyses of major legislation.

The methodology and sources used for each analysis are detailed in the footnotes and summarized below:

- **Committee Work.** To obtain information concerning committees’ handling of each of the “major” laws passed from 1997 through 2001, we examined committee voting records from the Assembly Public Information Office and the Senate Journal Clerk’s Office for all of the committees through which these bills passed. Those records reflect both attendance at those meetings at which the bills were voted out of committee and the vote tallies for each bill. Because the Senate permits proxy voting in committee, however, those records do not reflect actual attendance at any meeting. In addition, neither the Public Information Office nor the Journal Clerk’s Office nor the committees themselves maintain any publicly available minutes of committee meetings. As a result, it is impossible without testimonial evidence to determine whether or how the committee addressed a specific bill during a committee meeting unless a vote on the bill occurred at that meeting. Similarly, records of committee hearings and reports, to the extent these are available, are not maintained in a central location. Where possible, we supplemented committee voting records with interviews of both the legislative analysts from each of the relevant committees and staff members for the laws’ sponsors to determine whether public hearings had been held and whether committee reports had been issued on the bills in question.
- **Debates on the Floor.** Information on debate was collected from the floor transcripts and the summaries of activity on each of the 308 major bills passed from 1997 through 2001 maintained by the Senate Microfilm/Microfiche Office and the Assembly Public Information Office. In the Senate, an electronic record is kept for each bill passed, which contains the bill number, the page numbers and dates on which the bills appear in the Senate transcript, and a notation indicating whether any debate occurred on such date. Where such a notation existed, the transcript for that date was analyzed to determine the extent of debate. To check whether a bill was debated on the Assembly floor, transcripts were analyzed for all dates on which any of the 308 major bills were listed as having been debated in the

New York Legislative Digest. For all major bills during this period, the transcripts from both chambers on the dates of passages were also analyzed.

- **Messages of Necessity.** Information on messages of necessity for the 308 major bills passed from 1997 through 2001 was drawn from the Legislative Bill Drafting Commission, STATE OF NEW YORK LEGISLATIVE DIGEST (1997-2001).
- **Committee Votes.** To understand how standing committees choose to vote on bills referred to them, we examined the complete voting records of the Assembly's Committee on Economic Development, Job Creation, Commerce and Industry for the years 1997-2001 obtained from the Assembly Public Information Office.
- **Historical Survey.** The authors conducted historical research on legislative procedures and practices from 1777 to the present, but focused on the period since 1900. Sources included proceedings of the constitutional conventions, contemporary press accounts, contemporary studies of the New York State legislature and commission reports, secondary historical works on New York history, and political science literature on legislative procedure.
- **Legislative Rules Analysis.** Using the most recent versions of state legislative rules available on-line, the authors analyzed their treatment of specific steps in the legislative process, including limitations on debate, discharge of bills from committee, committee hearings, voting, and Rules Committees. The rules of all 99 legislative chambers were analyzed.
- **Telephone Survey on Frequency of Debate and Voting Procedures.** Interviews were conducted by telephone in November and December 2003 with the agencies listed in Appendix B. A copy of the questionnaire used is also included therein. At least one source was interviewed from each state, where possible from a non-partisan research or library service associated with the legislature and devoted to maintaining the state's legislative records in order to learn the frequency of debate on the floor, roll calls, and attendance at votes on the floor. Through this survey, we obtained complete information concerning 94 of the 97 state legislative chambers outside New York.
- **Interviews with Legislators and Staff.** In addition to the interviews conducted in connection with the committee analysis discussed above, numerous sitting members of the Assembly and Senate and members of their staff were interviewed concerning various legislative procedures; these interviews were conducted on the condition of anonymity to ensure that their responses would be candid and that they would not face any negative consequences from their colleagues or constituents. Accordingly, citations to these interviews have been coded with alphabetical identifiers in the footnotes.

- **Vote Outcomes for All Bills 1997-2001.** The vote tallies shown in the Journal of the Senate of the State of New York and in the Journal of the Assembly of the State of New York for all bills on which the Senate and Assembly voted from 1997 through 2001 were analyzed to determine how often bills were rejected by either chamber and whether a bill was enacted into law.

APPENDIX A

MCKINNEY'S MAJOR LEGISLATION, 1997-2001

1997*Leg #*

S4361, A6852A
 A3521B, S5065A
 A5323B, S4526A
 S4553A, A8158
 A4205, S2639
 A8346, S555s
 A6781A, S4060A
 S100A, A133A
 S4223, A7798
 A2718, S 1663
 S4372, A7052
 S2592, A4320
 A2959, S1884
 A197, S282
 A1986, S5416
 A7029, S3495
 S11A, A1455A
 S1939, A5530
 S4386A, A6492A
 S5052, A8265
 S1023A, A67
 S1793, A3847
 S3641, A511
 S3655A, A6405A
 S5049A, A8047A
 S5492A, A3977A
 S340A, A6539A
 S4234A, A8185A
 S5771, A8657
 S5791, A8672
 S476B, A7998A
 A6619C, S5709
 S2593A, A4241A
 S5071C, A4018C
 S5402, A8529
 S5768, A8649
 S5769, A8180A
 S5794, A8684
 S3211, A5644
 S3769, A7844
 S3286B, A4511B
 S5387A, A8661
 S5754, A270C

1998*Leg #*

S7881, A11466
 A10311B, S6835B

S6785, A11092
 S7879, A10907A
 S6444B, A9532B
 A11464
 S7873
 S7488A, A10905A
 A6246A, S24346A
 S4117A, A6652B
 S7820, A11453
 A8970B, S6046B
 S7740, A11273
 S6183, A9229
 S1418A, A10724
 S3504, A6155A
 S4422B, A6629B
 S5223, A8363
 S5488B, A8362B
 S6170, A8895
 S7843, A10767B
 S588D, A8690B
 S7799A,
 A1624, S6216
 S6361A, A9648A
 S6415, A9885A
 S7287C, A9412D
 S7317B, A11265
 S7396, A10393
 A11258, S337B
 S7847, A11406A
 S7591, A11094
 S2640B, A2112C
 A11040, S7289A
 S4595A, A7647B
 S6476, A10368
 S7731, A9895B
 S5548B, A11072B
 A9999A, S6565A
 A1357A, S6020A
 A10311B, S6835B
 S6468B, A11107
 S7817, A11396
 S7845, A9833B
 S7040A, A10947
 S5663A, A8569A
 S6781C, A10223C
 A925, S6261
 S7356, A10952
 S5436B, A1619B
 S6255B, A9757A
 A 9167, S6116

S5809B, A8986
 S6389, A9808
 A8922, S6015
 S6423, A9962
 A422, S2706
 S6280, A9520
 A9759, S6838
 S6796C, A5699B

1999*Leg #*

A962-A, S2346
 S131, A3515
 S2862, A6780
 S3580, A6843
 S980, A1217
 A2597, S1556
 S2578, A4672
 A5203, S2904
 A3440-A, S2698
 S3070, A5936
 S5000, A7974
 A7959, S3465
 A3517, S1371
 S2970-A, A5816-B
 S2271-A, A5733-A
 S1640-A, A2844-A
 S4767-A, A8303-A
 S5594-B, A8346-A
 A7126, S4092
 S4717, A7533-A
 S4783, A8629
 S3162-C, A1589-A
 S3985-A, A7707
 S5544, A7914
 A7102, S4427
 S2937-A, A 6509-A
 A2333, S1726
 S4546-A, A3041-B
 S3831, A7904
 S827-B, A2309-B
 S1206-A, A1768-A
 S4642-B, A8257-C
 A8338-A, S5166-A
 S778-A, A8638-B
 S1144, A4855
 S3183-A, A6130-A
 A3480, S811
 S2657-A, A4736-A
 A1961, S4128

S4055, A921
 S2188-B, A4266-B
 S118-B, A1474-B
 A5337-A, S4323-A
 S5462-B, A8320-A
 A8225, S3440
 S5790-A, A8703-B
 A3013-B, S1740
 A8686, S4869-A
 A8489, S4454
 A3522-A, S978-A
 S3399, A7266
 A1568, S1263
 S5950, A8576-A
 S3776-B, A8408-B
 S2505, A1807
 A996-B, S5888
 S3521-A, A8558-A
 S6089, A9000
 S6100, A9020
 S3-B, A9026
 A5747-B, S3089
 A6386-B, S3080-A
 A8851, S5936
 S4927-B, A7261-C
 A8948-A, S5980-B
 A9005, S6095
 S5762-A, A8477-A
 S6113, A9031
 A9038-A, S6144
 A9036-A, S6146
 A9093, S6187
 A9094

2000*Leg #*

A9284, S6286
 A5912-A , S 5731
 A5513, S 6137-A
 S6539, A9529
 S6720-A, A9454-C
 A9090-A, S4917-C
 A2845-C, S1639-C
 S6846, A9855
 A10096, S7094
 S6133-A, A9229
 S7198-A, A10250-A
 S7202, A10239
 A11006, S1
 A11005, S7838

A9291-A, S6292-A	A1432-B, S 4729-E	S7837-A, A11525	S1971, A4772A
S7833, A1103	S8115, A11446	S8231, A11536	A7699A, S3751A
A7162-A, S 4686	S5012- B, A8184-B	S8127, A 1401-D	S5339A, A1762A
A7265-D, S3393-C	S6677, A9630	S3554-A, A 8761-B	S4087B, A8441A
A8561-B, S3453-A	S7618-B, A11069-A	S8233, A11532	A5584A, S2956A
A9723-B, S6767-B	S4692 , A1303-A	S8236, A6899-B	S3685, A7182
A10950, S7080	S6647, A10847		A8596, S3546
S4515-B, A3606-C	S5799, A7145	2001	S4859A, A8700A
S8142, A11418	S6171, A9226	Leg #	S3562, A7144
S6237-B, A9965-B	S8095, A7459-A	S77, A4196	S1454, A5217A
S7952, A11209	S8223, A1461-A	S394, A1613	S1575A, A7351A
S2895-B, A2492-C	A5370-A, S28-A	S 3711, A7189	A9050B, S5531A
S8081, A 8737-C	A9576-C, S6590-C	S3712, A7191	A7344B, S3485B
S7976-A, A11239-A	S4102-A, A8126	S3713, A7190	A8723A, S3484A
A11162-B, S8181	S6153-A, A10995-A	S3631, A6094-A	A1872, S4974A
S6672-D, A9631-D	S7440-A, A10851-A	A8316, S3995	S5404A, A8959-A
S8116, A7641	S6987-A, A11200	A5305, S2967	S357C, A85C
S6914-A, A5763-B	A4919-B, S706-A	S14, A6639	S4251A, A7348A
S8061-A , A7701-C	S5309-C, A 8097-C	A7221, S3821	S5355A, A8612A
A9460, S6465	S8126, A11413	S704, A7575	S4639A, A9215
S6988, A10047	S4691A, A30002	S2761, A5091	A2358B, S4624A
A7647- A, S4490-A	S8234, A11535	A7926, S4178	S5400A, A9280
S8132, A10817-B	S4268-A, A8109-A	S1327A, A8889	S5110A, A9278
S7284-A, A8327	S7892-A , A11522	S4299A, A8607A	S5213B, A2359B
S7269, A 11075	S8232, A11534	S4341, A7755	A9113, S5491
S8180, A11460	S6688-C, A9955-C	A7925, S4409	A235B, S3571B
S7327-B, A10957-A	S7197-B, A10106-A	S4094A, A7422A	A5104B, S2764B
S6985-A, A11399	S1031-G, A11537	S4028, A5888	S5789A, A9433A
S8188, A11479	S8239, A11539	S1078B, A1199B	S5613A, A9322A
S8183, A11474	S2838, A11538	S5370, A9062	
S7962, A11307	S2709-C, A4818-C	A7751A, S5134	

APPENDIX B

TELEPHONE SURVEY QUESTIONNAIRE

1. EMPTY SEAT VOTING.

- Is physical presence in the chamber required to cast a vote?
- If so, is that practice observed?
- If empty seat voting occurs, how often, generally? (less than 10 times a session, about a third of the votes, about half of the votes, about two-thirds of the votes, almost all of the votes)
- How often does it occur for votes on ‘significant’ legislation? (less than 10 times a session, about a third of the votes, about half of the votes, about two-thirds of the votes, almost all of the votes)

2. FAST V. SLOW ROLL CALLS.

- Does this distinction exist in your state legislature? (Slow roll call: calling each member’s name to obtain vote; Fast roll call: some abbreviated version where each name is not called individually) (Note that some states may use electronic voting systems that circumvent the need for this distinction.)
- How often do fast roll calls occur? (less than 10 times a session, about a third of the votes, about half of the votes, about two-thirds of the votes, almost all of the votes)
- How often do fast roll calls occur for votes on ‘significant’ legislation? (less than 10 times a session, about a third of the votes, about half of the votes, about two-thirds of the votes, almost all of the votes)

3. FREQUENCY OF DEBATE. *This refers to a significant debate over a bill, with at least a few speeches or exchanges over the merits of a bill rather than simply an explanation of its terms by sponsor.*

- How often does significant debate occur? (less than 10 times a session, about a third of the votes, about half of the votes, about two-thirds of the votes, almost all of the votes)
- How often does significant debate occur before votes on ‘significant’ legislation? (less than 10 times a session, about a third of the votes, about half of the votes, about two-thirds of the votes, almost all of the votes)

TELEPHONE SURVEY RESPONDENTS

Alabama

Legislative Research Service
Alabama State House
11 South Union Street, Suite 613
Montgomery, AL 36130-3550
334-242-7560

Alaska

Anchorage Legislative Information Office
716 W 4th Avenue, Suite 200
Anchorage, AK 99501-2133
907-269-0111

Arizona

Arizona State Library,
Archives and Public Records
Law and Research Library Division
1700 W. Washington, 3rd Floor
Phoenix, AZ 85007
602-542-3701

Arkansas

Senate Office
Arkansas Senate, Room 320
State Capitol
Little Rock, AR 72201
501-682-2902

House Office
Arkansas House of Representatives, Room 350
State Capitol
Little Rock, AR 72201
501-682-6211

California

California State Library
Capitol Branch
State Capitol, Room 5210
Sacramento, CA 95814
916-445-3551

Colorado

Legislative Council
Room 029 State Capitol Building
Denver, CO 80203
303-866-3521

Connecticut

Legislative Library
Legislative Office Building
300 Capitol Avenue, Rm 5400
Hartford, CT 06106
860-240-8888

Delaware

General Assembly
Division of Research
Legislative Hall
Dover, DE 19901
302-744-4114

Florida

House of Representatives
Clerk's Office
The Capitol, Rm 423
402 South Monroe Street
Tallahassee, FL 32399-1300
850-488-1157

Georgia

Clerk of the House
309 State Capitol
Atlanta, GA 30334
404-656-5015

Hawaii

House
House Clerk's Office
State Capitol, Rm 027
Honolulu, HI 96813
808-586-6400

Senate
Senate Clerk's Office
415 South Beretania St., Rm 10
Honolulu, HI 96813
808-586-6720

Idaho

Legislative Services Office
State Capitol, Room 108
P.O. Box 83720
Boise, ID 83720-0054
208-334-2475

Illinois

Clerk of the House
402 State House
Springfield, IL 62706
217-782-8223

Indiana

Secretary of the Senate's Office
200 W. Washington Street
Indianapolis, IN 46204
317-232 9418

Iowa

House
House Clerk's Office
Iowa House of Representatives
Des Moines, IA 50319
515-281-5381

Senate
Legislative Information Office
State Capital, Room G16
Des Moines, IA 50319
515-281-5129

Kansas

Legislative Research Department
300 SW Tenth Avenue – Room 545-N
Topeka, KA 66612-1504
785-296-3181

Kentucky

House
Clerk's Office
Kentucky House of Representatives
700 Capital Avenue
Room 203 of the Annex
Frankfurt, KY 40601
(502) 564-3900

Senate
Secretary of the Senate's Office
700 Capital Avenue
Room 203 of the Annex
Frankfurt, KY 40601
502-564-5320

Maine

Maine State Law & Legislative
Reference Library
43 State House Station
Augusta, ME 04333-0043
207-287-1600

Maryland

House
Speaker's Office
State House
Annapolis, MD 21401
410-841-3800

Senate
President's Office
State House
Annapolis, MD 21401
410-841-3700

Massachusetts

House
House Clerk's Office
State House
Boston, MA 02133
617-722-2356

Senate
Senate Clerk's Office
State House
Boston, MA 02133
617-722-1276

Michigan

House of Representatives
Clerk's Office
PO Box 30014
Lansing, MI 48909-7514
517-373-0135

Minnesota

House
Chief Clerk's Office
211 State Capitol
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155
651-296-2314

Senate
Senate Information Office
231 Capitol
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155
651-296-7198

Mississippi

House Clerk's Office
P.O. Box 1018
Jackson, MI 39215-1018
601-359-3360

Missouri

Senate Research Office
Missouri State Senate, Room B-9
State Capitol Building
Jefferson City, MO 65101
573-751-4666

House
Information Systems Office
201 W. Capitol Ave, Rm B16
Jefferson City, MO 65102
573-751-2357

Montana

Legislative Services Division
 State Capitol Bldg, Room 110
 1301 E. Sixth Avenue
 Helena, MT 59601
 406-444-3064

Nebraska

Clerk of the Legislature's Office
 Room 2018, State Capitol
 P.O. Box 94604
 Lincoln, NE 68509-4604
 402-471-2271

Nevada

Nevada Legislative Counsel Bureau, Research
 Division
 Research Library
 401 South Carson Street
 Carson City, NV 89701-4747
 775-684-6827

New Hampshire

New Hampshire General Court
 Visitors Center
 State House, Room 119
 107 North Main Street
 Concord, NH 03301
 603-271-2154

New Jersey

Legislative Information & Bill Room
 State House Annex
 P.O. Box 068
 Trenton, NJ 08625-0068
 609-292-4840

New Mexico

Legislative Council Service
 Library
 411 State Capitol
 Santa Fe, NM 87505
 505-986-4600

North Carolina

House
 Principal Clerk of the House
 Legislative Building, Room 2320
 16 West Jones Street
 Raleigh, NC 27601
 919-733-7760

Senate
 Principal Clerk of the Senate
 Legislative Building, Room 2020
 16 West Jones Street
 Raleigh, NC 27601
 919-733-7761

North Dakota

Legislative Council
 State Capitol
 600 E. Boulevard
 Bismark, ND 58505
 701-328-2916

Ohio

House
 House Clerk's Office
 Statehouse, 2nd Floor
 Columbus, OH 43215
 614-466-3357

Senate
 Senate Clerk's Office
 Statehouse
 Columbus, OH 43215
 614-466-4900

Oklahoma

Senate Records and Information Division
 2300 N. Lincoln Blvd.
 Oklahoma City, OK 73105
 405-521-5650

Oregon

House Chief Clerk's Office
 900 Court St NE H-271
 Salem, OR 97301
 503-986-1870

Pennsylvania

Senate Library
 157 Capitol Building
 Harrisburg, PA 17120-3055
 717-787-6120

Rhode Island

Rhode Island State Library
 State House, Room 208
 Providence, RI 02903
 401-222-2473

South Carolina

Legislative Printing, Information & Technology
Systems
1105 Pendleton St., 223 Blatt Bldg.
Columbia, SC 29201
803-734-3179

South Dakota

Legislative Research Council
Capitol Building, 3rd Floor
500 East Capitol Avenue
Pierre, SD 57501-5070
605-773-3251

Tennessee

Senate Clerk's Office
State Capitol, 2nd Floor
Nashville, TN 37243
615-741-2730

House Clerk's Office
State Capitol, 2nd Floor
Nashville, TN 37243
615-741-2901

Texas

House
Clerk's Office
P.O. Box 2910
Austin, TX 78768
512-463-0855

Senate
Senate Parliamentarian
P.O. Box 12068
Austin, TX 78711-2068
512-463-0248

Utah

Office of Legislative Research
436 State Capitol
Salt Lake City, UT 84114
801-538-1032

Vermont

Legislative Council
115 State Street, Drawer 33
Montpelier, VT 05633-5301
802-828-2231

Virginia

Senate
Senate Clerk's Office
P.O. Box 396
Richmond, VA 23218
804-698-7400

House
Clerk's Office
House of Delegates
P.O. Box 406
Richmond, VA 23218
804-698-1500/1619

Washington

Legislative Information Center
120 Legislative Building
Olympia, WA 98504-0600
360-786-7573

West Virginia

Legislative Reference & Information Center
MB-27, Building 1
State Capitol Complex
Charleston, WV 25305
304-347-4836

Wisconsin

Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
608-266-3561

Wyoming

Legislative Service Office
213 State Capitol
Cheyenne, WY 82002
307-777-7881

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