

**UNFINISHED BUSINESS:
NEW YORK STATE
LEGISLATIVE REFORM
2006 UPDATE**

LAWRENCE NORDEN, DAVID E. POZEN AND BETHANY L. FOSTER



**REFORM NEW YORK
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- Lead counsel for Plaintiffs, *Lopez Torres v. New York State Board of Elections*, 06-0635-CV, U.S. Court of Appeals for the Second Circuit
- *Amicus Curiae* for Appellants-Respondents, *Campaign for Fiscal Equity, Inc., et al. v. The State of New York, et al.*, 111070/93, New York State Court of Appeals
- *Paper Thin: The Flimsy Façade of Campaign Finance Laws in New York State* by Suzanne Novak and Seema Shah
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PREFACE

In 2004, the Brennan Center for Justice at NYU School of Law released *The New York State Legislative Process: An Evaluation and Blueprint for Reform*. Dozens of newspaper editorials endorsed its conclusions. A coalition of 83 organizations, including civic, business, religious and labor groups, formed to press for change. A Lexis/Nexis search reveals at least 1500 newspaper or magazine articles where, echoing the Brennan Center, the Albany government is referred to as “dysfunctional.”

Let’s face it: legislative reform usually is not the subject of much excitement. This report hit with such force not because it revealed things that were new – but because it confirmed what everyone involved knew to be true. New York’s government has been mired in a long era of stagnation and stasis, with critical problems unaddressed and key opportunities missed. Both parties bear responsibility. Both pledged action.

Two years later, how far have we come? How far do we have to go?

On the one hand, as this report card shows, some has changed, but not enough. Two budgets in a row have come in on time, a clearly positive development. Some legislative rules were amended as well. But major reforms remain undone. Rank-and-file lawmakers are still shut out of decision-making; the public still has little practical access to the most basic information; and the essential elements of the legislative process, such as committee hearings on bills, still are hard to find in Albany.

On the other hand, New York is on the edge of major change. Nearly all candidates for statewide offices speak of reform. A new governor will enter office. Voters have made clear they want action. Rarely will the political planets align for reform as they will over the next year.

Legislators themselves, of course, bear the first and greatest responsibility. But they are not alone.

The challenge is especially great for the new governor. Executive leaders seeking policy change often find that an existing hardened system blocks action. To transform an array of state policies, the governor will need to find a way to move decisively and early for reform. Many things must change. As Brennan Center reports and litigation have identified, New York must fix the State’s campaign finance system, which is the worst among those states that claim to regulate money in politics, and must rewrite the system for choosing Supreme Court judges. And other members of the public have been yearning and advocating for new policies on a variety of issues, from taxes to health care.

A strong executive, armed with a mandate and backed by a vocal and persistent citizen reform movement, has long been the best way to win lasting change. But until all legislators are permitted to participate in the process and adequately represent their constituents, New Yorkers cannot expect their voices to be heard, nor can they expect an engaged, innovative Legislature that is the architect of well-developed policy in any area. Such reform won't happen unless the public demands it: the media, civic organizations, business and labor organizations, and unorganized citizens themselves.

This is a rare reform moment – a once-a-generation opportunity to renew government and politics in New York. We must seize it, taking inspiration from the rallying cry of New York's greatest governor, Al Smith: "All the ills of democracy can be cured by *more democracy*."

Michael Waldman
Executive Director, Brennan Center for Justice at NYU School of Law

INTRODUCTION

In July 2004, the Brennan Center for Justice at New York University School of Law issued a study of the New York State Legislature entitled *The New York State Legislative Process: An Evaluation and Blueprint for Reform*.¹ The report (the “2004 Report”) documented in detail the pervasive deficiencies in New York’s legislative process and offered a blueprint for reform. Specifically, the 2004 Report noted that the state’s legislative rules limited members’ consideration of legislation and their role in shaping policy, prevented the public from participating in the legislative process or accurately assessing the performance of their representatives, and fostered great inefficiencies. Just as significantly, the 2004 Report found that the quantitative data – whether counted in hearings, debate, amendments, conference committees, or even legislators’ presence when they voted – showed these problems to be far greater in New York than in any other state in the country.

As a solution, the Brennan Center recommended more than 20 rules changes to create a more transparent, accountable, and deliberative body. In the months that followed, editorial boards, chambers of commerce, civic organizations and voters from across the state embraced our blueprint and demanded change in the way the State Legislature operates.²

To the surprise of many hardened Albany veterans, both houses of the State Legislature responded to the 2004 Report by making changes to their internal operating rules at the start of the new session in January 2005.³ The Assembly followed up with additional changes in February.⁴

The changes represented the first time in more than a generation that legislative leaders acknowledged that to function properly, the State Legislature needs governing rules that encourage more deliberation, provide greater transparency, and facilitate real accountability.

When these new rules were passed, the State’s legislative leaders promised that the changes they adopted would transform the way the Legislature operated and that even more reform was on the way. Senate Majority Leader Bruno claimed that the reforms passed by the Senate would “make the legislative process more open, effective, and responsive”⁵ and “address most of the recommendations made by the Brennan Center.”⁶ Assembly Speaker Silver said, “New Yorkers deserve and are entitled to a more efficient, accountable and honest government.”⁷ He promised that “making state government more efficient, productive and responsive [would] be among the Assembly’s top priorities” in the 2005–2006 Session.⁸

This report examines the extent to which these promises were kept. Did the chambers actually adopt a significant portion of the 2004 Report recommenda-

tions? And regardless of whether they did, did they keep their promise of creating a more efficient, accountable and deliberative legislature?

The answers to these questions, it turns out, are as unavoidable as they are unfortunate. In spite of some modest reforms, the quantitative evidence from 2005 shows that the State's legislative process remains broken. To move beyond this dysfunction and effect real change in Albany, the Senate and Assembly need to adopt key rules changes they did not make in January and February of 2005.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The new rules adopted by the Senate and Assembly in 2005 have brought some change to the legislative process in New York. The Assembly adopted more of the 2004 Report recommendations than did the Senate: eliminating all empty-seat voting in the full chamber, requiring open and regular meetings of the powerful Rules Committee, obligating standing committees to meet at least once a month, and mandating annual oversight hearings by committees to assess agency implementation of programs.⁹

The Senate made fewer changes – at least one of which can only be characterized as a step backward. Positive steps included eliminating empty-seat voting for any bill on the “controversial” calendar, reducing the maximum number of committee assignments that a Senator may hold to seven, and eliminating the power of the Majority Leader to “star” bills for the purpose of preventing them from being considered by the full chamber.¹⁰ On the other hand, the Senate added a rule that requires all future rules changes to be considered and approved by its Rules Committee, rather than being raised and approved by the full chamber on the floor. Because the Rules Committee is controlled by Senate leadership and insulated from public scrutiny,¹¹ this Orwellian move effectively killed any rules changes that the leaders do not embrace.

If seen as first steps toward greater reform, there should be no question that many of the changes made by both chambers in 2005 were positive. However, the quantitative analysis of the Legislature’s performance in 2005 shows that the vast majority of the problems identified in the original report remain deeply endemic in both chambers. In 2005, the only year since the new rules were passed for which complete statistics are publicly available:

- there were few standing committee hearings devoted to a specific piece of major legislation¹² that passed into law in either chamber;¹³
- there were no detailed committee reports attached to major bills;
- leadership continued to maintain near-total control over what legislation reached the chamber floor;
- neither house voted down a single bill that received a vote on the floor;
- there was little floor debate on major legislation; and
- the use of conference committees to reconcile similar bills in each chamber remained the exceedingly rare exception rather than the rule.

Interviews with Senators, their staff, and legislative counsel further indicate that there was no significant change in any of these areas in 2006.¹⁴

Finally, leadership has maintained its near total command over legislative resources, allocating funds based on loyalty and party affiliation rather than objective criteria such as member responsibility and district size. In the 2005–2006 session, majority members in both the Senate and Assembly were given substantially more legislative funds for office resources and staff than their minority counterparts – despite the fact that legislators in the same chamber represent a similar number of constituents.

It is plain from this and other evidence that neither chamber’s 2005 rules changes fundamentally changed the power relationship within the chamber or limited leadership’s iron-clad control over legislation and the ability of members to get bills to the chamber floor for debate and vote. The new and improved legislature that New Yorkers were promised in January 2005 has yet to materialize in any significant way.

In January 2007, the Senate and Assembly will again have the opportunity to change their operating rules. As in 2005, these changes do not require agreement between each chamber’s leaders or gubernatorial approval. Instead, each chamber’s members can unilaterally adopt new rules – although, in the case of the Senate, the Rules Committee will need to approve any changes before the chamber can even consider them. This report offers those members, as well as their constituents, a clear view of what still needs to be done to create a legislature that fulfills its potential as an open and accountable representative body.

Specifically, at a minimum, each chamber should make the following changes:

- **Strengthen the Standing Committees so Rank-and-File Members can Force a Hearing or Vote, even over the Objections of the Committee Chair.**
- **End Leadership’s Stranglehold on Getting Bills to the Floor.**
- **Institutionalize Conference Committees.**
- **End Leadership Control over Resources and Staff.**

In both the discussion (*infra* at 12–13, 17, 26–27, 29–30) and conclusion (*infra* at 34) of this report, we detail how each of these goals can be achieved.

There are more changes detailed in the 2004 Report that each chamber could make to improve the legislative process. And the Senate should repeal its 2005 decision to require all future rules changes to be considered and approved by the Rules Committee of the Senate, rather than by the full chamber on the floor. This regressive “reform” served only to consolidate additional power in the Senate

leadership, which controls the Rules Committee, and undercut the movement for real reform.

But the four key changes detailed above are the most important. They will not magically transform the New York State Legislature into a paradigm of good government; they are, however, vital first steps in that direction.

EFFECTS OF THE 2005 RULES CHANGES

The 2004 Report identified five principal problems with the New York Legislative process. They were:

- Standing committees rarely fulfilled their primary legislative functions;
- The Legislature made it more difficult than any other in the country to move a bill from committee to the floor for consideration without leadership approval;
- There was little debate, amendment, or review of legislation;
- Conference committees, which could be used to reconcile differences between similar bills passed by both houses were rarely used; and
- The Legislature was inefficient and wasted resources.

Below, we review the impact of the changes that were made in 2005 on solving each of these problems. In addition, we provide the minimal reforms that must be made if the Legislature is to have any hope of ending its failures in each of these areas.

■ DYSFUNCTIONAL STANDING COMMITTEES

In the 2004 Report, we noted that the State Legislature’s committees were weak and ineffective, failing to serve two core legislative functions:

... first, to enable legislators to develop, examine, solicit public and expert feed back 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.¹⁵

Specifically, instead of anchoring the legislative process, we found that the committee system in New York “rarely include[d] significant deliberation, policy development, drafting, or amendments to legislation, even for major bills that become law.”¹⁶ These failures contrasted starkly with the way committees functioned in Congress and most other state legislatures, where committees are “the locus of most legislative activity.”¹⁷

New York’s weak committee system had led to weak legislation: more often than not, legislation did not reflect the collaborative engagement of experts, input from public hearings and reports, or discussion, deliberation, and debate among members of the public and the Legislature.

The reasons for the weak committee system were many. Among the most important reasons identified in the 2004 report were the following:

- The Speaker and Majority Leader exercised almost complete control over committee staffing, which deprived committees of the ability to prioritize, consider and develop legislation independent of leadership.¹⁸
- It was far too difficult for rank-and-file members to compel a standing committee to hold public hearings on pending legislation or to oversee administrative agencies within the committee's jurisdiction. As we noted in 2004, that difficulty "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...The legislators are deprived of a forum to educate themselves and to debate and mark up proposed legislation."¹⁹
- Committees were not required to draft (and rarely *did* draft) committee reports that set forth the purposes of a bill, the proposed changes to existing law, section-by-section explanation, cost-benefit analysis, procedural and voting history, or any individual members' comments on the bill. Instead, committees issued only Sponsors' Memoranda or Committee Bill Memoranda, which either ignored these topics altogether or addressed them in a superficial fashion. More meaningful committee reports, we noted, would allow the full chamber, the courts, and the public to gain a greater understanding of a bill's potential impact, and they would "encourage[], if not guarantee[], that the committee in question [would] in fact analyze, debate, and fully consider a bill."²⁰
- Because legislators in both houses were assigned to so many committees – in the Senate, the average number of assignments was 8, more than in any legislative chamber in the country,²¹ – it became far less likely that they would attend most committee meetings and hearings, develop expertise through committee work, or otherwise devote themselves to the time-consuming work necessary to create effective committees.
- New York made it more difficult than any other legislature in the country for a rank-and-file member to obtain consideration of a bill by either her committee or the full chamber.²²

■ 2005 RULES CHANGES TO THE COMMITTEE PROCESS

The 2004 Report recommended several changes to the legislative rules that would strengthen committees in New York. The chart below lists those recommended changes and compares them to the actual changes made by the Senate and Assembly in their 2005 operating rules.

TABLE 1

| BC RECOMMENDATION | 2005 SENATE RULES | 2005 ASSEMBLY RULES | IMPACT ON PRACTICE |
|---|---|---|---|
| 1 Each standing and rules committee shall be authorized to hire and fire its own staff. | No change. | No change. | N/A |
| 2 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. | No change. | No change. | N/A |
| 3 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. | No change. | Annual agency oversight hearings by committees after the adoption of the budget are required to assess the relevant agency's implementation of programs. ²³ | Several Assembly Members and staff interviewed stated that the scope and depth of these committee hearings have been insufficient in detail to adequately assess and regulate these agencies. ²⁴ |
| 4 All bills reported to the legislative floor must be accompanied by a detailed public committee report. | "Each bill reported by a standing committee shall be accompanied by a report, and the minority shall file a minority committee report within seven days of the bill being reported out of committee." ²⁵ | No change. | The 2005 Senate rules do not specify what information the reports should or must contain. In practice, Senate reports contain little useful information. |
| 5 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 change. | A committee member who has three unexcused absences "as determined by the chairperson or ranking minority member... from any regularly scheduled meeting of a standing committee at which bills are scheduled to be considered[,] shall be removed from one or more of the standing committees to which he or she is assigned." ²⁶ | Assembly Members report that, unlike in the Senate where there is and has been chronic proxy voting, attendance at committee meetings has been and generally remains good. ²⁷ |

TABLE 1 (continued)

| BC RECOMMENDATION | 2005 SENATE RULES | 2005 ASSEMBLY RULES | IMPACT ON PRACTICE |
|--|---|---|---|
| 6 No member shall be assigned to more than three committees during a legislative session. | Reduced the maximum number of committee assignments to seven, "as far as practicable." ²⁸ | Members of the Assembly are limited to six committee assignments, with committee chairs limited to five. Ex officio and interim memberships are not counted. ²⁹ | Although the changes in both houses are welcome, six or seven committee assignments is still in excess of the average number of assignments per legislator in almost any other state. ³⁰ |
| 7 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. | No change. | No change. | N/A |
| 8 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. | Senate Rule VII, § 3(b) already required minutes of committee meetings to be taken and made public. ³¹ | No formal change was made, but the Rules Committee, which has in the past been used to silently kill bills before they could get to the floor, now holds public meetings and records votes. ³² | In spite of the fact that the Senate Rules require minutes of committee meetings, there are no direct or full transcripts of Senate Committee meetings. In general, committee minutes provide little information other than what bills were considered and how members voted. ³³ |
| 9 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. | The provision from the old rules that permitted proxy voting was removed. ³⁴ | No change made or necessary because proxy voting was already prohibited in the Assembly. ³⁵ | Even though Senators' votes must now be entered "on a signed official voting sheet delivered to the committee chair," interviews with Senators and staff indicate that absenteeism and proxy voting are still common. ³⁶ |

As the chart demonstrates, while both chambers (and, in particular, the Assembly) made some changes in the way committees operate, the most important reforms – such as giving committees full control over hiring and firing of their own staff, allowing rank-and-file committee members to force a hearing or vote over the objection of a committee chairperson, or requiring detailed committee reports for legislation voted out of committee – were not implemented. Moreover, the Rules Committee still acts as a bottleneck preventing bills from reaching the floor once they have been voted out of committee, Assembly committees do not take any minutes of their meetings (while the Senate’s minutes contain very little useful information other than how members voted), and proxy voting and absenteeism are still pervasive in Senate committees.³⁷

While the Senate now requires that every “bill reported by a standing committee [] be accompanied by a report,” an examination of these “reports” shows that they contain very little useful information; specifically, they do not contain contributions from committee members other than the bill sponsor, committee analysis of the bill or its potential impact (including cost and regulatory impact assessments) beyond mere conclusory claims, evidence or testimony gathered via hearings or other means, or relevant minutes of committee debate or deliberations. Thus, unlike reports produced by committees in Congress and other state legislatures, these reports do not encourage committee member participation in the development of legislation, do not provide other legislators with useful information about the related bill, and do not provide courts and the public with a key source from which to determine the legislative intent behind the bill.³⁸

■ ■ QUANTITATIVE ANALYSIS OF COMMITTEE PERFORMANCE SINCE 2005 RULES CHANGES³⁹

A review of the legislative record shows that committees remain nearly as weak as they were before the 2005 rules changes. Across the six categories used in the 2004 report to judge the robustness (or lack thereof) of the committee process, there was either no significant improvement or decline on each measure of performance.

Few Committee Reports. Between 1997 and 2001, only 1.1% of the major bills passed by the Assembly, and 0% of the major bills passed by the Senate, were the subject of committee reports. This pattern has not changed since the new rules were passed. In fact, in 2005, there was not a single substantive committee report issued in either chamber for a piece of major legislation.⁴⁰

Proxy Voting. In the 2004 Report we noted that one Senator, remarking on the frequency of proxy voting in Senate Committees, stated that “lobbyists are more regular attendees of committee meetings than Senators.”⁴¹ In January of 2005, the Senate removed language in its rules specifically allowing proxy voting, but they did not replace it with an explicit ban on the practice. In fact, committee members are still permitted to cast votes without attending meetings, and interviews with Senators suggest that members frequently continue to take advantage of this lux-

ury.⁴² As we noted in the 2004 Report, the rules of only one other professional chamber, the Pennsylvania Senate, allowed proxy voting in committees.⁴³

Unanimous Committee Votes and Chairpersons' Control over Bills in Committee. As we noted in the 2004 Report, rank-and-file legislators cannot require a committee chair to hold a hearing or a committee vote on a bill, even if a majority of the committee's members would support doing so. The result was that committee chairs would allow votes only on bills they supported, leaving even popular bills with little or no hope of escaping the committee and making it to the floor. Unanimous committee votes were thus the norm.⁴⁴ Statistics on committee votes for 2005 show that this remains the norm in both chambers.

Specifically, in the Senate, of the 305 committee votes on major legislation passed in 2005 that we reviewed, only 21 (*i.e.*, 6.9%) were not unanimous. Moreover, on the rare occasions when there was not unanimity, the "no" votes were generally cast by a single committee member: out of a total of 5,650 votes cast on such legislation, there were only 25 (*i.e.*, 0.4%) "no" votes. In the Rules Committee, "no" votes were even more of a rarity: of the 3,099 votes cast on major legislation in 2005 that we reviewed, there were just 8 "no" votes.⁴⁵

The numbers in the Assembly were similar. Out of the 292 committee votes on major legislation in 2005 that we reviewed, only 28 (*i.e.*, 9.6%) were not unanimous. Out of a total of 5,677 votes cast on this legislation, only 100 (*i.e.*, 1.8%) were "no" votes.⁴⁶

Committee Assignments. In the 2004 Report, we noted that the New York State Senate had more standing committees (32) than all but one other state senate (Mississippi, at 35).⁴⁷ The New York State Assembly ranked fifth in the nation among lower chambers, with 37 committees.⁴⁸ As we noted in the 2004 report, "[t]he proliferation of committees saddles lawmakers with an excessive number of committee assignments, and threatens the quality of committee work."⁴⁹ In 2005, the Senate reduced the number of standing committees by one, to 31, a step in the right direction but not enough to effect substantial change.⁵⁰

Both chambers reduced the maximum number of committees on which members could serve, but the limits proved too high to have much practical impact. In terms of actual committee assignments per legislator, the Senate average decreased from just under 8 in 2003 to just under 7 in 2005,⁵¹ and the Assembly average held steady at slightly under 5 slots per member.⁵² These averages remain significantly higher than the averages in virtually every other state legislature in the country.⁵³

Frequency of Committee Meetings. We noted in the 2004 Report that "the infrequency of committee meetings [in both chambers] reflects the limited scope of committee work."⁵⁴ In 2005 and 2006, many committees continued to meet infrequently, and some not at all.⁵⁵ For instance, in the Senate, 15 of 31 committees

met five or fewer times in 2005, including the Ethics Committee, *which did not meet at all* in either 2005 or 2006.⁵⁶ Interviews with Assembly Members indicate that the problem of infrequent committee meetings remains endemic in that chamber as well.⁵⁷

■ CONCLUSIONS ABOUT THE 2005 RULES CHANGES

While the Assembly took important steps by requiring annual agency oversight hearings in relevant committees and mandating attendance at committee meetings, these reforms will be of limited effect by themselves. Neither chamber took the crucial steps necessary to create an even moderately independent, deliberative committee process that could act as an incubator for policy – the kind of system used by Congress and so many other state legislatures.

Furthermore, because it remains nearly impossible for committee members to force their chair to hold a hearing or vote on specific legislation, the committee system does not 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 interest. These concerns are borne out by the fact that in 2005, almost no committee hearings were held on major legislation that was eventually enacted into law, and nearly all committee votes were unanimous.⁵⁸

Moreover, as they did during the period from 1997 to 2001, the Assembly Speaker and Senate Majority Leader still control nearly all committee resources and continue to have the power to hire – and fire – all committee staff.⁵⁹ This means that the most significant policy development and legislative drafting are done not by committee members but by Central Staffers, who are ultimately responsible to the legislative leaders.⁶⁰

Finally, putting a limit on the number of committees on which members can serve was certainly a positive change, and both the Assembly and Senate appear to have enforced these limits. However, the current thresholds are too high, which means that members are still stretched too thin to participate effectively in committee deliberations.

Taken together with the absence of substantive committee reports, limits on forcing hearings or votes, the low attendance rates at committee meetings, and the continued use of proxy voting in the Senate committees, these statistics paint a picture of a committee system that is barely functional – and very far removed from the public interest.

If each chamber is to create a strong committee system, it must make at least three changes to its legislative operating rules:

- A minority of committee members must be able to force a public hearing on a bill unless a majority of the committee publicly votes to reject the request;

- One-fourth or more of a committee's members must be able to force a timely and public committee vote on a particular bill, even if the committee chairperson objects; and
- Each committee should have the power to hire and fire professional committee staff, independent of the preferences of the Speaker or Majority Leader.

■ BARRIERS TO FULL CONSIDERATION OF LEGISLATION

In the 2004 report, we noted that New York makes it exceptionally difficult to get a bill to the chamber floor without the consent of the Speaker or Majority Leader, even when the vast majority of legislators publicly claim to support the bill. In the 2004 Report, we concluded that New York's Legislature made it more difficult to discharge a bill from a committee and get it to the full chamber for consideration than any other legislature in the country.

As a result of these barriers, legislators cannot get votes on legislation important to them and their constituents without leadership approval. In addition, members of minority political parties in each chamber – the Democrats in the Senate and Republicans in the Assembly – have a much more difficult time representing their constituents through legislative action. Finally, voters are often unable to hold their representatives accountable for failing to act on difficult or controversial issues; all too often, as demonstrated in the case study on page 18, legislative leaders will prevent such difficult or controversial issues from ever coming to a public vote.

The 2004 Report identified three key barriers to full consideration of a bill that allowed the Speaker and Majority Leader “to prevent any bill from reaching the floors of their respective chambers without the certainty of passage and, presumably, without their support: ⁶¹

- New York's Legislature placed “more restrictions than any other state legislature on motions to discharge a bill from a committee to the floor for a vote.”⁶²
- The Senate Majority Leader had the power to “star” any matter listed on the calendar, and prevent any action from being taken on the matter until a date of his or her own choosing.⁶³ In 2004, New York State's Senate was the only legislative chamber in the country that granted such unilateral authority over legislation to its leader.
- Legislative leaders had full control over the order of bills placed on the calendars – and full discretion over whether to place a bill on the calendar at all. As of 2004, the New York Senate and Assembly were two of only three chambers nationwide to grant leaders this power for the second-reading and special-order calendars, and two of only five chambers to grant leaders this power for the third-reading calendar (on which final votes on passage are taken).⁶⁴

■ ■ 2005 RULES CHANGES TO BARRIERS TO FULL CONSIDERATION

The 2004 Report made eight recommendations to reduce the barriers to getting bills from committee to the full chamber floor. Below is a chart that lists those recommended changes and compares them to the actual changes made by the Senate and Assembly in the 2005 Rules.

TABLE 2

| BC RECOMMENDATION | 2005 SENATE RULES | 2005 ASSEMBLY RULES | IMPACT ON PRACTICE |
|--|---|---|--|
| 1 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. | No change. | The Assembly already had the "Form 99" process, which allows committee members to petition to the Committee Chair for a vote. That process, however, only requires a vote before the end of the two-year session. ⁶⁵ | N/A |
| 2 Any elected member of the chamber shall be allowed to make a motion to discharge a bill from committee, and the sponsor's agreement shall not be required. | No change. | No change. | N/A |
| 3 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. | Motions to discharge are now allowed after 30 days (as opposed to previous 60-day requirement). ⁶⁶ The cutoff date for discharge motions was extended from the second Tuesday in April to the fourth Tuesday. ⁶⁷ | The cutoff date for discharge motions was extended from the second Tuesday in April to the fourth Tuesday. ⁶⁸ | While these changes are a modest improvement, the time restrictions on discharge motions are still far greater than those in the vast majority of state legislative chambers in the country. ⁶⁹ |
| 4 There shall be no limit on the number of discharge motions within a legislative session. | No change. | No change. | N/A |
| 5 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. | The sponsor of a discharge motion is now allowed ten minutes, instead of five, to explain the motion. ⁷⁰ | No change. | N/A |

As the chart indicates, the Senate and Assembly took some very limited steps to reduce the power of leadership to prevent bills from being debated or receiving a vote on the chamber floor. For instance, in the Senate, the Senate Temporary President (who is also the Majority Leader) is no longer able to “star” bills to prevent full consideration by the full chamber; discharge motions are now allowed

TABLE 2 (continued)

| BC RECOMMENDATION | 2005 SENATE RULES | 2005 ASSEMBLY RULES | IMPACT ON PRACTICE |
|--|--|--|--|
| <p>6 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.</p> | <p>The Temporary President (who is the Majority Leader) is no longer able to “star” bills to prevent consideration by the full chamber.⁷¹</p> | <p>No change.</p> | <p>The Senate’s elimination of the Majority Leader’s “starring” power is commendable, if long overdue. By failing to enact reforms permitting committee members to discharge bills, however, the Majority Leader still has de facto starring power through his or her control of the calendar.</p> <p>The Senate did not eliminate the power of the Majority Leader to control which bills voted out of committee will make it onto the so-called “Active List.” If a bill is not placed on the Active List by the Majority Leader, it will not be voted on by the full Senate chamber.⁷²</p> |
| <p>7 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.</p> | <p>No change.</p> | <p>No change.</p> | <p>N/A</p> |
| <p>8 All votes on discharge motions shall be taken by slow roll call and the votes of each member recorded as a public record.</p> | <p>No change.</p> | <p>The Assembly already required a public recording of discharge motions.⁷³</p> | <p>N/A</p> |

after a bill has sat in committee for more than 30 days, as opposed to 60 days, without a vote; and the cutoff date for discharge motions has been extended from the second Tuesday in April to the fourth.⁷⁴

However, the Senate did not reverse a “new” rule, instituted in 2001, that requires discharge motions to be taken by “canvass of agreement.” In such votes, Senators who support discharge raise their hands. “No” votes are neither taken nor recorded. The result is that when a popular bill is kept by a majority of Senators from moving out of committee and to the floor, there is no public record of *which* Senators were responsible.⁷⁵ Accordingly, Senators can kill a bill by abstaining from a discharge vote.

The Assembly also took limited steps to reduce the obstacles to discharge motions. Most notably, the Assembly now requires members to be present to vote on these motions, and the body seems to be enforcing its requirement that the Rules Committee, which in the past has been used to silently kill bills before they reach the floor, must hold public meetings and record votes.⁷⁶

However, these modest changes in the Assembly fall far short of what would be necessary to make it substantially easier to bring bills to the floor. In both chambers, restrictions on discharge motions remain far more onerous than those used in other states.⁷⁷ It is exceptionally rare for a bill, no matter how popular, to be removed from committee to the floor by a discharge motion.⁷⁸ In fact, in interviews with several legislators, their staffs and legislative counsel, no one could recall an instance in their careers when a discharge motion was successful.⁷⁹

■ ■ QUANTITATIVE ANALYSIS OF PERFORMANCE SINCE 2005 RULES CHANGES

Leadership Control over Bills Coming to the Floor. Between 1997 and 2001, the Senate voted on 7,109 bills. Between 1997 and 1999, the Assembly voted on 4,365 bills. Not a single one of these bills was rejected in either chamber.⁸⁰ This is a clear indication of the amount of control leadership exercises over which bills reach the chamber floor. Evidence from 2005 suggests this iron grip has not changed since new rules were adopted: in 2005, the Assembly voted on 1,649 bills and the Senate on 1,650 bills. None were rejected.⁸¹

Lack of Dissent. Leadership’s refusal to bring controversial legislation to the floor can also be demonstrated by the lack of dissent in floor votes. Of the 317 major bills passed in 2005, only 44 in the Senate (i.e. 13.9%) and 89 in the Assembly (i.e. 28.1%) received any no votes at all. Only 3.6% of major bills passed by the Senate and 4.4% passed by the Assembly were opposed by at least 10 percent of the chamber’s membership.⁸²

No Successful Discharge Motions. It remains nearly impossible to get a bill out of committee without the support of a committee chairperson. There was not a single successful discharge motion in 2005 or 2006.⁸³

■ ■ CONCLUSIONS ABOUT 2005 RULES CHANGES

While both the Senate and Assembly took some steps toward reducing the barriers to full consideration of legislation, it is still impossible for legislators to move a bill out of committee and to the floor without the consent of the chambers' leaders. This is true regardless of whether the bill was voted out of the committee or how much support it might have.

If the absolute power of leadership over the fate of bills is to change, the Senate and Assembly must adopt a rule that provides a mechanism for rank-and-file legislators in the Legislature to bring bills that have been voted favorably out of committee, or that have the support of a majority of members, to the floor for debate and a vote (even over the objection of the Majority Leader or Speaker). One possible solution would be to adopt a rule that every bill voted out of committee must be placed on the calendar, considered, and voted on by the full chamber within a relatively short time frame (*e.g.*, 60 days) or prior to adjournment, whichever comes first.

BARRIERS TO FULL CONSIDERATION OF LEGISLATION: A CASE STUDY

Recent attempts by Senator Carl Marcellino of Syosset and Assemblyman Thomas DiNapoli of Great Neck to amend New York's wetlands preservation laws demonstrate how barriers in the Legislature can prevent broadly popular legislation from receiving a floor vote. The effort to get a vote in the Senate on wetlands preservation legislation is particularly telling because it was thwarted both in 2004 (before new Senate rules were adopted) and in 2005 (after new rules were adopted), despite the fact that in both sessions, a majority of Senators claimed to support the legislation.

For several years, environmental groups have called New York's wetlands protection laws the weakest in the Northeast. A 2001 Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*⁸⁴ ("SWANCC") and subsequent federal actions made this problem more acute, leaving a significant percentage of New York's wetlands unprotected. In reaction, Senator Marcellino and Assemblyman DiNapoli introduced legislation in their respective chambers designed to strengthen protection of New York's wetlands. In 2004 and again in 2005, the Assembly passed this bill.

In the Senate, however, the bill stalled both years. This happened even though the vast majority of Senators claimed to support it,⁸⁵ and Governor Pataki proposed virtually identical legislation in 2005.⁸⁶ To his credit, Senator Marcellino steered his bill through the Environmental Conservation Committee (which he chaired), where it was favorably voted out by wide margins in 2004 and 2005. But it never reached the full Senate floor for debate, let alone a vote.

In early June 2004, the bill was favorably voted out of the Senate Environmental Conservation Committee.⁸⁷ Pursuant to Senate rules, the bill was sent to the Rules Committee, which must consider all bills moved through standing committees after late May of every session.⁸⁸ For the next six months, the bill sat in the Rules Committee, which is chaired by Senate Majority Leader Joseph L. Bruno. Environmental groups say that during this six-month period, Senator Marcellino and other Senate supporters asked Senator Bruno on several occasions to move the bill through the Rules Committee and onto the floor for a vote.⁸⁹

In 2005, Senator Marcellino avoided the Rules Committee by getting the bill passed through the Senate Environmental Conservation Committee in April (before the Rules Committee would gain jurisdiction over the bill), by an 11-to-1 vote.⁹⁰ Despite this lopsided vote, the fact that Senator Marcellino chaired the Environmental Conservation Committee, and the apparent support of 49 of the Senate's 62 members,⁹¹ the Senate Majority Leader would not place the bill on the "Active List." Consequently, it never reached the Senate floor for debate and a vote.

■ INSUFFICIENT DEBATE, LACK OF AMENDMENTS, INADEQUATE REVIEW

The New York State Legislature has not only failed to seriously scrutinize the laws it enacts; it has routinely failed to engage in any public deliberation of its legislation whatsoever. As the 2004 Report commented:

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[.]⁹²

The absence of deliberative activities means that rank-and-file legislators do not have a meaningful opportunity to comment on or have input into bills on the floor. This is particularly damaging in New York because the committee process also does not provide such opportunities, nor does it produce substantive reports. Most bills are voted on without ever being subject to detailed analysis in the committees or debate and amendment in the full chamber. Many bills are rushed through in the final days of the legislative session. Floor votes have become rubber stamps. *The New York Times* noted wryly in a July 2004 editorial that “[w]hen Assembly members began a verbal exchange on the floor last month about the horrors of junk food versus the joys of chocolate, the moment was viewed by Albany veterans as an extremely good day for democracy.”⁹³

The lack of debate, amendment, and review has serious consequences. Legislators make enormously significant decisions without adequate information and without being compelled to publicly explain their logic. Voters are denied a public conversation on the pros and cons of legislation, which hinders their ability to participate and hold representatives accountable. Courts are further deprived of interpretive guidance. Bad laws – laws that contain errors or that would have been unpopular had they received any real attention – get enacted. The legislature becomes a less transparent, less engaged, less democratic body.

The 2004 Report identified four main ways in which the Legislature's operating procedures stymied deliberation in the full chamber:

- Each house, but especially the Assembly, placed formal constraints on debate beyond what is healthy or necessary.⁹⁴ The Assembly was rare among state legislative chambers in limiting both the duration and frequency of debate.⁹⁵ Although legislators could, of course, contemplate and discuss pending bills in private, “at no point in the legislative process prior to the floor vote [was] there any opportunity for members to hear from each other in an open forum about the policy implications of a specific piece of legislation.”⁹⁶ The intra-house, intra-party caucuses offered no substitute, because they were closed to the public and to legislators from the other party.
- The New York State Constitution requires that legislators have at least three

days to read and consider a bill before voting on its final passage.⁹⁷ There is an exception to this rule, however, when the Governor certifies “under his or her hand,” with supporting facts, that speedier action is needed in a declaration known as a “message of necessity.” The 2004 Report found that, far from being used only for emergencies, messages of necessity were used on a regular basis to bypass the constitutionally mandated three-day consideration period.⁹⁸

- Both houses employed a voting procedure known as “fast roll call” voting, whereby members’ votes are counted automatically as affirmative unless they take action to record a negative vote. Only upon the request of one member in the Assembly or five members in the Senate would a slow roll call – whereby individual legislators actually have to vote “aye” or “nay” – have to be taken on a final vote. A Brennan Center survey found that less than one-fourth of the country’s legislative chambers ever used the fast roll call procedure; the New York Senate and Assembly, in stark contrast, almost never failed to use it.⁹⁹
- Both houses also employed a voting procedure known as “empty seat voting,” in which members who are physically absent or who fail to raise their hand are counted as affirmative votes. Empty seat voting was routine in both houses despite longstanding public criticism and 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.”¹⁰⁰ A Brennan Center survey found that no other state routinely allowed empty seat voting (a few others allowed it in special circumstances).¹⁰¹

■ 2005 RULES CHANGES TO DEBATE, REVIEW, AND PASSAGE OF BILLS

To create a legislative process that encouraged greater public debate and deliberation, the Brennan Center recommended four reforms. (*See* Table 3.)

As the chart reflects, the Legislature’s reforms in this area were mixed. The Assembly eliminated empty seat voting and fast roll call voting for votes on the final passage of bills. The Senate made a positive change in eliminating empty seat voting for bills on the “controversial” calendar. Yet neither house’s reforms did anything meaningful to curb the excessive reliance on messages of necessity, to foster greater debate and review, or to open up the legislative party conferences – arguably the only locus of collective policy discussion in the entire Legislature –¹⁰² to the public. Finally, the Assembly still allows members to speak no more than twice on the same subject (unless granted special leave), limits their presentations to fifteen minutes (unless two-thirds of those present consent to an extension), and allows members two minutes to explain their votes.¹⁰³

TABLE 3

| BC RECOMMENDATION | 2005 SENATE RULES | 2005 ASSEMBLY RULES | IMPACT ON PRACTICE |
|---|--|---|---|
| <p>1 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.</p> | <p>Empty seat voting was eliminated for bills on the "controversial" calendar but not for bills on the non-controversial calendar.¹⁰⁴</p> <p>No change to fast roll call voting procedures.¹⁰⁵</p> | <p>Empty seat voting and fast roll call voting have been eliminated for votes on the final passage of bills, though they remain the default for other types of votes.¹⁰⁶</p> | <p>Both chambers have made significant progress in reforming their voting procedures on the floor, especially the Assembly.</p> |
| <p>2 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.</p> | <p>No change.¹⁰⁷</p> | <p>The Rules Committee must now approve acceptance of messages of necessity; all such approval will be by publicly recorded vote.¹⁰⁸</p> | <p>Neither chamber has adopted the Brennan Center's recommendations.</p> |
| <p>3 Debate on a bill shall not be limited to less than five hours and, if at all, shall be limited only by a majority vote of the elected members of the chamber.</p> | <p>The time limit on debate of bills is now set at four hours. There is no means to extend this limit, and after two hours the possibility remains of ending debate by majority vote.¹⁰⁹</p> | <p>No change.</p> <p>The new rules institute Tuesday sessions to "allow for greater review and debate of legislation."¹¹⁰</p> | <p>Both chambers have failed to make progress in easing restrictions on debate.</p> |
| <p>4 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.</p> | <p>No change.</p> | <p>No change.</p> | <p>In both chambers, legislative party conferences – the meetings in which parties hammer out their policy positions – remain closed to the public and to legislators from the other party.¹¹¹</p> |

■ QUANTITATIVE ANALYSIS OF PERFORMANCE SINCE 2005 RULES CHANGES

The most visible effect of the 2005 rules changes was to eliminate empty seat voting in the Assembly and greatly reduce its use in the Senate. New York’s legislators now must generally show up in person if they want their votes to count.

On the other hand, there is still almost no real debating or amending of bills on the floor of either chamber. The end-of-session legislative logjam remains as bad as ever. And bills do not come to the floor for a vote unless they are guaranteed to pass, usually with little or no dissent. In other words, both houses eliminated the most glaring and embarrassing symbol of dysfunction, while doing little to resolve the substantive problem.

Rare debate. Between 1997 and 2001, 95.5% of the major bills in the Assembly and 95.1% of the major bills in the Senate passed without any substantive debate on the floor.¹¹² 81.8% of major bills passed the Assembly and 70.8% passed the Senate without any discussion whatsoever.¹¹³

Remarkably, there was even less debate in 2005 after the new rules were passed. 96.8% of major laws passed by the Senate and 95.3% of major laws passed by the Assembly were not subject to any substantive floor debate. Similarly, 89.9% of the major laws passed in the Senate and 89.0% of major laws passed in the Assembly were passed without any discussion on the floor *at all*.¹¹⁴

Rare Amendments. None of the 308 major bills analyzed from 1997 through 2001 were amended by the full chamber on the floor of the Senate or the Assembly, and none of the “off the floor” amendments to those bills were debated on the floor of either chamber.¹¹⁵

In 2005, some amendments were made to bills after they were reported from the final committee in both chambers; 11.0% of major bills in the Assembly and 17.7% in the Senate were “amended on third reading.”¹¹⁶ However, none of these amendments were debated or voted on in the full chamber, which means that there is no record of deliberation and no way of holding individual legislators responsible for these changes. As in 1997-2001, there was also no debate on “off the floor” amendments in either chamber.¹¹⁷

TABLE 4

| Year | Message of Necessity Used for Vote in at Least One Chamber | Message of Necessity Used for Vote in Both Chambers |
|------|--|---|
| 1997 | 7 | 6 |
| 1998 | 19 | 16 |
| 1999 | 17 | 10 |
| 2000 | 29 | 24 |
| 2001 | 11 | 5 |
| 2005 | 14 | 10 |

Excessive messages of necessity. The 2004 Report criticized the Legislature for its excessive use of messages of necessity between 1997 and 2001.¹¹⁸ As we noted at that time, “the process facilitates the passage of major legislation without any debate or participation by legislators.”¹¹⁹ As Table 4 demonstrates, the number of messages of necessity used in 2005 was still quite large, though substantially less than the peak number reached in 2000.¹²⁰

The drop in the number of messages of necessity since 2000 may be attributable to public pressure and other recent attention given to its abuse in the media.¹²¹

Empty Seat Voting. The authors of the 2004 Report were not able to obtain precise statistics on how often the Assembly used empty seat voting from 1997 to 2001, but interviews suggested that the practice was the rule rather than the exception. Because of the rules reforms made in 2005, the Assembly no longer uses empty seat voting for final votes on the passage of bills.¹²²

By contrast, the Senate's new rules require only that Senators be present to vote for bills on the "controversial" calendar. While any Senator may request that a bill be placed on the controversial calendar, Senators have estimated that between 5 %¹²³ and 15% of bills are typically placed on the controversial calendar in any given session.¹²⁴ This percentage is much lower at the end of session, when members are deluged with bills.¹²⁵

End-of-Session Logjam. Between 1997 and 2001, 21.4% of major bills were passed in the Senate and 24.0% in the Assembly either during the final three days of the legislative session or during a special session day after the final day of the regular session.¹²⁶ *This problem has only become worse since the 2005 rules were adopted.* In 2005, 36.0% of major bills were passed in the Senate and 40.4% in the Assembly during these last possible days.¹²⁷

■ CONCLUSIONS ABOUT 2005 RULES CHANGES

The ban on empty seat voting, which the Senate applied only to "controversial" bills, was the "blockbuster" rules reform of 2005 for both houses. And indeed, it is a salutary, if long overdue, development. The Brennan Center applauds both houses for ending the embarrassment of counting absent legislators as if they were present and voting "yes."

It remains to be seen how this reform will influence the legislative process. At least one commentator believes that "[t]he fact that [legislators] now have to sit in their seats has fundamentally changed the way Albany operates: it has forced lawmakers to experience the legislative process collectively."¹²⁸ In the Assembly, at least, the ban on empty seat voting, coupled with the new possibility of sanctions for missed committee meetings,¹²⁹ has reportedly helped spur some members to show up to work more frequently¹³⁰ and review bills more carefully.¹³¹

Other changes necessary to ensure the consideration, debate, and amendment of bills, however, were not enacted by either chamber. Messages of necessity still occur more frequently than what can reasonably be considered "necessary," legislators continue to pass many bills after having had only a few days to review and consider them, and the end-of-session logjam persists.

Even more troubling is the Legislature's continued failure to debate or amend bills on the floor. In 2005, as in years prior, nearly every bill passed unanimously, and there was almost no meaningful debate on the floor. Bills come up for a vote and are summarily passed. This is most certainly because leadership will not

allow a bill to come to the floor unless it is certain that the bill will pass. That is troubling for at least two reasons: first, it means that divisive but important legislation has significantly less chance of receiving a vote; and second, citizens are deprived of the opportunity to hold individual representatives accountable for this failure by reviewing their voting records on matters that do not command unanimity.

If either chamber is to have real public debate on the floor, leaders must cede some control over which bills are considered by the full Legislature. There must be some way for rank-and-file legislators to bring to a floor vote bills that have been favorably voted out of committee or have the support of a majority of members – even in the Majority Leader or Speaker objects.

There are at least four different ways to achieve this:

- The Senate and Assembly could provide that, on the motion of a majority of members of the chamber, any bill will immediately come to the floor for a debate and vote. The United States House of Representatives and the Massachusetts Senate, among other chambers, have adopted similar practices. In both chambers, a majority of members can force a bill to the floor for a vote through a discharge vote (or series of discharge votes) both before *and* after the bill has been voted out of committee.¹³²
- The Senate and Assembly could mandate that all bills come to the floor for debate and a vote within a certain number of days after they have been voted out of committee and passed through their automatic “second” and “third” readings. The California Senate and the Massachusetts Assembly, for example, have adopted this approach.¹³³
- The Senate and Assembly could allow any member to bring a bill out onto the floor by his or her own motion once it has been reported out of committee, as is done in the Pennsylvania Assembly and Wisconsin Senate.¹³⁴
- Finally, the Senate and Assembly could permit members to bring non-germane amendments to most bills. In practical terms, this would mean allowing legislators to obtain a floor vote on nearly any piece of legislation, as long as it was presented as an “amendment” to pending legislation, whether or not it was relevant to that legislation. This is often how minority party and rank-and-file members of the United States Senate have brought legislation to the floor.¹³⁵

There is much more that the chambers can do to increase deliberation, debate and review of legislation on the chamber floor: limiting the use of messages of necessity, easing the restrictions on debate, and opening up the legislative party conferences would all be positive steps. But until both chambers provide some mechanism for bills and issues to get to the floor, leadership will continue to have near-total control over what is considered, debated, voted on and ultimately passed.

■ INFREQUENT CONFERENCE COMMITTEES

The 2004 report noted that New York had no established mechanism to reconcile differences between bills passed by the two houses and thereby “prevent complete legislative failure if the Speaker and Majority Leader [could not] resolve their differences directly in closed-door negotiations.”¹³⁶ All too often the result was gridlock, even for bills that had overwhelming support.

The situation in New York stands in stark contrast to that in other state legislatures, where the use of conference committees is routine: One 1999 study found that the average state chamber had used 59 conference committees in that year alone.¹³⁷ On the other hand, in New York, conference committees were used only rarely and never in a systematic fashion.¹³⁸ Instead, most often, to pass a bill into law one chamber had to substitute the other chamber’s version of the bill for its own, with the leaders of the two chambers working out any differences without the input of rank-and-file members.

The Senate and Assembly have for years shared a joint rule that allows for the possibility of conference committees, but this rule contains no mandatory or even hortatory language, and it vests power to convene conference committees exclusively with the two leaders.¹³⁹

■ 2005 RULES CHANGES TO CONFERENCE COMMITTEES

The 2004 Report recommended one pivotal reform to expand the use of conference committees. Table 5 compares it with the changes made by the Legislature in 2005.

As the chart suggests, the Assembly made more effort than the Senate in 2005 to provide a mechanism for mandating conference committees in certain circumstances. The Assembly’s proposal for mandatory joint budget conference committees would have been a positive reform, but the Senate did not adopt it. There are still no provisions in the rules of either chamber that make routine bill reconciliation mandatory.

■ QUANTITATIVE ANALYSIS OF PERFORMANCE SINCE 2005 RULES CHANGES

In 2005 and 2006, the Senate and Assembly appear to have convened more conference committees reconciling bills than in the past, at least for budget resolutions and “non-major” legislation.¹⁴⁴ In particular, in addition to budget conference committees, there was a public conference committee to resolve differences in the State’s implementation of the federal Help America Vote Act (though this conference committee meeting came painfully late, long after New York failed to implement important elements of the Act – this delay eventually led the United States Department of Justice to sue New York State for non-compliance).¹⁴⁵

Some commentators viewed the budget conference committees as little more than a publicity stunt, with the real negotiations occurring behind closed doors.¹⁴⁶ Nevertheless, 2005 and 2006 marked the first years in over two decades that the New York State Legislature passed its budget on schedule. While increased pressure from the public, the media, and several watchdog groups certainly spurred the legislators to this timeliness, their use of conference committees also helped facilitate that result. As many have noted, the conference committee process provided a crucial, open forum in which the two houses could work out a fiscal compromise.¹⁴⁷

But the budget conference committees were outliers. In 2005 and 2006, conference committees on major legislation continued to be exceptionally rare.¹⁴⁸ For all practical purposes, the Speaker and Majority Leader must still resolve their differences before similar bills can be reconciled, regardless of the views of the public or other legislators.

■ ■ CONCLUSIONS ABOUT 2005 RULES CHANGES

As the experience of the 2005 and 2006 budget conference committees suggests, such negotiations can play an extremely constructive role in New York.

TABLE 5

| BC RECOMMENDATION | 2005 SENATE RULES | 2005 ASSEMBLY RULES | IMPACT ON PRACTICE |
|--|-------------------|---|--------------------|
| <p>1 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.</p> | <p>No change.</p> | <p>The Assembly created a new Committee on Conference Committees, which “shall meet as necessary to review legislation passed by both houses for the purpose of making recommendations for the convening of conference committees” and which “may review requests for conference committee made by the introducer of legislation.”</p> <p>The Assembly also proposed to change the Senate and Assembly joint rules by mandating the creation of a conference committee to consider all budget resolutions passed by both houses. The Senate did not adopt this proposed change.</p> | <p>N/A</p> |

Conference committees could not only prove useful for overcoming legislative gridlock, but also for making the legislative process more deliberative, more transparent, more effective, and – with the right procedures in place – more democratic.¹⁴⁹

However, the budget conference committees notwithstanding, such public meetings to reconcile competing bills passed in both houses remain exceptionally rare, particularly for major legislation. While the culture of avoiding conference committees may have changed to some degree in Albany in the past two years, it has changed at a glacial pace.

The key is to *institutionalize* a role for conference committees and to *democratize* this role, rather than leaving it to the whim of the house leaders. The Assembly's new Committee on Conference Committees is a start, but it does not provide any clear, broadly-accessible mechanism for triggering a conference committee, and it does not give the minority party a sufficiently large voice to ensure that the Committee can act independently of the Speaker.

Ultimately, the best way to ensure that similar bills in each chamber receive a conference committee is to adopt the recommendations in the 2004 Report: when bills addressing the same subject have been passed by both chambers, a conference committee should be convened at the request of the prime sponsor from each chamber or the Speaker and Majority Leader. Such conference committees should include members from each chamber and should proportionally represent the majority and minority of each chamber. The committee should convene for a “mark-up” session within two weeks of the request to reconcile the differences in the two chambers’ bills before final passage, and these sessions should be transcribed and open to the public.

■ LEGISLATIVE INEFFICIENCY, HIGH COSTS, UNFAIR DISTRIBUTION OF FUNDS

The New York Legislature is extremely inefficient in its use and distribution of funds. As of 2004, New York legislators introduced “more bills than in any other state legislature yet enact[ed] a lower percentage of bills into law than all but two other legislatures.”¹⁵⁰ As we noted in the 2004 Report, this disparity suggested 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 reach a committee vote much less become law.”¹⁵¹ It may also allow Senators and Assembly members to avoid responsibility for the failure of the legislature to act on important, popular issues. As Senator Lachman has noted in his book *Three Men in A Room*, “[w]hen elections roll[] around, otherwise impotent legislators point[] to the many bills they . . . sponsored . . . [though these] bills were crafted not to pass . . . but simply to impress voters or [wealthy individuals and interest groups that could be counted on to contribute big money to their campaigns].”¹⁵²

In addition to the evidence that legislators were not using their time efficiently, the 2004 report presented considerable evidence that house leaders used their control over resources to reward or punish members based on their loyalty, rather than ensuring that resources were allocated for their most efficient use.¹⁵³ The resources they controlled were vital to rank-and-file members and included not just committee staff budgets, but the budget for each member's personal staff, travel reimbursements and office equipment.¹⁵⁴ Not surprisingly, the minority conference in each chamber received substantially less than their share of members would warrant.¹⁵⁵

This control, we noted, created a strong disincentive for rank-and-file members to challenge their leader's approach to legislation or to procedural rules.¹⁵⁶ More specifically, we feared, this control would prevent members from publicly supporting "any changes to the procedural rules that could lessen the authority of the chambers' leader, regardless of the merit of those changes."¹⁵⁷

■ 2005 RULES CHANGES ADDRESSING INEFFICIENCY/ HIGH COSTS/UNFAIR DISTRIBUTION

In 2004, the Brennan Center made two important recommendations for making the State Legislature more efficient and less wasteful. (See Table 6.)

TABLE 6

| BC RECOMMENDATION | 2005 SENATE RULES | 2005 ASSEMBLY RULES |
|---|-------------------|---------------------|
| 1 Each member shall be limited to introducing 20 bills in the Assembly and 30 bills in the Senate in each session. | No change. | No change. |
| 2 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. | No change. | No change. |

■ QUANTITATIVE ANALYSIS OF PERFORMANCE SINCE 2005 RULES CHANGES

Neither chamber made real changes in this area in 2005. Not surprisingly, our research shows that the Legislature continues to be grossly inefficient and to allocate resources unfairly.

Bills Introduced and Enacted. During the period studied in the 2004 Report, more bills were introduced in New York than in any other state, while the percentage of bills enacted into law was lower in only two states (New Jersey and North Carolina).¹⁵⁸ After the 2005 rules were adopted by the Senate and Assembly, little changed.

In 2005, the Senate introduced 6,021 bills, and the Assembly introduced 9,078 (roughly the same number introduced during each year studied in the 2004 report).¹⁵⁹ Only 8.2% of bills introduced in 2005 in the Senate were enacted (compared to 7.1% for the period studied in the 2004 report) and 3.1% of bills introduced in the Assembly were enacted (compared to 2% for the period studied in the 2004 report).¹⁶⁰

Unequal Funding. In New York, the Speaker and Majority Leader effectively control funds available for each member's personal staff, as well as necessary expenses, such as computers, mailing and printing costs for newsletters and travel reimbursements.¹⁶¹ Both continue to make more funds and resources available to members of the majority party than members of the minority party who have equal responsibility.¹⁶² The effect is that constituents who elect a minority party representative (*i.e.*, a Democrat in the Senate or a Republican in the Assembly) are punished.

A review of the amount spent by legislators in the last session shows how disparate member funding is. For the period of October 1, 2005 through March 31, 2006, members of the Senate majority spent on average \$361,143.90 per office, while members of the minority spent \$197,390.80 – an average difference of \$163,753.10. In other words, Senate Republicans were able to spend on average 82% more per office than their Democratic counterparts.¹⁶³

The situation in the Assembly was similar. Majority members spent, on average, \$161,575.80 in that time period, while minority members spent \$109,804.50 – an average difference of \$51,771.13. Assembly Democrats spend on average 47% more per office than Assembly Republicans.

The stark disparities in funding can be seen in Figures 1 and 2 below.

■ ■ CONCLUSIONS ABOUT 2005 RULES CHANGES

Neither the Senate nor the Assembly has taken steps to create a more efficient legislature that allocates funds fairly. However, if the Legislature adopts the other recommendations we have made in this report, members may be forced to cut back on frivolous or over-politicized bill drafting: if legislators must attend committee meetings and hearings, draft committee reports, and publicly consider and debate bills in the full chamber, there will be far less time to write and introduce bills that have no chance of reaching the floor.

FIGURE 1

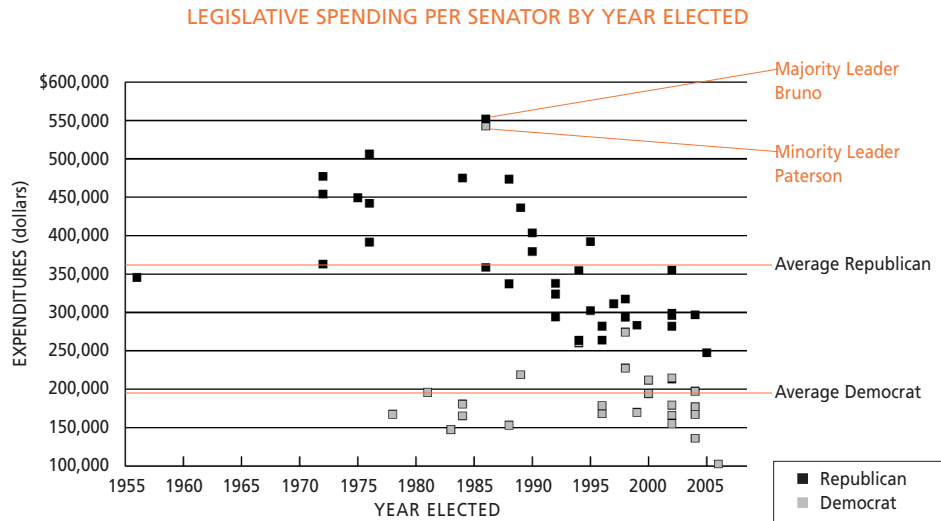
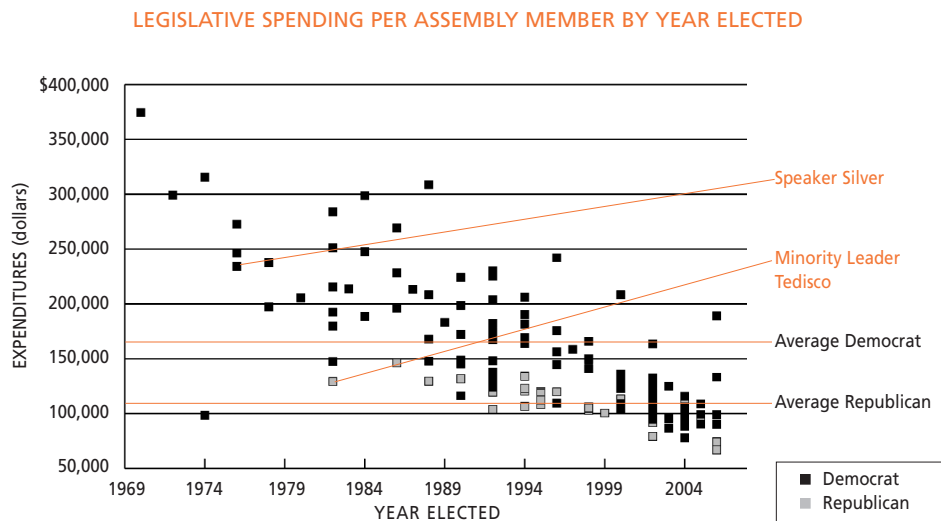


FIGURE 2



But if such changes are made, all legislators must have the resources to do their jobs properly. The base allocation of funds – representing the bulk of office and staff allowances for all legislators – should be distributed equally within each chamber, regardless of party, as it is done in Congress.¹⁶⁴ Anything less is profoundly unjust, not only to the legislators, but most importantly, to the constituents they represent.

While it could be argued that the increased responsibilities that come with certain leadership positions entitle a few members to extra resources and staff, the need for such resources should be small compared to the base amount of funds needed by all legislators. Additional resources provided for “extra” responsibilities should be based on objective criteria, unrelated to party affiliation.

■ RETROGRADE SENATE ACTION

Of all the steps taken by the Legislature since the 2004 Report, the most disturbing was the Senate's cynical decision to require all future rules changes to be considered and approved by the Rules Committee of the Senate, rather than being raised and approved by the full chamber on the floor.¹⁶⁵ The change of venue for future rules changes not only gave Senate Leadership veto power over any change; it also has made the Senate even more opaque. Voters will now have a very difficult time learning which new rules have been proposed and which legislators voted against them. This is especially true because, unlike other committees in the Senate, the Rules Committee has no stated meeting times and does not publicly record votes or keep minutes.¹⁶⁶

In fact, in 2005, Senators submitted eleven proposed rules changes to the Senate Rules Committee.¹⁶⁷ These included rules changes to: restore recorded votes on discharge motions and amendments; require 60% of approval of the full Senate before permitting the use of a message of necessity; allow any Senator to request an explanation on the need for a message of necessity and to speak on such message; reduce limits on discharge motions; provide equal resources for all Senators; end time limits on debate; end absentee voting in committee; and restore authority for changing Senate Rules to the full Senate.¹⁶⁸ There is nothing in the public record, however, to indicate that the Rules Committee has debated, or even considered, these proposals.

This new rule should be repealed in 2007.

THE IMPORTANCE OF RULES REFORM

In the 2004 Report, we documented five direct injuries that resulted from New York's broken legislative process.¹⁶⁹ They were:

- **Failed Representation.** Legislators were prevented from fully and faithfully representing the people of New York. Rank and file members were shut out of the legislative process. Leadership decided when bills could be passed and in what form. As a result, New Yorkers' voices were not fully heard, and bills were not tested to ensure they reflected the public's views.
- **Ineffective Government without Deliberation.** A moribund committee system robbed New Yorkers of the 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 allowed unnecessarily flawed bills to pass into law.
- **Inaccessible Government.** Members of the public had no opportunity to comment on or review legislation prior to its passage. Moreover, it was frequently difficult, if not impossible, for voters to determine how their representatives performed. In addition, there was no way to know whether a Senator physically attended a committee meeting, or voted by proxy. Finally, legislative party conferences, where the most significant discussion between members occurred, were entirely closed to the public.
- **Absence of Public Accountability.** For two reasons, it was exceptionally difficult for members of the public to hold their elected officials accountable: (1) most rank-and-file members were shut out of most of the legislative process; and (2) there was very little publicly available information about the Legislature's actual practices.
- **Inefficiency.** Legislators introduced a massive number of bills and passed an exceptionally low percentage of them. There was no institutional mechanism for resolving small differences between similar bills passed in each chamber. And funding of legislative resources bore no relation to the size of a member's district or her responsibilities.

As our review of the empirical evidence from 2005 shows, while some modest reforms were made at the start of that year, the broken legislative process has not been substantially fixed by either chamber: there were no substantive committee reports on major legislation; proxy voting in Senate committees continued to be commonplace; there were almost no hearings specifically addressing major legislation; not a single bill was voted down on the chamber floor in 2005; there was almost no debate on major legislation on the floor of either chamber; and there were almost no conference committees used to resolve differences for any

major non-budget-related legislation. In both 2005 and 2006, resources continued to be allocated to legislators based on party affiliation and loyalty shown to leadership, rather than district size or responsibility.

CONCLUSION

In 2004, we wrote that “New York State’s legislative process is broken.” And after the 2005 rules changes and promises of further reform, it is still broken. New Yorkers continue to pay a heavy price for the Legislature’s dysfunction, deprived of the deliberative, transparent and dynamic legislature they deserve.

Following the publication of the 2004 Report, leaders in the Senate and Assembly responded to our call for twenty-two changes to the legislative rules by cherry-picking a handful and ignoring the vast majority. The result was that while the Legislature (in particular, the Assembly) took some steps toward a more open and accountable process, transformative reform was averted.

The Legislature is about to get another chance. In January 2007, the Senate and Assembly will again have the opportunity to change their operating rules. If the New York State Legislature is to become the representative, deliberative, accessible, accountable and efficient legislative body that most legislators claim to want, and that their leaders promised, each chamber will have to take *at least* the following four steps at that time:

- Strengthen the Committee Process
 - A minority of committee members must be able to force a public hearing on a bill unless a majority of the committee publicly votes to reject the request.
 - Committee members must be able to force a timely and public committee vote on a particular bill, even if the committee chairperson objects.
- End the Stranglehold That Leadership Has Over Bills Getting to the Floor.

Provide a mechanism for rank-and-file legislators in the Legislature to bring bills that have been voted favorably out of committee, or have the support of a majority of members, to the floor for debate and a vote (even over the objection of the Majority Leader or Speaker).
- Institutionalize Conference Committees.

When bills addressing the same subject have been passed by both chambers, a conference committee should be convened at the request of the prime sponsor from each chamber or the Speaker and Majority Leader.
- End Leadership Control over Resources and Staff
 - The bulk of office and staff allowances should be distributed equally to all legislators within each chamber, regardless of party. And additional resources provided for “extra” responsibilities should be considerably less

than the base amount and allocated using objective criteria, unrelated to party affiliation.

- Each committee must have the power to hire and fire professional committee staff, independent of the preferences of the Speaker or Majority Leader.

ENDNOTES

¹ JEREMY M. CREELAN AND LAURA M. MOLTON, BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW, *THE NEW YORK STATE LEGISLATIVE PROCESS: AN EVALUATION AND BLUEPRINT FOR REFORM* (2004), available at http://www.brennancenter.org/programs/downloads/albanyreform_finalreport.pdf [hereinafter 2004 REPORT].

² See, e.g., Editorial, *New York's Fake Legislature*, N.Y. TIMES, July 25, 2004, at 13; Editorial, *A Legislature in Denial*, THE TIMES UNION (Albany), July 25, 2004, at B4; Editorial, *New York's Shame*, THE BUFFALO NEWS, August 1, 2004, at H4; Editorial, *The Trouble with Albany*, NEWSDAY (New York), July 22, 2004, at A36; Editorial, *To Fix a Broken System*, THE POST-STANDARD (Syracuse), July 25, 2004, at C2; Jay Gallagher, Editorial, *State in a League of its Own for Dysfunctional Legislature*, POUGHKEEPSIE JOURNAL, July 25, 2004, at 7A; Editorial, *Albany Emperors*, PRESS & SUN-BULLETIN, July 25, 2004, at 14A. See also, BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW, ORGANIZATIONS SUPPORTING RULES REFORM, available at http://www.brennancenter.org/programs/downloads/albanyreform_finalreport_appendixb.pdf

³ See Press Release, Office of Senate Majority Leader Joseph L. Bruno, *Senate Passes Rules Changes and Reforms*, (Jan. 24, 2005), available at <http://www.senate.state.ny.us/pressreleases.nsf/2e0e86fa9105ed5a85256ec30061c0be/67cdb978f1ca381e85256f94000349db?OpenDocument>; Press Release, New York State Assembly, *Silver and Nesbitt Announce Bipartisan Agreement Reforming Assembly Rules*, (January 6, 2005), available at <http://assembly.state.ny.us/Press/20050106/>.

⁴ See Press Release, New York State Assembly, *Silver and Nesbitt Announce Second Round of Assembly Rules Changes*, (Feb. 10, 2005), available at <http://assembly.state.ny.us/Press/20050210/>.

⁵ Press Release, Office of Senate Majority Leader Joseph L. Bruno, *Senate Announces Rules Reforms*, (Jan. 6, 2005), available at <http://www.senate.state.ny.us/pressreleases.nsf/2e0e86fa9105ed5a85256ec30061c0be/a342758e5ca8351485256f8100762306?OpenDocument>.

⁶ *Senate Passes Rules Changes*, *supra* note 3.

⁷ Press Release, Office of Assembly Speaker Sheldon Silver, *Remarks by Speaker Silver at Reform Press Conference*, (Jan. 10, 2005), available at <http://assembly.state.ny.us/Press/20050110b/>.

⁸ *Silver and Nesbitt Announce Bipartisan Agreement*, *supra* note 3.

⁹ See Methodology, “Legislative Rules Analysis.”

¹⁰ *Id.*

¹¹ 2005 SEN. R. XI, §1.

¹² Every year, the editors of *McKinney's Session Laws of New York* identify and publish a list of those laws enacted in the prior year and determined to be “major legislation.” The 2004 Report used this resource to identify major bills passed from 1997 to 2001, and we have used the 2005 version for the purposes of our study. See Methodology, “Data Set.”

¹³ Interviews with Legislators and their staffs indicate anecdotally that, at least in the Assembly, there were a greater number of general issue hearings, open to the public, than in the past. Telephone Interview with A, Member of NYS Assembly (Sept. 15, 2006). For instance, the Codes Committee in the Assembly led five public of hearings on the issue of the Death Penalty in 2005. There is no question that greater use of hearings in general should be applauded. However, neither chamber used hearings to shape major legislation that passed into law. This deprives New York of an important public forum, used in most other states and Congress, through which legislation is shaped by public and expert testimony. See Methodology, “Committee Hearings.”

¹⁴ Telephone Interview with Liz Krueger, NYS Senator, and Brad Usher, Chief of Staff to Senator Liz Krueger (Aug. 22, 2006); Telephone Interview with Nicholas Spano, NYS Senator (Sept. 15, 2006); Telephone Interview with Mark J.F. Schroeder, Member of NYS Assembly (Sept. 14, 2006); Telephone Interview with Pete Grannis, Member of NYS Assembly (Aug. 18, 2006);

Telephone Interview with A, Member of NYS Assembly (Aug. 22, 2006); Telephone Interview with H, Member of the NYS Assembly (September 19, 2006); Telephone Interview with G, Legislative Counsel (Sept. 15, 2006).

¹⁵ 2004 REPORT, at vii.

¹⁶ 2004 REPORT, at 6.

¹⁷ ABNER J. MIKVA & ERIC LANE, LEGISLATIVE PROCESS 207 (2d ed. 2002).

¹⁸ 2004 REPORT, at 12.

¹⁹ 2004 REPORT, at 8-9.

²⁰ 2004 REPORT, at 11.

²¹ 2004 REPORT, at 40-1.

²² 2004 REPORT, at 14-8.

²³ 2005 ASSEMB. R. IV, §4(b).

²⁴ Telephone Interview with Assemblyman Schroeder, *supra* note 14; Telephone Interview with Tom Kirwan, Member of NYS Assembly (Sept. 15, 2006); Telephone Interview with Assembly Member A, *supra* note 13; Telephone Interview with B, Legislative Director for Former Member of NYS Assembly (Sept. 15, 2006).

²⁵ 2005 SEN. R. VII, §5(b).

²⁶ 2005 ASSEMB. R. IV, §1(b).

²⁷ Telephone Interview with Assemblyman Kirwan, *supra* note 24; Telephone Interview with Assembly Member A, *supra* note 13; Telephone Interview with I, Member of NYS Assembly (September 19, 2006), Telephone Interview with Assembly Member H, *supra* note 14.

²⁸ 2005 SEN. R. VII, §1.

²⁹ 2005 ASSEMB. R. IV, §1(c).

³⁰ 2004 REPORT, at 40-1.

³¹ 2004 REPORT, at 9.

³² The Rules Committee was always required to hold public meetings but had not previously done so; the attention to rules reform and 2005 rules changes apparently prompted the Rules Committee to comply with this rule. Telephone Interview with B, Legislative Director for Former Member of NYS Assembly (Sept. 1, 2006).

³³ This conclusion is based on our review of committee minutes (*see* Methodology, “Committee Minutes”), as well as telephone interviews with Senator Nicholas Spano (*supra* note 14) and Brad Usher, Chief of Staff to Senator Liz Krueger (Sept. 1, 2006).

³⁴ 2005 SEN. R. VII, §5(a).

³⁵ 2005 ASSEMB. R. IV, § 2(d).

³⁶ Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14. Senators may no longer direct the chairperson of a committee to cast their votes as he pleases; however, they can still vote without being present at meetings by filling out a sheet with their votes on each bill to be considered during a meeting before the meeting convenes. *Id.*; Telephone Interview with Senator Spano, *supra* note 14.

³⁷ *See* Methodology, “Committee Minutes.” As discussed in this report (*see infra* at “Dysfunctional Standing Committees”), the Senate eliminated language in its rules permitting “proxy” voting in committees. In practice, however, this has meant only that a Senator can no longer give a committee chairperson the right to vote for him as the chair chooses; instead, the Senator must provide a list of his votes to the chairman prior to the meeting. But the Senator still

does not need to attend the meeting to cast his vote.

³⁸ 2004 Report at 11; *see* Methodology, “Committee Reports.” The information contained in – and missing from – the reports we reviewed remains essentially the same as in reports prior to the 2005 rules changes.

³⁹ Our quantitative analysis in this report is largely based on comparisons relating to major legislation for the period 1997-2001 (covered in the 2004 Report) and 2005 (covered in this report). These comparisons are not exact because *McKinney’s* liberalized its definition of “major laws” since the release of the 2004 Report, so that many more laws are now characterized as “major” each year. *See* Methodology, “Data Set” (explaining our use of *McKinney’s Session Laws* to define our sample). Our sample thus contains 317 major laws from 2005 alone, whereas from 1997 to 2001 there were approximately 60 laws so labeled per year. This discrepancy is attributable to *McKinney’s* employing a new attorney editor for New York. E-mail from Stacie Christensen, Thomson-West Reference Attorney (June 20, 2006) (on file with the Brennan Center). We felt it important to continue to use *McKinney’s* definition of “major legislation” because *McKinney’s* is a trusted, apolitical, third-party source. Although our data set for this report sweeps in laws that are relatively less consequential and salient – laws that are less “major” – than those covered in the 2004 Report, the information gleaned from this analysis is substantially more representative of the full work of the State Legislature than the 2004 dataset, as it includes more than 40% of *all* laws enacted in 2005.

⁴⁰ Telephone Interview with C, Records Officer, Assembly Public Information Office (June 21, 2006); Telephone Interview with D, Staff Member in Senate Journal Clerk’s Office (June 21, 2006). In 2005, the Senate changed its rules to dictate that committees must produce reports on legislation reported out of committee. On June 30, 2006, the Brennan Center requested bill reports regarding major legislation for 2005 from the Secretary of the Senate and the Assembly Public Information Office through the Freedom of Information Law (the “Senate FOIL Request” and “Assembly FOIL Request”). None of the “committee reports” that were supplied in response contained individual member comments on the bill, evidence or testimony gathered via hearings or other means, committee debate or deliberations, cost-benefit analysis, or any other information that would satisfy the usual purposes of committee reports in other state legislatures and Congress.

⁴¹ 2004 REPORT, at 10.

⁴² Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14; Telephone Interview with Blair Horner, Legislative Director, New York Public Interest Research Group (June 16, 2006).

⁴³ 2004 REPORT, at 6.

⁴⁴ 2004 REPORT, at 19.

⁴⁵ *See* Methodology, “Committee Votes.” It is important to note that the number of committee votes for major legislation is not the same as the number of bills we analyzed. The records we obtained on committee votes contained multiple votes for a few bills and contained no votes for several others. This may be the result of committee error, rather than an omission by the Information Office or the Journal Clerk’s Office.

⁴⁶ *Id.*

⁴⁷ 2004 REPORT, at viii.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 2005 SEN. R. VII, §1.

⁵¹ 2003 SEN. R. VII, §1; 2005 SEN. R. VII, §1.

⁵² 2003 ASSEMB. R. IV, §1; 2005 ASSEMB. R. IV, §1.

⁵³ COUNCIL OF STATE GOVERNMENTS. THE BOOK OF THE STATES EDITION 176 TBL.3.23

(2005).

⁵⁴ 2004 Report at 9.

⁵⁵ NYS SENATE OFFICE OF MINORITY POLICY DEVELOPMENT, 2005 FINAL LEGISLATIVE WRAP-UP (July 2005) (on file with the Brennan Center); NYS SENATE OFFICE OF MINORITY POLICY DEVELOPMENT, 2006 FINAL LEGISLATIVE WRAP-UP (July 2006) (on file with the Brennan Center).

⁵⁶ *Id.*; Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14.

⁵⁷ Telephone Interview with Tom Kirwan, Member of NYS Assembly (Sept. 1, 2006); Telephone Interview with Assembly Member A, *supra* note 13; Telephone Interview with William Parment, Member of NYS Assembly (Sept. 18, 2006).

⁵⁸ See Methodology, “Committee Hearings,” “Committee Votes.”

⁵⁹ 2004 REPORT, at 11-12; Telephone Interview with Assembly Member A, *supra* note 14; Telephone Interview with Eric Schneiderman, Deputy Minority Leader, NYS Senate (Aug. 24, 2006); Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14.

⁶⁰ Telephone Interview with Assembly Member A, *supra* note 14; Telephone Interview with Senator Schneiderman, *supra* note 59.

⁶¹ 2004 REPORT, at 22.

⁶² 2004 REPORT, at 14-8.

⁶³ 2004 REPORT, at 21-2.

⁶⁴ 2004 REPORT, at 22.

⁶⁵ E-mail from F, Legislative Director for Member of NYS Assembly (May 5, 2005) (on file with the Brennan Center); Telephone Interview with Assemblyman Kirwan, *supra* note 57; Telephone Interview with Legislative Director B, *supra* note 24.

⁶⁶ 2005 SEN. R. XI, §2(b).

⁶⁷ *Id.*

⁶⁸ 2005 ASSEMB. R. IV, §7(b)

⁶⁹ 2004 REPORT, at 17.

⁷⁰ 2005 SEN. R. XI, §2(e).

⁷¹ 2005 SEN. R. VIII, §7(a).

⁷² Telephone Interview with Frank Luchowski, Legislative Counsel to the NYS Senate Majority (April 29, 2005); Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14.

⁷³ Telephone Interview with Legislative Counsel G, *supra* note 14.

⁷⁴ 2005 SEN. R. XI, § 2(b).

⁷⁵ Interview with Senator Schneiderman, *supra* note 59; E-mail from Brad Usher, Chief of Staff to NYS Senator Liz Krueger (Aug. 31, 2006) (on file with the Brennan Center).

⁷⁶ 2005 ASSEMB. R. V, §2(b).

⁷⁷ 2004 REPORT, at 14-8; LOST IN THE SHADOWS: THE FIGHT FOR A SENATE VOTE ON WETLANDS PROTECTION LEGISLATION. BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW (2005), available at <http://www.brennancenter.org/programs/downloads/Wetlands%20Report.FINAL.pdf> [hereinafter WETLANDS REPORT].

⁷⁸ Telephone Interview with Assemblyman Kirwan, *supra* note 57; Telephone Interview with Senator Spano, *supra* note 14; Telephone Interview with Assemblyman Schroeder, *supra* note 14; Telephone Interview with Assembly Member A, *supra* note 13; Telephone Interview with Brad

Usher, *supra* note 33; Telephone Interview with Legislative Counsel G, *supra* note 14.

⁷⁹ *Id.*

⁸⁰ 2004 REPORT, at 34-5. Statistics were not available for 2000-2001 for the Senate. A *New York Times* editorial prompted by our 2004 report noted just how striking these figures are:

Perhaps the statistic that speaks loudest about the meaninglessness of a legislator's job [in New York] is the number of bills defeated on the floors of the Assembly and Senate – a whopping zero. And nobody can remember the last time an amendment to a bill was added on the floor. Joseph Bruno, the Senate majority leader, and Sheldon Silver, the Assembly speaker, decide which bills make it to the floor of their respective chambers, and their blessing makes the legislation invulnerable. Whatever hits the floor is a done deal. . . . [The Senate's and Assembly's 100% rate of unanimous voting] is a record that the Kremlin of yore could admire.

New York's Fake Legislature, *supra* note 2.

⁸¹ See Methodology, "Bill Introduction, Intra-Chamber Passage, and Enactment;" Telephone Interview with Assembly Member A, *supra* note 14; Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14; Telephone Interview with Senator Schneiderman, *supra* note 59; Telephone Interview with Assemblyman Kirwan, *supra* note 57.

⁸² See Methodology, "Floor Votes."

⁸³ Telephone Interview with Senator Spano, *supra* note 14; Telephone Interview with Liz Krueger, NYS Senator (Sept. 15, 2006); Telephone Interview with Assemblyman Schroeder, *supra* note 14; Telephone Interview with Assembly Member A, *supra* note 13; Telephone Interview with Legislative Director B, *supra* note 32; Telephone Interview with Legislative Counsel G, *supra* note 14.

⁸⁴ 531 U.S. 159 (2001)

⁸⁵ E-mail from John Stouffer, Legislative Director, Sierra Club (March 19, 2005) (on file with the Brennan Center).

⁸⁶ A. 2048/S. 2081.

⁸⁷ Telephone Interview with J, Staff Member for NYS Senator Carl Marcellino (April 22, 2005).

⁸⁸ 2005 SEN. R. VII, §5.

⁸⁹ E-mail from John Stouffer, *supra* note 85.

⁹⁰ Telephone Interview with Staff Member J, *supra* note 87.

⁹¹ Telephone Interview with John Stouffer, Legislative Director, Sierra Club (April 29, 2005). The Sierra Club estimates that at least 49 of the Senate's 62 members currently support Senator Marcellino's bill. This estimate was calculated as follows: on the Democratic side, all 26 Senators either co-sponsored the bill, voted to report the bill favorably out of the Environmental Conservation Committee, or represented to the Sierra Club that they supported the bill. On the Republican side, in addition to Senator Marcellino, there were ten co-sponsors of the bill, plus two more Republican Senators who voted to report the bill favorably out of the Environmental Conservation Committee, plus ten more Republican Senators who have indicated to the Sierra Club or Upper St. Lawrence Riverkeeper that they support the bill.

⁹² 2004 REPORT, at x.

⁹³ *New York's Fake Legislature*, *supra* note 2.

⁹⁴ 2004 REPORT, at 22-25.

⁹⁵ 2004 REPORT, at 23.

⁹⁶ 2004 REPORT, at 25.

⁹⁷ N.Y.S. CONST., ART. III, § 14 [hereinafter N.Y.S. CONST]. The Senate rules contain an analogous requirement. 2005 SEN. R. VIII, § 1.

⁹⁸ 2004 REPORT, at 27-30. The 2004 Report identified a number of recent instances where “more substantial committee involvement, significant debate and mark-ups, and compliance with the aging requirement than resort to messages of necessity could have led to a sounder outcome” in the New York State Legislature. *Id.*, at 47.

⁹⁹ 2004 REPORT, at 30-3.

¹⁰⁰ N.Y.S. CONST., ART. III, § 14 (emphasis added).

¹⁰¹ 2004 REPORT, at 30-3.

¹⁰² 2004 REPORT, at 43.

¹⁰³ 2005 ASSEMB. R. V, § 6(b).

¹⁰⁴ 2005 SEN. R. IX, § 1. The controversial calendar is nowhere defined in the Senate rules; Majority Leader Joseph Bruno indicates that it “includes every bill, with the exception of most local bills and others that the Majority and Minority agree are either technical in nature, routine and are generally not subject to debate.” *Senate Passes Rules Changes*, *supra* note 3. In the same press release announcing the Senate’s 2005 rules reforms, Mr. Bruno asserts that “[t]he Senate rules will still enable any Senator to request that any bill be placed on the controversial calendar for debate and an individual vote by all members present in the Chamber.” *Id.* Note that these measures offer no guarantee that bills assigned to the “non-controversial” calendar will not in fact be controversial, and this has been borne out in practice. *See, e.g.*, Press Release, *Senate Approves Bill to Boost Union Organizing*, BUSINESS COUNCIL OF NEW YORK STATE, INC, July 3, 2002. The press release notes, “A day after The Business Council sent all state Senators a strong memorandum [opposing a union-related bill], the Senate put the bill on its ‘non-controversial’ calendar, which meant that it was voted on without debate,” and then passed the bill. The Assembly does not maintain separate controversial/non-controversial calendars.

¹⁰⁵ 2005 SEN. R. IX, § 6(b).

¹⁰⁶ 2005 ASSEMB. R. V, § 2.

¹⁰⁷ The only change that the Senate made related to messages of necessity was to add a provision stipulating that “[w]here a message of necessity is received from the Governor, such message shall be filed with the Journal Clerk of the Senate upon final passage of the bill.” 2005 SEN. R. VII, § 5(d).

¹⁰⁸ 2005 ASSEMB. R. IV, § 10(b)(1)(f).

¹⁰⁹ 2005 SEN. R. IX, § 3(d).

¹¹⁰ *Silver and Nesbitt Announce Bipartisan Agreement*, *supra* note 3.

¹¹¹ New York’s Open Meetings Law explicitly exempts legislative party conferences and caucuses, meaning there is no legal requirement that the political parties give any public record of what occurs at these meetings. N. Y. PUB. OFF. LAW ART. 7, § 108(2). New York’s highly respected Committee on Open Government has advocated for a repeal of this exemption. *See, e.g.*, COMMITTEE ON OPEN GOVERNMENT, N.Y. DEP’T OF STATE, REPORT TO THE GOVERNOR AND THE STATE LEGISLATURE 26-29 (2005).

¹¹² “Debate” is defined here to mean instances in which at least one question about a bill was asked on the floor in advance of the final vote on its passage. Instances in which a bill’s sponsor summarizes its terms for the chamber without any comments or questions by other members are thus counted as “discussion” but not as debate.

¹¹³ 2004 REPORT, at 23-24.

¹¹⁴ See Methodology, “Floor Debate.”

¹¹⁵ 2004 REPORT, at 25.

¹¹⁶ See Methodology, “Amendments.” A bill amended after being reported out of committee is considered “amended on third reading.” However, this does not necessarily imply that the amendment was announced or debated on the floor of the chamber; indeed, this is rarely the case.

¹¹⁷ *Id.*

¹¹⁸ 2004 REPORT, at 29.

¹¹⁹ *Id.*

¹²⁰ 2005 LEG. DIGEST.

¹²¹ Telephone Interview with Assemblyman Grannis, *supra* note 14. Along with the Brennan Center’s 2004 Report, an additional development that may have shamed the Governor, Speaker, and Majority Leader into reducing their use of messages of necessity in 2005 was the *Urban Justice Center v. Pataki* lawsuit (see 10 Misc.3d 939, 810 N.Y.S.2d 826, 2005 N.Y. Slip Op. 25523). In their original complaint, plaintiffs Urban Justice Center, Senator Liz Krueger, and Assemblyman Tom Kirwan alleged that Governor Pataki’s excessive use of messages of necessity violates the Equal Protection and Free Speech clauses of the U.S. and State Constitutions, and that the Governor’s habitual failure to recite supporting facts and to sign messages in his own hand (rather than by autopen) violates the state constitution (see N.Y.S. CONST. ART. III, § 14). The plaintiffs also pointed out that messages of necessity place minority-party legislators at a particular disadvantage: When the decision to use a message is made in private meetings, as is often the case, the minority party conference may have to react to the new legislation on little or no notice.

At the trial court level, the judge dismissed several of the plaintiffs’ claims but let survive the state constitutional challenge to the Governor’s use of an autopen. As of this writing, the *Urban Justice Center* litigation is currently on appeal with New York’s Appellate Division, First Department. For an overview of the case, see Brennan Center ReformNY Blog, *Judicial Remedy?* (June 20, 2006), <http://reformny.blogspot.com/2006/06/judicial-remedy.html>.

¹²² 2005 ASSEMB. R. V, § 2.

¹²³ Telephone Interview with Senator Spano, *supra* note 14.

¹²⁴ Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14.

¹²⁵ Telephone Interview with Senator Spano, *supra* note 14; Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14.

¹²⁶ 2004 REPORT, at 34.

¹²⁷ See Methodology, “Timing of Passage.”

¹²⁸ Telephone Interview with Blair Horner, *supra* note 42.

¹²⁹ See 2005 ASSEMB. R. IV, § 1(b) (“. . . A member who in any calendar year has three or more unexcused absences, as determined by the chairperson or ranking minority member, as appropriate, from any regularly scheduled meeting of a standing committee at which bills are scheduled to be considered shall be removed from one or more of the standing committees to which he or she is assigned. . . .”).

¹³⁰ Telephone Interview with Blair Horner, *supra* note 42; Telephone Interview with Legislative Director B, *supra* note 24.

¹³¹ Telephone Interview with Tom Kirwan, Member of NYS Assembly (Aug. 25, 2006).

¹³² Telephone Interview with James V. Saturno, Specialist on the Congress, Congressional Research Service (May 16, 2005); Telephone Interview with David Sullivan, Counsel for the President of the Massachusetts Senate (May 12, 2005).

¹³³ Telephone Interview with David Valvereti, Chief Assistant to the Secretary of the California Senate (May 12, 2005); Telephone Interview with Steve Jay, Massachusetts Clerk of the Assembly (May 13, 2005).

¹³⁴ Telephone Interview with Joseph Murphy, Counsel for the Majority in the Pennsylvania House (May 13, 2005); Telephone Interview with Dennis Nelson, Chief Clerk of the Wisconsin Senate (May 13, 2005).

¹³⁵ Telephone Interview with James Saturno, *supra* note 132.

¹³⁶ 2004 REPORT, at 35.

¹³⁷ NATIONAL CONFERENCE OF STATE LEGISLATURES, CONFERENCE COMMITTEE USAGE (1999) (on file with the Brennan Center), *discussed in* 2004 REPORT, at 35-6. For accounts of the federal Congress's use of conference committees, *see* LAWRENCE D. LONGLEY & WALTER J. OLESZEK, BICAMERAL POLITICS: CONFERENCE COMMITTEES IN CONGRESS (1989); CHARLES TIEFER, CONGRESSIONAL PRACTICE AND PROCEDURE: A REFERENCE, RESEARCH, AND LEGISLATIVE GUIDE 767-848 (1989); STEPHEN D. VAN BEEK, POST-PASSAGE POLITICS: BICAMERAL RESOLUTION IN CONGRESS (1995).

¹³⁸ 2004 REPORT, at 35-6.

¹³⁹ PERMANENT JOINT RULES OF THE SENATE AND ASSEMBLY, JOINT RULE II, §1.

¹⁴⁰ 2004 REPORT, at 55-6.

¹⁴¹ The Senate made no changes related to conference committees, despite the claim made in a press release from Majority Leader Bruno that it had passed reforms that would “[e]ncourage expanded use of Joint Conference Committees on the budget and other legislation.” *Senate Passes Rules Changes*, *supra* note 3.

¹⁴² 2005 ASSEMB. R. IV, § 12.

¹⁴³ The Assembly's proposed resolution would have added two new sections to Joint Rule II, the first requiring the Speaker and Majority Leader to set a “budget adoption schedule” within ten days of the submission of the budget by the Governor, the second mandating the use of “joint budget conference committees” consisting of five members from each house to consider budget resolutions. The Speaker and Majority Leader would have the power to appoint four of the committee members, with the remaining appointment falling to the house's Minority Leader, and the committee would be required to “file a written report setting forth the joint recommendations of the committee which may include specific bill language.” The Assembly's proposed resolution is available at <http://assembly.state.ny.us/Press/20050106/joinrulestext.html>.

¹⁴⁴ Telephone Interview with Assemblyman Grannis, *supra* note 14; Telephone Interview with Senator Krueger and Brad Usher, *supra* note 14; Telephone Interview with Assemblyman Kirwan, *supra* note 131 ; Telephone Interview with Senator Schneiderman, *supra* note 59.

¹⁴⁵ Elizabeth Benjamin, *HAVA Deal Remains Undone*, ALBANY TIMES UNION, April 14, 2005, at B3.

¹⁴⁶ *See* Jay Gallagher, “Conference Committee” Budget Talks a Sham, JOURNAL NEWS, Mar. 19, 2006, available at <http://www.thejournalnews.com/apps/pbcs.dll/article?AID=/20060319/NOCATEGORY/603190343&SearchID=73238951502863>; SEYMOUR P. LACHMAN, THREE MEN IN A ROOM 160 (2006).

¹⁴⁷ *See, e.g.*, Erin Duggan, *State Poised for an On-Time Budget*, ALBANY TIMES UNION, Mar. 30, 2005, at A1; Editorial, *An On-Time Budget?: It May Finally Happen in Albany's Changed Political Culture*, SYRACUSE POST-STANDARD, Mar. 30, 2005, at A10; Editorial, *Reform in Mind: How Lawmakers Can Make 2006 a Productive Year in Albany*, SYRACUSE POST-STANDARD, Jan. 1, 2006, at C2.

¹⁴⁸ Telephone Interview with Assemblyman Schroeder, *supra* note 14; Telephone Interview with Assembly Member A, *supra* note 13; Telephone Interview with Assemblyman Grannis, *supra*

note 14; Telephone Interview with Assemblyman Kirwan, *supra* note 57; Telephone Interview with Legislative Counsel G, *supra* note 14; Telephone Interview with Legislative Director B, *supra* note 24; Letter from Steven M. Boggess, Secretary of the NYS Senate (July 13, 2006) (on file with the Brennan Center).

¹⁴⁹ In the United States Congress, it is sometimes complained that conference committees are dominated by a few individuals, which leaves them unrepresentative of the full chambers and especially vulnerable to special interest pressure. *See, e.g.*, Seth Grossman, *Tricameral Legislating: Statutory Interpretation in an Era of Conference Committee Ascendancy*, 9 N.Y.U. J. LEGIS. & PUB. POL'Y 251 (2006). That complaint would likely be inapplicable to the notion of conference committees in New York, where the Speaker and Majority Leader already dominate the policymaking process – and are abetted in their dominance by the ability to make deals in private, outside of any formal bargaining structure. Moreover, federal laws do not require Congress's conference committees to be open to the public or even to legislators from the other party, which means that lawmakers may be able to do “secret tinkering” to bills in the hope that no one will notice. *See* Richard E. Cohen, *The Third House Rises*, 33 NAT'L J. 2397 (2001); Editorial, *Secrecy Breeds Bad Lawmaking*, SYRACUSE POST-STANDARD, Feb. 14, 2006, at A10. In New York, by contrast, state law requires conference committees to be open affairs. *See supra* note 110 (N.Y. PUB. OFF. LAW Art. 7, § 108). Given the functional and legal baseline from which the New York legislature is operating, greater use of conference committees would make the legislative process unambiguously *more* representative and transparent, not less.

¹⁵⁰ 2004 REPORT, at xiii.

¹⁵¹ *Id.*

¹⁵² THREE MEN IN A ROOM, at 31.

¹⁵³ 2004 REPORT, at 13.

¹⁵⁴ 2004 REPORT, at 12.

¹⁵⁵ *Id.*; *Urban Justice Center v. Pataki*, 10 Misc.3d 939, 810 N.Y.S.2d 826, 2005 N.Y. Slip Op. 25523. The complaint filed in this case is available at http://www.brennancenter.org/programs/downloads/Urban_Justice_Rules_Complaint.pdf

¹⁵⁶ 2004 REPORT, at xiv.

¹⁵⁷ *Id.*

¹⁵⁸ 2004 REPORT, AT 36-8.

¹⁵⁹ *See* Methodology, “Bill Introduction, Intra-Chamber Passage, and Enactment.”

¹⁶⁰ *Id.*

¹⁶¹ *Urban Justice Center v. Pataki*, *supra* note 155, at ¶¶ 18 and 19.

¹⁶² *Id.*, at ¶ 20.

¹⁶³ *See* Methodology, “Legislative Spending.”

¹⁶⁴ PAUL E. DWYER, CONGRESSIONAL RESEARCH SERVICE, CONGRESSIONAL SALARIES AND ALLOWANCES, at 3.

¹⁶⁵ 2005 SEN. RUL. XI, §1.

¹⁶⁶ Telephone Interview with Senator Schneiderman, *supra* note 59.

¹⁶⁷ E-mail from Brad Usher, Chief of Staff for Senator Liz Krueger (Aug. 24, 2006) (on file with the Brennan Center).

¹⁶⁸ *Id.*

¹⁶⁹ 2004 REPORT, at 42.

METHODOLOGY

Data Set. The research for this report focused primarily on the set of laws passed in 2005 that were identified by McKinney’s Session Laws of New York as “major legislation.” McKinney’s Session Laws of New York III – XXVII (2005). For a list of these 317 laws, see Appendix.

Legislative Rules Analysis. The authors compared the rules adopted and amended by the Assembly and Senate in 2005 to those used during the 2003-2004 session. Any changes were analyzed for their relation to the recommendations made in the 2004 Report and their potential impact on the deliberativeness, transparency, and accountability of the Legislature. Rules of the Assembly of the State of New York 2003–2004, Adopted January 8, 2003; Rules of the Assembly of the State of New York 2005–2006, Adopted January 10, 2005, Amended February 17, 2005; Rules of the Senate of the State of New York 2003–2004, Adopted January 14, 2003; Rules of the Senate of the State of New York 2005–2006, Adopted January 24, 2005, Amended February 8, 2005.

Bill Introduction, Intra-Chamber Passage, and Enactment. The Legislative Digest reports the number of bills introduced by each chamber in 2005 (6,021 in the Senate and 9,078 in the Assembly). To calculate the number of these bills passed by each chamber, the authors used the Legislative Digest bill history for all bills introduced in 2005. The *number of bills enacted into law* was calculated as the number of bills that were passed by both chambers and signed by the Governor plus the number of bills that were approved by two-thirds of both chambers after initially being passed by both chambers and vetoed by the Governor. The number of bills passed by a single chamber (*i.e.*, the Assembly or Senate) includes *the number of bills enacted into law* and the number of bills passed *only* by the chamber in question. Legislative Bill Drafting Commission, State of New York Legislative Digest (2005).

Committee Assignments. The rules of both chambers prescribe the number of legislators that will sit on each standing committee. The average number of committee assignments per member was calculated by summing the number of legislators per standing committee and dividing by the number of legislators in the chamber.

Frequency of Committee Meetings. The authors were able to obtain schedules of meetings of the standing committees but not confirmation that meetings actually took place on these dates. We reviewed the 2005 and 2006 “Final Legislative Wrap-Up” Prepared by the Minority Policy Development, Counsel’s Office and Finance Office,” as well as interviews with legislators, their staff and legislative counsel in both chambers.

Committee Minutes. The Assembly does require committees to take minutes of meetings. A review by the Brennan Center of Senate committee minutes shows

that they do not provide any relevant information about the actions taken during the meeting that do not show up in other forms, such as committee voting records. Interviews with Senators and their staff confirmed this fact.

Committee Hearings. Neither chamber keeps detailed, publicly available records of hearings held by committees. The Brennan Center e-mailed the Chair of every committee in both chambers and asked whether, during the 2005 and 2006 session, their committees held any hearings on major legislation. Only Senator Fuschillo, chair of the Senate Consumer Protection Committee, recalled a hearing on a piece of major legislation that eventually passed into law: S3942A, or A4254A. In determining how often the Senate held committee hearings on specific legislation we also reviewed the Senate Calendars, which showed the number of hearings during 2005 and 2006, but did not identify any bills to be discussed at these hearings. The Assembly provides announcements of public hearings on its website, so the authors used this source to examine the hearings held in 2005. While several Assembly committees held hearings regarding specific legislation, none of these bills was enacted into law in 2005 and thus none appeared in our sample. In addition to this review, we interviewed a Records Officer at the Assembly Public Information Office (July 6, 2006) and were told that there were no hearings on major legislation in 2005. Finally, the Brennan Center Senate and Assembly FOIL Requests included a request for information on “whether or not a hearing was held on” major legislation in 2005. Neither the Senate nor the Assembly provided any record or transcript of hearings on major legislation passed in 2005 in response to these requests.

Committee Votes. To determine the amount of opposition faced by each of our major pieces of legislation in committee, the authors examined committee vote records provided by the Assembly Public Information Office and the Senate Journal Clerk’s Office.

Committee Reports. The FOIL requests made of both chambers included a request for any committee reports. The Senate Journal Clerk’s Office sent us reports for 261 of the 317 major bills, which we reviewed. We did not receive any committee reports from the Assembly.

Floor Debate. Information on debate was collected from the floor transcripts provided by the Senate Journal Clerk’s Office and the Assembly Public Information Office. We distinguished between substantive debate and mere grandstanding, such as the explanation of a member’s vote after the passage of the bill, by determining whether a question was asked by a member before the vote.

Amendments. The rules of both the Senate and Assembly stipulate that the number of amendments be indicated with a letter at the end of the bill number (i.e. A1234A has been amended once, S5678B has been amended twice, etc.). The final printed bill number of each major law thus indicates if it has been amended and how many times. The authors used the State of New York Legislative

Digest, compiled by the Legislative Bill Drafting Commission, to determine whether the bill was amended in committee or on a third reading. The authors also used the floor debate transcripts received from the Senate Journal Clerk's Office and the Assembly Public Information Office to determine if any of the amendments were debated on and agreed to by the full chamber.

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

Floor Votes. To determine the amount of opposition to bills on the floor of each chamber, the authors used voting records for each bill obtained using the New York State Legislative Session Information website, available at <http://public.leginfo.state.ny.us/menuf.cgi>.

Timing of Passage. To determine the percentage of bills passed in the final three days or during extraordinary session, we used the bill history provided in the Legislative Digest for each of our pieces of major legislation.

Legislative Expenditures. There are no records kept of how much money each legislator receives to run his or her office. Blair Horner, legislative director of the New York Public Interest Research Group, provided the authors with information on how much each legislator spent from October 1, 2005 through March 31, 2006.

Interviews with Legislators and Staff. As noted throughout the report, the data obtained through Freedom of Information requests were at times incomplete; moreover, many records that would shed crucial light on the legislative process are simply not produced by either chamber. As a complement to the empirical data that were available, the authors sought additional evidence from legislators and staff to determine how, if at all, the 2005 rules changes affected business in the Assembly and Senate. Interviewees were given the option of remaining anonymous in this document, both to encourage candid responses and to protect legislators and staff from any negative consequences. Accordingly, citations to interviews with individuals who opted to remain anonymous have been coded with alphabetical identifiers in the footnotes.

APPENDIX
MCKINNEY'S MAJOR LEGISLATION, 2005

| | | | |
|----------------|----------------|----------------|----------------|
| A1500, S216A | A4975A, S5848A | A4431A, S2236A | S1936A, A5403A |
| A2489A, S1264 | A1092A, S5891 | A4742A, S5740 | S2440, A136 |
| S215A, A2904 | A2103B, S4585A | A4972A, S1925A | S3489A, A7928 |
| S752, A1576 | A2972, S2704 | A5209, S2803 | S3504, A7516 |
| S4371A, A2003B | A4362, S2178 | A6082B, S5050A | S4011, A7751 |
| A2338, S1853 | A5349, S760 | A6761B, S890B | S4058, A8450 |
| A6452, S3275 | A5488, S3007 | A6808A, S4580 | S4962A, A8262 |
| S1491, A3458 | A5779, S2940 | A6873A, S5508A | S5565A, A8691A |
| A2928, S1591B | A6061, S3702 | A7496, S4812 | S5866, A8960 |
| S3006, A6194 | A6454B, S5649A | A7728, S5259 | S758, A5620 |
| S3089, A3357 | A6590B, S5465A | A8120, S5359 | S5923, A9000 |
| A6714, S3460 | A6722, S3625 | A8492A, S5442A | A4851, S22 |
| S3517, A6655 | A7055, S4028 | A8633, S5633 | A6283A, S4313 |
| S3604, A6733 | A714B, S5092 | A8698A, S5086A | A6533, S5856 |
| S2182, A4370 | A7170, S5306 | A8813, S5663 | A6717, S3660 |
| S738A, A26 | A7379C, S5731 | A8851, S5742 | A6790, S4000 |
| A7708, S5248 | A7410B, S4356B | S160, A1264 | A7162A, S4869A |
| A6285B, S1872B | A7688, S593A | S4048, A8474 | A7493A, S4645A |
| A7099, S4264 | A7709, S5298 | S4050, A8472 | A787, S2768 |
| A7625A, S5218A | A7710, S4180 | S5181, A8738 | A8367, S5213A |
| A1551, S3018 | A7870, S5293 | S5505A, A1872A | A8376A, S5784 |
| S3971, A5217 | A7872, S5256 | S5855, A8950 | A8476B, S5587A |
| S877A, A6347A | A8484, S5564 | S740, A4878 | A8513, S5842 |
| A3107, S2777 | A8910, S5845 | A1794A, S1856 | A8799, S5732 |
| A7254, S3441 | A8929, S5821 | A236A, S1071A | A8827, S5713 |
| S2186, A2927A | S3044A, A3109A | A2664, S493A | S2415B, A5803B |
| S3371, A6539 | S4778, A7929 | A2767C, S3369A | S5196, A8526 |
| S977, A5802 | S5650A, A8832 | A3426, S3834 | S5252, A8263 |
| A3981, S2781 | S5750, A8896 | A4466A, S4811A | S5553B, A8672B |
| A7432, S4673 | S5819, A8930 | A5770, S1396 | S5584, A8762 |
| A876, S338 | S5822, A8931 | A5969, S3519 | S5722, A7669A |
| S2155, A6338 | S5877, A8969 | A6721A, S3624A | S5748, A8828 |
| S2192, A7766 | S5925, A9004 | A6791, S5609 | S5810A, A8923A |
| A8291, S5436 | S4885B, A1691A | A6886A, S4109 | S5904, A8853A |
| A4225, S1786 | A1201, S5451 | A7293, S3343 | S5614A, A8757B |
| A630, S2429 | A1377C, S936B | A7559B, S5888 | A2168A, S5901 |
| A6827A, S3579A | A142, S3159 | A7599, S5651 | A2947, S3059 |
| A7384A, S3483A | A1477A, S4129 | A7695, S4422 | A3812A, S3827A |
| A8770, S5647 | A1911, S2479 | A8312, S5470 | A4122C, S4973A |
| A8954, S5876 | A204, S5897 | A8800, S4943A | A4186, S4920 |
| S3216, A6307 | A2840A, S5769 | A88A, S33A | A4254A, S3492A |
| S4847A, A7345A | A3156, S966A | A8936, S5857 | A4320, S5514 |
| S5909, A8991 | A4189, S4893 | S109, A2608 | A5881B, S2994B |

| | | | |
|----------------|----------------|----------------|----------------|
| A6146, S3100 | S4742B, A7672B | S2527, A6538 | S5185, A7821 |
| A6577, S4862A | S4746, A8837 | S2714A, A239A | S5282, A8455 |
| A6793A, S5737 | S4775A, A8076A | S2822A, A7032 | S5323, A8274 |
| A7255B, S4854A | S4814A, A7494A | S2828D, A6852C | S5801, A2625A |
| A7421, S5072 | S4960A, A7674 | S2963A, A7180A | S1999B, A4375A |
| A7561A, S5744 | S5033, A6960 | S3020, A5766 | S2583B, A5423B |
| A75A, S4225A | S5223A, A8112A | S3154A, A6219B | S4762A, A6838 |
| A8174, S5574 | S5314, A7734 | S3165A, A314A | S5379A, A7265A |
| S3485, A7284 | S5435, A8742 | S317A, A6394A | S5874, A8975 |
| S3701, A6939 | S5536, A8101 | S3250, A7184 | S50001, A40001 |
| S3904, A7819 | S5618, A8830 | S3314A, A6548B | S50003, A40003 |
| S47, A7127 | S5805, A7225A | S3488A, A423A | S1924A, A1238A |
| S48B, A4540C | S5873, A8964 | S3535A, A5448A | S5736A, A8919 |
| S5535, A8104 | S5918, A8994 | S3640, A5490 | S85A, A1075A |
| S5827, A8937 | S1398B, A6465A | S4060A, A7223A | A6723A, S3626A |
| A1011A, S2826 | S217A, A2374A | S4096A, A7558A | A4257A, S5108A |
| A4433A, S2234A | S2707C, A5543C | S4184, A5398 | |
| A5521, S4721 | S2795B, A2550B | S4469A, A6850A | |
| A5957A, S4089B | S3025A, A1950A | S4719A, A7884A | |
| A7644A, S4560A | S3344A, A7381A | S4985A, A8140A | |
| A7675A, S5055A | S3507, A8228 | S5753A, A2252A | |
| A7878B, S4877B | S4019, A8784 | S850, A872 | |
| A8410A, S5431B | S4059, A8523 | S1168A, A3758A | |
| A8443, S5458 | S4117, A8366 | S1628B, A3635B | |
| A8903, S5764 | S4471B, A7280B | S2617A, A5482A | |
| S2811, A7146 | S4496A, A8387A | S2619, A5479 | |
| S2969B, A2827A | S4574A, A8445A | S3236A, A6143A | |
| S3679, A48A | S4582, A8479 | S3566, A6063 | |
| S4308A, A8829 | S5148B, A8059A | S4342, A6585 | |
| S4400A, A7263A | S5226, A8767 | S4652, A8405 | |
| S4699, A7262A | S5329A, A7095A | S4837, A8296 | |
| S4704A, A7637A | S5368, A8658 | S5081, A8227 | |
| S5152, A8126 | S5506, A6874 | S5192A, A3711B | |
| S5352, A8453 | S5568, A8434 | S5620, A8723 | |
| S5825, A8990 | S5617, A8780 | S5757, A7638B | |
| S677, A5624 | S5774, A8918 | S842B, A3633B | |
| A8894, S479A | S5786, A7603A | S5065A, A5101A | |
| S2223A, A7341A | S5831, A25 | S5358, A8356 | |
| S2232, A4436 | S5880, A8980 | S5377, A395 | |
| S26B, A3678B | S5898, A8981 | S5491A, A8586A | |
| S2778A, A8461 | S5921, A8999 | S5576A, A8005B | |
| S2812, A7142A | S5930, A9010 | S5830, A8944 | |
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