

December 18, 2000

INTERIM REPORT OF THE SPECIAL COMMITTEE  
ON STATE GOVERNANCE OF  
THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Suggestions re Changes in the Rules of the Two  
Houses of the State Legislature.

Background. Representativeness, accessibility, and deliberativeness are three interrelated characteristics of successful democratic lawmaking. Representativeness contemplates opportunities for the voices of legislators and their constituents to be heard in the legislative process. Accessibility demands an open process in which the workings of the legislature may be publically witnessed. Deliberativeness calls for a variety of procedural steps for legislative lawmaking in order to provide opportunities to air ideas, build consensus, and legislate clearly.

Historically, these essential characteristics, have applied only minimally, at best, in Albany. The Albany process, as confirmed for years by journalists, government advocates and legislative insiders, has been, as described only recently (November 30, 2000) in an editorial of the New York Times, characterized as a "stranglehold" by the legislative leadership on New York lawmaking, with members having "little more than cheerleading rights."

The Legislature itself has recognized the challenge this problem presents to New York's representative democracy. For example, Assembly Speaker Shelley Silver recently convened a special legislative committee to explore problems with the process. This committee has recommended some changes which would begin to open the legislative process to public view. While a good start, these proposals, and others that have been suggested by the Senate's Majority Leader Joseph Bruno, should be augmented to address the central problem with Albany's legislative process--the absence of incentives and opportunities for legislators to meaningfully participate in lawmaking.

Change is important because the consequence of the existing non-participatory system has been a stifling of the voices of legislators who want to actively participate, the discouragement of creative approaches to problems, additional fuel for public skepticism, and legislation that is, all too often, unsound or poorly worded, frequently because it was drafted and adopted without deliberation. Change is also necessary because cynicism about government is corrosive; the current system of state government breeds cynicism.

**The Recommendations.** Our recommendations are intended to address these problems largely by strengthening the Legislature's committee system. In healthy legislatures, public committee meetings and hearings are the

locus of the real policy debate. And committee reports constitute a very important guide to the purposes and meaning of legislation, for legislative, judicial and public use. In healthy legislatures, committees also serve to counterbalance the power of the legislative leadership, and to offer a policy counterbalance to the political considerations that are often accorded undue weight in last-minute leadership decisions.

Whatever the reason, the fact is that in Albany committees have been relatively moribund--usually simply the holding vehicles for legislation prior to a leadership determination of whether it should be considered. They produce virtually no reports. They encourage little debate. In fact, at the very time the session is winding down and most important legislation begins to be considered, committees have already been closed down for the session, and thus have no opportunity to discuss that legislation. By liberating committees to choose their own staff, and requiring committee openness and reports, the goal of these recommendations is simply to provide incentives and opportunities for members to participate more actively in a more open process.

To accomplish these ends, we propose that two major procedural changes be made in the Rules governing each House of the State Legislature. These proposed changes both

demand more of the committees and give the committees the necessary resources to carry out their work.

- (1) All bills reported to the legislative floor must be accompanied by a public committee report that contains, at a minimum, purposes of the bill, change in previous law, section by section analysis, procedural history, committee or subcommittee votes, and any members' views of the bill.
- (2) Each committee shall be authorized to hire its own professional staff. Adequate funding for professional staff, facilities and equipment shall be provided to each committee, and shall be allocated on a proportional majority-minority split.

It is not the intent of these recommendations to eliminate or reduce legislative leadership. Indeed, informed and active committees support a strong leadership model, through which the legislature can effectively provide a meaningful check on executive power, and through which a legislative body may be effectively administered. Moreover, as any observer of the United States Congress can attest, the strengthening of a committee system need not, and does not, make the leadership toothless. Quite the opposite.

As the committees increase their roles, we would hope that the Legislature would also incorporate into their proceedings the following mechanisms to ensure the fair, open, and substantial consideration of all bills.

- (3) Bills may be reported to the legislative floor only:
  - (a) by vote of a majority of those members of a standing committee present;

- (b) by motion to discharge a bill from a standing committee; or
  - (c) by message of necessity personally reviewed and signed by the Governor, as intended by the State Constitution.
- (4) If three or more members of a committee petition for a hearing on a bill, such consideration or hearing shall take place unless the petition is rejected by a vote of the committee.
  - (5) Before being reported out of the committee, all bills must be openly presented and considered with an opportunity for amendment.
  - (6) All committees shall remain in operation throughout the legislative session.
  - (7) When considering bills, legislative party caucuses shall be convened and remain in open session unless closed with respect to a specified bill.

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We believe that these proposed changes to the legislative rules would make the Legislature, and both its houses, stronger, more effective, and more democratic. We urge the Legislative Leaders and the members of the Assembly and the Senate to consider, openly discuss, and ultimately adopt these changes.