



NEW YORK
CITY BAR

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May 19, 2015

Hon. Carl Heastie
New York State Assembly
Legislative Office Building 932
Albany, NY 12248

Hon. Brian Kavanagh
New York State Assembly
Legislative Office Building 419
Albany, NY 12248

Hon. J. Gary Pretlow
New York State Assembly
Legislative Office Building 845
Albany, NY 12248

Re: Workgroup to strengthen Assembly operations and promote government transparency and public participation

Dear Speaker Heastie, Assembly Member Kavanagh and Assembly Member Pretlow:

We applaud the Assembly for convening a workgroup to undertake an examination of and make recommendations regarding improving and strengthening the Assembly's rules, operations and legislative processes with an aim towards promoting transparency and public participation. All too often the activities of the Legislature are a mystery to members of the public, seemingly too complicated, opaque and inaccessible for them to understand or truly engage with the process. One way to increase a person's trust in government is to give her the tools and information necessary to get involved and make a difference. We hope that the new workgroup can offer those tools.

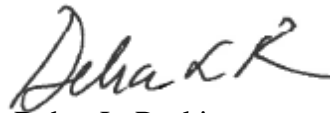
The New York City Bar Association frequently has commented on and proposed revisions to the law that would increase the public's access to information about the daily business of the legislature, whether it be through rules changes in the Senate and Assembly or greater disclosures under our ethics laws. Enclosed for your consideration please find two Association reports related to transparency in governance and rules reform. The first is a series

of recommendations for rules reforms. The second is a report supporting legislation (A.1887-A/S.1909-A), which would require (1) that committee and floor votes be made available online, and (2) that session and committee meetings be webcast through each house's website. While we recognize that these changes could be accomplished through rules reform, we urge you to enact the legislation as a way not only to codify important reforms into the law, but also to demonstrate your commitment to the stated purposes of the workgroup.

In addition, we encourage you to hold public discussions to aid in your review of the Assembly's operating rules in order to ensure they are updated in a manner that takes into account the public's interest in having a Legislature that is transparent, deliberative and accountable to the residents of the state.

Thank you very much for your consideration. We look forward to hearing the workgroup's recommendations. If the Association can be helpful to the workgroup as it undertakes its mission, please reach out to me or Maria Cilenti, our Director of Legislative Affairs at mcilenti@nycbar.org or 212-382-6655.

Respectfully,



Debra L. Raskin

Cc: Hon. Michael Blake
Hon. Vivian E. Cook
Hon. Deborah Glick
Hon. Donna Lupardo
Hon. Shelley Mayer
Hon. Francisco Moya
Hon. Steven Otis
Hon. Crystal Peoples-Stokes
Hon. Phil Ramos
Hon. Sean Ryan
Hon. Rebecca Seawright



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By Regular Mail

December 16, 2010

Hon. Sheldon Silver
Speaker
New York State Assembly
Legislative Office Building 932
Albany, NY 12248

Hon. Brian Kolb
Minority Leader
New York State Assembly
Legislative Office Building 933
Albany, NY 12248

Dear Speaker Silver and Assembly Member Kolb:

As the January 2011 legislative session approaches, we join the chorus of other good government groups who are encouraging the passage of new legislative rules as a top priority. We encourage the Assembly to hold a public discussion of its operating rules and ways they can be improved, in a manner that takes into account the public's interest in having a legislature that is transparent, deliberative and accountable to the citizens of the state. Although we applaud the Assembly for the reforms that have taken place since 2005, we believe there is much more to be done.

In light of such progress, we urge you to consider the following recommendations in order to create a more deliberative, representative, and accountable chamber, which will serve to positively impact the governing process of New York. We urge you to pass new rules to increase transparency and make it easier for rank and file members to move bills to the floor for debate, and to mandate hearings and public comment on important bills.

Last year, your Senate colleagues passed several key rules reforms which had the effect of: (i) making it easier for individual senators to bring their bills to a committee vote or to the floor without leadership approval (a flow chart detailing the various ways Senators could ensure a hearing or vote on their bills under last year's rules is attached); (ii) making the distribution of member resources more equitable; (iii) imposing term limits on leadership; and (iv) increasing transparency in the chamber by making the proceedings completely public and accessible via the Senate website. We urge the Assembly to follow suit by passing similar and other rules reforms.

In addition to the reforms the Senate has undertaken, we urge you to take initiative on the following rules changes:

1. Require a committee mark-up process for all significant legislation to both check for mistakes and allow committee members to use their expertise to make constructive comments on bills;
2. Require staff reports for all bills reported out of committee, to assist courts and others in determining the intent of unclear laws;
3. Provide each committee with explicit control over its own budget and the hiring and firing of all committee staff; and
4. Institutionalize conference committees, so that when bills addressing the same subject have been passed by both chambers, a conference committee will be convened at the request of the prime sponsor from each chamber or the Speaker and Majority Leader.

We are of the belief that these reforms, which are modeled on best practices from other states, will make for a more open and democratic Assembly, which is crucial to address the challenges we face in these difficult times. We are here to help and provide assistance in making these reforms possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Loren Gesinsky', with a long horizontal flourish extending to the right.

Loren Gesinsky

Cc: Members of the New York State Assembly (*via email; w/encl.*)

Encl.

CONTACT

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REPORT ON LEGISLATION

A.1887-A

S.1909 -A

M. of A. Hevesi

Sen. Marcellino

AN ACT to amend the legislative law, in relation to requiring that committee and floor votes be made available online and that session and committee meetings be webcast

THIS BILL IS APPROVED

The New York City Bar Association (the “Association”) has frequently commented on and proposed revisions to the law that would increase the public’s access to information about the daily business of the legislature, whether it be through rules changes in the Senate and Assembly or greater disclosures under our ethics laws. It is with that background and dedication to civility, integrity and transparency in government that we write this memo in support of A.1887-A/S.1909-A (“the proposed legislation”).

PROPOSED LEGISLATION

The purpose of the proposed legislation is to allow public access to the proceedings and voting records of committee and session activities conducted by both houses of the State Legislature. The bill would amend New York’s Legislative Law to require the following:

- All votes on legislation taken by legislators while in committee or in session would be posted on each respective house’s website within 24 hours of the vote, to the extent practicable.
- The Senate and Assembly websites would post the bill number, date of the vote, summary of the legislation voted on, whether the vote occurred in committee or on the floor, and what each member’s vote was (aye, nay, excused, absent or abstain). These postings would also include correspondence from the Governor relating to the legislation, such as messages of necessity and veto or approval memos.
- All committee meetings, hearings and legislative sessions would be webcasted live through each house’s website and archived, to the extent practicable.

The proposed legislation would go into effect 120 days after the bill is enacted to provide time for implementation. If that is not sufficient time, we would support a modest extension so that implementation can be fully and properly completed.

BACKGROUND

The New York State Assembly and Senate each maintain their own independent websites. These sites provide much of the same basic information including legislator profiles, committee listings, news, legislation, etc., and serve as the main free source of information on the daily activities of the New York Legislature. Another official source for bill information is the Legislative Retrieval Service (“LRS”), which was created in 1984 by the Legislative Bill Drafting Commission to provide an online database of information on current and past legislative session. LRS maintains two versions of their database. A free version allows users to search the laws of New York, past and current legislation in the State, as well as access committee agendas and floor calendars. A paid subscription service provides access to all of the information on the public site and more, such as more extensive search functions, bill text compare tools and the ability to track and catalog bills through their site and receive automatic updates on a bill’s status. While the information provided through a LRS subscription is extensive, the high cost of the service is prohibitive to most New Yorkers looking for basic legislative information.¹

In July 2009, the Senate passed a resolution to revise its governing rules.² Included in these reforms were a number of measures intended to increase the public’s access to information about the Senate’s activities. Since the adoption of these new rules, the Senate has redesigned its website to be more user-friendly and provide additional information about the actions of its chamber. Through the Senate website, the public can watch committee meetings or hearings within 24 hours (to the extent practicable) and live webcasts of session activities. The Senate website also provides a searchable database that includes records of committee agendas, votes, minutes, reports, attendance, fiscal notes, and records of the chamber including active lists, votes, transcripts, calendars, the Senate payroll report and expenditure reports.³

While the Senate has taken steps to increase transparency through its website, the Assembly has not made some of the same information available. Currently, the public can view live webcasts of Assembly sessions, public hearings and joint conference meetings with the Senate.⁴ However, Assembly committee meetings are not broadcast on the site. The Assembly also posts more limited information about its bills through its searchable public database. The Assembly makes available bill information such as bill summary, status, session votes and

¹ See Andrew Stengel, Lawrence Norden & Laura Sego, *Still Broken: New York State Legislative Reform 2008 Update*, Brennan Center for Justice at New York Law School, 12, available at <http://www.brennancenter.org/sites/default/files/legacy/publications/Still.Broken.pdf> (last visited Feb. 18, 2015).

² R.2844, 232nd Session (N.Y. 2009)

³ Rules of the Senate of the State of New York, 2013-2014, at Rule XV, available at <http://open.nysenate.gov/legislation/rules>. See also Open Senate website, at <http://www.nysenate.gov/open> (last visited Feb. 18, 2015).

⁴ Pursuant to the Rules of the Assembly of the State of New York, 2013-2014, at Rule X, available at <http://assembly.state.ny.us/Rules/?sec=r10> and the Permanent Joint Rules of the Senate and Assembly, at Joint Rule II, available at <http://assembly.state.ny.us/Rules/?sec=jr#j2s1>. See also “Live Stream of Legislative Proceedings,” NYS Assembly website at <http://assembly.state.ny.us/av/> (last visited Feb. 18, 2015).

sponsor memos, along with hearing notices, the legislative calendar and biannual expenditure reports.⁵ While the database provides current committee agendas, no information is available on the votes, minutes or attendance of those committee meetings. Active lists are also not released to the public prior to each session day, making it difficult for the public to know what bills will be discussed and voted on each day by the Assembly.

JUSTIFICATION

The New York City Bar supports the passage of the proposed legislation. While we applaud the steps the Senate and Assembly have taken to improve the availability of information on their websites, more needs to be done in order to achieve meaningful transparency, which both educates and informs the public about the work of the Legislature. In addition, the imbalance between the two houses also needs to be remedied - a member of the public should be able to access just as much information about Assembly bills as it can for the Senate, and vice versa. As it currently stands, particularly with regard to the Assembly website, it is confusing and difficult for an individual to stay informed about a particular bill's progress, how it is faring in committee, and what kind of feedback it has received. For the public to meaningfully participate in the legislative process, that process must be more transparent.

It is also significant that these measures be codified into law. While the Senate and Assembly have taken steps to include greater access to information in their chambers' rules, these rules can be changed more easily than a law. The State Constitution provides no guidance on how each chamber's rules must be considered.⁶ In general, the controlling party of each house establishes the rules for its chamber, and while the rules must be approved by the majority of members, they are not given the same level of public scrutiny. There generally are no hearings before rules are changed, and at times, legislators are not provided the opportunity to fully review proposed changes before they are voted on.⁷ Rules can be changed at any time, and do not need to be approved by anyone other than the respective house.

The New York City Council has recognized the importance of codifying such measures by enacting legislation that amends the City Charter to require all City agencies, committees, commissions, task forces, and the City Council itself to record their open meetings in digital video format and webcast the meetings live where practicable.⁸ Although such webcasts were already required by an Executive Order⁹ and the Council Rules,¹⁰ the Council and Mayor saw the need to include these provisions in the City Charter to ensure they were being implemented.

⁵ See "Bill Search and Legislative Information Home," NYS Assembly website at <http://assembly.state.ny.us/leg/> and "Legislative Reports," NYS Assembly website at <http://assembly.state.ny.us/Reports/> (last visited April 11, 2013).

⁶ N.Y.S Constitution, Art. III, § 1.9.

⁷ See for example, Michael Johnson, *Stewart-Cousins Calls on Skelos to Make New Senate Rules Public*, Capital Tonight, Jan. 7, 2013, available at <http://capitaltonightny.ynn.com/2013/01/stewart-cousins-calls-on-skelos-to-make-new-senate-rules-public/> (last visited Feb. 18, 2015).

⁸ N.Y.C Council Int. 0132-2010, enacted Dec. 2, 2013.

⁹ Governor Eliot Spitzer, "Executive Order No. 3: Promotion of Public Access to Government Decisionmaking," January 1, 2007, available at <http://www.its.ny.gov/executive-order-3>. This order was continued under Governor

Enacting these measures through the legislative process rather than by a rules change sends a clear message: it tells the public that the legislature wants to foster and facilitate an open process. It shows that both houses take the issue of transparency seriously. As was stated in the Committee Report of the Infrastructure Division regarding New York City's webcasting law, such legislation "enhances a municipality's image as open, accountable, and technologically forward."¹¹ This principle should guide the State Legislature as well.

A survey of other states reveals that New York has not kept pace with the transparency advances that can be made through the simple use of technology and the internet. Thirty-nine states plus the District of Columbia provide live webcasts of at least some committee meetings (this includes the New York State Senate).¹² Indeed, most states provide far more information to the public than even this bill calls for. Some examples:

- The Hawaii State Legislature provides all related committee reports, submitted testimony, hearing notices and media related to a piece of legislation on its website in one place and allows the public to upload hearing testimony on bills directly through its website.¹³
- The Connecticut General Assembly provides access to all related committee reports, submitted testimony, and various bill analyses, as well as committee votes and a list of bills related to the one being searched. Bill analyses list organizations that support and oppose the bill.¹⁴ The site allows people to add and save notes about bills if they sign up for their free tracking service.¹⁵
- The California State Legislature website posts daily journals of floor proceedings, legislative counsel analysis of all pending legislation, committee analysis, information on all votes related to a bill and a table of sections of California law that would be affected by pending legislation, with links to related bill information for

Andrew Cuomo, "Executive Order No. 2: Review, Continuation and Expiration of Prior Executive Orders, January 1, 2011, available at <http://www.governor.ny.gov/executiveorder/2> (last visited Feb. 18, 2015).

¹⁰ "Rules of the Council" at 10.40, available at http://www.council.nyc.gov/downloads/pdf/2014-05-28_council_rules_ab.pdf (last visited Feb. 18, 2015).

¹¹ *Supra* note 8. Robert Newman, "Committee Report of the Infrastructure Division," N.Y.C. Council, Nov. 14, 2013, 4, available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=657961&GUID=7880F746-C597-416E-BD20-43175D0CD616&Options=ID|Text|&Search=0132> (last visited Feb. 18, 2015).

¹² Broadcasts and Webcasts of Legislative Floor Proceedings and Committee Hearings, National Conference of State Legislatures, at <http://www.ncsl.org/issues-research/telecom/legislative-webcasts-and-broadcasts.aspx> (last visited Feb. 18, 2015).

¹³ See for example http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=35 (last visited Feb. 18, 2015).

¹⁴ Committee analyses are also known as 'JF Reports', see <http://www.cga.ct.gov/asp/content/Terms.asp#J> (last visited Feb. 18, 2015).

¹⁵ See http://www.cga.ct.gov/asp/cgapublicbilltrack/help.htm#_C1 (last visited Feb. 18, 2015).

easy reference.¹⁶ Often included in bill analyses is a list of all the groups that support or oppose a bill, as well as an argument in support of and an argument against the bill from one of those listed groups. This information is available online for all sessions going back to 1993.

- The Alaska State Legislature offers a free service that allows the public to track the status of bills and receive email updates as bills progress through the legislative process. It provides a system that allows individuals to send a text message through the bill tracking system to receive status updates to a mobile device. The public can also obtain daily summaries of fiscal notes and bill actions, access a robust archive of materials from past sessions, and watch unedited coverage of committee meetings, floor sessions, press conferences, briefings, general government activities, and other meetings about legislative issues or of political interest, all from one centralized webpage.¹⁷
- Florida Senators are required to disclose why they have to abstain on matters where there is potential for them to inure personal gain or loss; all such disclosures and their corresponding bills are posted on the Florida Senate website.¹⁸ The site also contains a wide array of reports intended to give the public a fuller sense of the activities of the Senate, including a introducer/sponsor report which lists all bills introduced by a specific legislator and the bill's current status, a "Money Report" listing all bills with a fiscal impact on the state and a governor's action report showing all bills that have passed both chambers and the Governor's action or the deadline by which he/she must act on the bill.¹⁹
- According to the National Conference of State Legislatures, 35 states offer bill tracking notification services to make it easier to keep up to date on legislative activities.²⁰ New York's LRS service provides these valuable tools but only to paid subscribers.

Compared to what is freely available through the websites of other legislative bodies, the New York Senate and Assembly websites fall far short.

¹⁶ See http://www.legislature.ca.gov/the_state_legislature/bill_information/bill_information.html (last visited Feb. 18, 2015).

¹⁷ See <http://w3.legis.state.ak.us/index.php> (last visited Feb. 18, 2015).

¹⁸ See <http://www.flsenate.gov/Senators/VoteDisclosures> (last visited Feb. 18, 2015).

¹⁹ See <http://www.flsenate.gov/Session/Reports> (last visited Feb. 18, 2015).

²⁰ Bill Tracking and Subscription Services on Legislative Websites, National Conference of State Legislatures, at <http://www.ncsl.org/issues-research/telecom/bill-tracking-and-subscription-services.aspx> (last visited Feb. 18, 2015).

RECOMMENDATIONS

The City Bar supports the proposed legislation as currently written, and we applaud the sponsors for amending the bill to require live webcasting of legislative activities and the posting of official correspondence from the Governor relating to legislation. That said, we offer the following additional recommendations for consideration. We recommend that all bills reported to the legislative floor be accompanied by a public committee report that contains, at a minimum; purposes of the bill, change in previous law, estimated cost of the bill, if any, proposed source of revenue to cover such cost, section by section analysis, procedural history, committee or subcommittee votes, and any members' views of the bill.²¹ These reports should be provided on the Senate and Assembly websites to the extent feasible. In addition, all efforts should be made to ensure consistency throughout the Assembly and Senate website to make it easier for users to find and access information. This does not need to be accomplished with legislation. Ideally both websites would have the same design and layout to reinforce the concept of a unified legislature, however something as simple as making sure each site has a clearly marked link to the other house's website would be a positive step towards improving access.

CONCLUSION

This bill is a positive first step in bringing our State Legislature into the 21st Century and, in the process, increasing transparency, accountability and public awareness. We support its enactment.

Reissued March 2015

²¹ *Supporting Legislative Rules Reform: The Fundamentals*, State Affairs Committee, New York City Bar Association, May 2007, 13, available at http://www.nycbar.org/pdf/report/Committee_on_State_Affairs.pdf.