

**THE NEW YORK STATE LEGISLATURE:  
A LOOK AT THE HISTORY AND THE  
PROCESS**

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## INTRODUCTION

The intricacies and nuances of the rules and laws governing the New York State Legislature are hard to follow and often cause consternation for those attempting to follow the process.<sup>1</sup> As one critic noted, “New York State legislative procedures remain an arcane mystery to many of even the most sophisticated counsel.”<sup>2</sup> This confusion is likely one of the main reasons why the New York Legislature is continually plagued by the term “dysfunction.”<sup>3</sup> The process is a complicated one, and if you do not follow it on a regular basis, it can certainly look dysfunctional. An analysis of the process can clear up most of the confusion and make the system understandable. This article will look at how a bill becomes a law in New York and the procedure that is used to navigate the system.

Before delving into the details of the legislative process, one must first have an understanding of how New York State government is structured and how the legislature in New York is designed to work.

## I. THE HISTORY OF THE NEW YORK STATE LEGISLATURE

New York is governed by the New York State Constitution, which was adopted in 1777.<sup>4</sup> The constitution has twenty articles and provides the broad outline of power in New York, including the powers, duties, and responsibilities of the executive branch, legislature, and the judiciary.<sup>5</sup> With its constitutional establishment in 1777, “[t]he New York State legislature is older than the United States Congress.”<sup>6</sup>

As with most governing documents, the New York State Constitution is a living, breathing document and it can be

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<sup>1</sup> ROBERT B. WARD, *NEW YORK STATE GOVERNMENT: WHAT IT DOES HOW IT WORKS* 79 (2d prtg. 2002).

<sup>2</sup> Richard A. Givens, Practice Commentaries, *A Primer on the New York State Legislative Process: And How it Differs from Federal Procedure*, in N.Y. LEGIS. LAW Art. 3, at 80 (McKinney Supp. 2011).

<sup>3</sup> ANDREW STENGEL ET AL., BRENNAN CTR. FOR JUSTICE, *STILL BROKEN: NEW YORK STATE LEGISLATIVE REFORM 2008 UPDATE 1* (2009), available at [http://brennan.3cdn.net/ec21bc2f8e70edb787\\_j9m6b0k88.pdf](http://brennan.3cdn.net/ec21bc2f8e70edb787_j9m6b0k88.pdf).

<sup>4</sup> LEAGUE OF WOMEN VOTERS OF N.Y. STATE, *NEW YORK STATE: A CITIZEN'S HANDBOOK* 11 (1979) [hereinafter LEAGUE OF WOMEN VOTERS].

<sup>5</sup> See *id.* at 14.

<sup>6</sup> Deborah Wenig, *The Legislative Branch*, in *A GUIDE TO NEW YORK STATE GOVERNMENT* 43, 43 (Mary Jo Fairbanks ed., 7th ed. 1995).

amended.<sup>7</sup> Some parts of the constitution are original sections from the 1777 document, while other sections have been added, deleted, or amended over the years to reflect changing political and social tides.<sup>8</sup>

The constitution can be amended in one of two ways: (1) either through the legislative process, or (2) through a constitutional convention.<sup>9</sup> To pass an amendment through the legislative process, a proposal must be submitted to the legislature and “passed by two successive, separately elected Legislatures.”<sup>10</sup> The proposal must then be submitted to a vote of the people of the State of New York.<sup>11</sup> If the people approve the proposal, it becomes part of the constitution.<sup>12</sup> Conversely, if the people reject the proposal, it will not become part of the constitution.<sup>13</sup>

In addition to the legislative process, the constitution can also be amended through a constitutional convention.<sup>14</sup> The constitution requires that every twenty years a question is placed on the ballot asking if the voters want a constitutional convention.<sup>15</sup> The legislature may also vote to place this question on the ballot more frequently.<sup>16</sup> If voters approve the convention, delegates to the convention are elected in the next general election.<sup>17</sup> The delegates make recommendations for constitutional changes, and these recommendations are voted on by the people.<sup>18</sup> Again, if the voters reject the changes, the constitution remains unchanged.<sup>19</sup> The last constitutional convention approved by voters took place in 1967, and the voters rejected the recommended changes.<sup>20</sup>

The New York State Constitution has often been criticized.<sup>21</sup> First, some argue that several sections of the constitution are obsolete and repetitive and include statutory law that is not best

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<sup>7</sup> LEAGUE OF WOMEN VOTERS, *supra* note 4, at 11.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *See id.*

<sup>20</sup> *Id.* at 12–13.

<sup>21</sup> DOROTHY BUTCH, NEW YORK STATE DOCUMENTS: AN INTRODUCTORY MANUAL 8 (1989).

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suitied for inclusion in the constitution.<sup>22</sup> Second, the constitution is very long and detailed.<sup>23</sup> The constitution was 45,000 words in 1894,<sup>24</sup> and in 1966, it was about 60,000 words.<sup>25</sup> Consequently, New York has one of the “wordiest” constitutions in the country.<sup>26</sup> Nevertheless, whatever the criticism of the constitution, it is the governing document in New York and provides the outline for the New York State Legislature.

## II. THE STRUCTURE OF THE NEW YORK STATE LEGISLATURE

While there have been many changes to the constitution over the years, the powers relating to the legislature have remained relatively unchanged. Article III of the constitution vests the legislative power of the state in the senate and assembly, with each house sharing power.<sup>27</sup> This article also sets forth foundational matters such as qualifications for elected legislators and some details of the legislative process.<sup>28</sup>

Additionally, Article III outlines the leadership structure.<sup>29</sup> The assembly is presided over by the Speaker of the Assembly.<sup>30</sup> In the senate, the Lieutenant-Governor, while not a member of the senate, serves as the official President of the Senate.<sup>31</sup> The senators then choose the Temporary President.<sup>32</sup> At the beginning of the legislative session, each party chooses a candidate to serve as the Temporary President of the Senate.<sup>33</sup> The candidate that wins this role, usually the majority party candidate, serves as the Temporary President of the Senate.<sup>34</sup> Traditionally, the Temporary President of the Senate also serves as the Senate Majority Leader.<sup>35</sup> The candidate that loses the

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Christopher W. Hammons, *State Constitutional Reform: Is it Necessary?*, 64 ALB. L. REV. 1327, 1327 (2001).

<sup>27</sup> N.Y. CONST. art. III, § 1.

<sup>28</sup> *Id.* art. III, § 2.

<sup>29</sup> *Id.* art. III, § 9.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* art. IV, § 6.

<sup>32</sup> *Id.* art. III, § 9; THE NEW YORK RED BOOK 87 (Edward Neiles ed., 101st ed. 2010) [hereinafter N.Y. RED BOOK].

<sup>33</sup> Deborah Wenig, *Part One: New York State Government*, in A GUIDE TO NEW YORK STATE GOVERNMENT, *supra* note 6, at 50.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

vote for Temporary President of the Senate, usually the minority party candidate, serves as the Senate Minority Leader.<sup>36</sup>

The assembly is comprised of 150 members pursuant to the constitution.<sup>37</sup> The constitution requires a minimum of fifty senators but does not set a maximum number.<sup>38</sup> By statute, the number of senators is currently set at sixty-two.<sup>39</sup> Each member, regardless of house, serves a two-year term.<sup>40</sup>

The New York State Legislature is a part time legislature.<sup>41</sup> As such, some legislators have outside professions in addition to their elected duties.<sup>42</sup> However, the rigors of the legislative schedule are demanding, and many elected officials choose to treat their legislative role as a full time job.<sup>43</sup> Legislative salaries are fixed by law, and members of the senate and assembly are paid \$79,500.<sup>44</sup> The members of the legislature are also entitled to per diems—daily allocations for time spent on legislative business—and they are reimbursed for their travel expenses to Albany for session.<sup>45</sup> Members may also receive various stipends, known as “lulus,” for taking on leadership roles, committee chairpersonships, and various other roles.<sup>46</sup> New York legislators are the third highest paid elected officials in the country, trailing only legislators in California and Michigan.<sup>47</sup>

When the members of the legislature are not in Albany for session, they are usually in their districts attending to local and constituent issues.<sup>48</sup> The members may also be participating in legislative hearings or political events.<sup>49</sup> A legislator necessarily spends a great deal of time addressing constituent issues because constituents are the people that will elect or un-elect them.<sup>50</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> N.Y. CONST. art. III, § 2.

<sup>38</sup> *Id.*; see WARD, *supra* note 1, at 98.

<sup>39</sup> N.Y. STATE LAW § 123 (McKinney 2003).

<sup>40</sup> N.Y. CONST. art. III, § 2.

<sup>41</sup> Wenig, *supra* note 33, at 46.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> N.Y. LEGIS. LAW § 5(1) (McKinney Supp. 2011).

<sup>45</sup> *Id.* § 5(2) (McKinney Supp. 2011).

<sup>46</sup> Wenig, *supra* note 6, at 47.

<sup>47</sup> See *Legislator Compensation*, EMPIRE CTR. FOR N.Y. STATE POLICY, <http://www.empirecenter.org/DataBank/DataBank.cfm?FileID=354> (last visited May 15, 2011).

<sup>48</sup> WARD, *supra* note 1, at 112.

<sup>49</sup> *Id.*

<sup>50</sup> Wenig, *supra* note 33, at 46.

## III. LEGISLATIVE SESSION

The legislative session officially starts each year with the Governor's State of the State address.<sup>51</sup> Pursuant to the constitution, this address is held on the "first Wednesday after the first Monday in January."<sup>52</sup> The senate and assembly traditionally meet two to four days a week from the beginning of January through the end of June.<sup>53</sup> There is no set date for the end of session in the constitution or the rules of either house.<sup>54</sup> Session ends when the official business of the legislature is concluded.<sup>55</sup> At the start of each session, both houses adopt a joint legislative calendar that sets the beginning and end of session dates and determines the number of session days.<sup>56</sup> In 2011, there were sixty-three scheduled session days.<sup>57</sup>

If the scheduled session has concluded, and the legislature is no longer scheduled to meet, the governor can call extraordinary session.<sup>58</sup> The governor can call back both the senate and the assembly or just the senate for this special session.<sup>59</sup> Extraordinary session allows the governor to set the agenda for what items will be considered.<sup>60</sup> Only items on the governor's extraordinary session agenda can be considered while the houses are in extraordinary session.<sup>61</sup>

The legislature operates on a two-year cycle.<sup>62</sup> A new legislative cycle begins in January after the November elections in which members of the legislature run for re-election.<sup>63</sup> The elections are held in even years, so the new legislative sessions begin in odd years. For example, the last election for legislators was held in November 2010, so a new two-year legislative cycle began in January 2011. The cycle ends on December 31 of the

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<sup>51</sup> WARD, *supra* note 1, at 112.

<sup>52</sup> N.Y. CONST. art. XIII, § 4; *see* WARD, *supra* note 1, at 96.

<sup>53</sup> WARD, *supra* note 1, at 95.

<sup>54</sup> *See* N.Y. RED BOOK, *supra* note 32, at 87.

<sup>55</sup> *Id.*

<sup>56</sup> *See* WARD, *supra* note 1, at 95.

<sup>57</sup> *See New York State Legislative Session Calendar*, N.Y. STATE ASSEMBLY, <http://www.assembly.state.ny.us/leg/?sh=cal> (last visited May 15, 2011).

<sup>58</sup> N.Y. CONST. art. IV, § 3.

<sup>59</sup> *Id.*

<sup>60</sup> *See* N.Y. RED BOOK, *supra* note 32, at 87.

<sup>61</sup> *Id.*

<sup>62</sup> WARD, *supra* note 1, at 96.

<sup>63</sup> *See id.*

year of the next election cycle.<sup>64</sup> Additionally, the two-year cycle that began in January 2011 will conclude on December 31, 2012. Any legislation introduced in the first year of the two-year cycle remains active in the second year.<sup>65</sup> However, at the end of the two-year cycle, bills that have not been passed by both houses and acted upon by the governor are no longer valid and must be reintroduced in the next two-year cycle.<sup>66</sup>

Article III of the constitution outlines the general powers and duties of the legislature and allows each house to determine its own procedural rules for the day-to-day house operations.<sup>67</sup> The rules of the legislature are set by the New York State Legislative Law, internal rules adopted by both houses, and tradition.<sup>68</sup> Each house adopts internal rules at the beginning of the two-year session, usually through resolution.<sup>69</sup> These rules provide details outlining the specific legislative process for each house.<sup>70</sup> An understanding of these rules provides insight into how a bill becomes a law. This understanding is imperative because there are many steps involved in the lawmaking process.

#### IV. HOW A BILL BECOMES A LAW

A proposal for the “enactment, amendment[,] or repeal” of a law is called a bill.<sup>71</sup> No law can be enacted, amended, or repealed “except by bill.”<sup>72</sup> Bills can be introduced by a member of the legislature, an order of either house, by message from one house to the other, or by recommendation of a standing committee.<sup>73</sup> For the bill to become law, it must pass both the assembly and the senate, in the exact same form, and then be signed by the governor.<sup>74</sup>

While this seems like a straightforward process, there are many nuances that make this a complicated process. For example, if the senate version of a bill has even one word

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<sup>64</sup> *See id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> N.Y. CONST. art. III, § 9.

<sup>68</sup> WARD, *supra* note 1, at 112.

<sup>69</sup> ELLEN M. GIBSON, NEW YORK LEGAL RESEARCH GUIDE I-28 (2d ed. 1998).

<sup>70</sup> WARD, *supra* note 1, at 112.

<sup>71</sup> Evelyn Stock, *How a Bill Becomes a Law*, in A GUIDE TO NEW YORK STATE GOVERNMENT, *supra* note 6, at 55; *see* N.Y. RED BOOK, *supra* note 32, at 88.

<sup>72</sup> N.Y. RED BOOK, *supra* note 32, at 88.

<sup>73</sup> Stock, *supra* note 71, at 57.

<sup>74</sup> *Id.* at 61, 63.

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different than the assembly version of the bill, or vice versa, the bill is deemed not passed by both houses and cannot be acted upon by the governor.<sup>75</sup>

During each legislative session, a trend has developed where more bills are introduced in the senate and assembly than the session before. In 1920, 3,442 bills were introduced,<sup>76</sup> of these “nearly 27 percent, or 940, were signed into law.”<sup>77</sup> In 2000, there were 19,105 bills introduced, and of those, 1,268, or 6.6%, were signed into law.<sup>78</sup> Even with all the additional bills introduced, the actual number of those signed into law has not increased as one would expect. While 15,663 more bills were introduced in 2000 than in 1920, only 328 more bills were signed into law.<sup>79</sup>

Below is a look at the process and steps necessary for a bill to become a law.

### A. *The Idea*

A bill first starts with an idea. Someone identifies a problem with an existing state law and comes up with a solution to address that problem. The idea can come from any number of sources. First and foremost, the idea for the bill can come from a legislator.<sup>80</sup> Legislators hear about problems from constituents, their staff members, and often have personal experience with an issue.<sup>81</sup>

The ideas for legislation can also come from other governmental sources. For example, a legislative committee in either the assembly or the senate may come up with an idea for legislation.<sup>82</sup> The governor also serves as a source of ideas for legislation. Bills introduced on behalf of the governor are known as program bills, but these bills must be introduced by a member of the legislature on the governor’s behalf.<sup>83</sup> Further, ideas can come from the governor’s executive agencies, such as the State

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<sup>75</sup> *See id.* at 61.

<sup>76</sup> *Id.* at 55.

<sup>77</sup> *Id.*

<sup>78</sup> WARD, *supra* note 1, at 113.

<sup>79</sup> Compare Stock, *supra* note 71, at 55 (stating that 940 bills were signed into law in 1920), with WARD, *supra* note 1, at 113 (showing that 1,268 bills were signed into law in 2000).

<sup>80</sup> Stock, *supra* note 71, at 57.

<sup>81</sup> *See id.* at 55, 57.

<sup>82</sup> *Id.* at 57.

<sup>83</sup> ELIZABETH G. ADELMAN & SUZANNE E. ROWE, NEW YORK LEGAL RESEARCH 129–30 (2008).

Department of Health, and these are known as departmental bills.<sup>84</sup> Departmental bills must be introduced by a member of the legislature on the department or agency's behalf.<sup>85</sup>

Ideas for legislation can also come from outside sources such as an organization, a business, or a professional association.<sup>86</sup> The New York State Law Revision Commission is also a source of ideas for legislation.<sup>87</sup> Created by statute in 1934, the Law Revision Commission is charged with reviewing a variety of areas and issues and then suggesting legislation.<sup>88</sup> In these cases, the outside entity develops an idea for legislation and then must meet with legislators to look for a sponsor. An outside entity cannot introduce legislation on its own.<sup>89</sup> As discussed earlier, only a member of the legislature or a standing committee can introduce legislation.<sup>90</sup>

There is one exception to this bill introduction rule. Article VII of the New York State Constitution grants the governor power to introduce all budget bills.<sup>91</sup> So, if an outside group has an idea for a budget proposal, that group can meet with the governor's office and ask the governor to include their idea in the executive budget. Again though, the outside group has to rely on an elected official to introduce the legislation.

### *B. Sponsorship*

Once an idea is formed, a legislator takes this idea and turns it into legislation, also known as bills. A legislator can introduce a bill on any topic.<sup>92</sup> Further, a member can introduce an unlimited number of bills.<sup>93</sup> In both houses, after a set date, the bills are introduced on a member's behalf with the approval of leadership.<sup>94</sup>

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<sup>84</sup> *Id.* at 129.

<sup>85</sup> *Id.*

<sup>86</sup> Stock, *supra* note 71, at 57.

<sup>87</sup> WILLIAM H. MANZ, GIBSON'S NEW YORK LEGAL RESEARCH GUIDE 31 (3d ed. 2004).

<sup>88</sup> *Id.*; see N.Y. LEGIS. LAW § 72 (McKinney 1991).

<sup>89</sup> See ADELMAN & ROWE, *supra* note 83, at 126.

<sup>90</sup> N.Y. RED BOOK, *supra* note 32, at 88; N.Y. ASSEM. R. III, § 2(e), available at <http://www.assembly.state.ny.us/Rules/?sec=r3#s2>; N.Y. SEN. R. VI, § 1, available at <http://open.nysenate.gov/legislation/bill/R338-2011>.

<sup>91</sup> N.Y. CONST. art. VII, § 2.

<sup>92</sup> WARD, *supra* note 1, at 113.

<sup>93</sup> N.Y. ASSEM. R. III, § 4(a); see N.Y. SEN. R. VI, § 5(b).

<sup>94</sup> N.Y. ASSEM. R. III, § 4(a); N.Y. SEN. R. VI, § 5(a).

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The main sponsor of the bill in the senate and assembly retains exclusive control of the bill throughout the legislative process—with limited exceptions which will be addressed later.<sup>95</sup> The bill, regardless of house, may also have multi-sponsors.<sup>96</sup> Multi-sponsors are other legislators who may sign onto the main sponsor's legislation and show their support for the issue and the solution being addressed in the legislation.<sup>97</sup>

For a bill to have a chance at becoming law, it must have a prime sponsor in both the senate and assembly.<sup>98</sup> There are times when a bill has a sponsor in only one house,<sup>99</sup> and it is known as a “one-house” bill.<sup>100</sup> Until a sponsor in the other house introduces the legislation, a one-house bill has very little chance of becoming law, because for a bill to become law, it must pass both the senate and the assembly.<sup>101</sup>

### C. Bill Drafting

Once the idea is developed and a sponsor is determined, the idea for legislation is sent to the Legislative Bill Drafting Commission.<sup>102</sup> The Legislative Bill Drafting Commission is responsible for drafting and reviewing all bills that are presented to them.<sup>103</sup> A sponsor can submit a proposed bill draft to the commission, and the commission simply has to review the proposed draft for accuracies and typographical errors.<sup>104</sup> Alternatively, a legislator can simply submit an idea, and the commission will research what sections of law need amending and develop a full draft of the bill.<sup>105</sup> The commission then sends the draft to the sponsor for final review.<sup>106</sup>

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<sup>95</sup> N.Y. ASSEM. R. III, § 3(a)(2); N.Y. SEN. R. VI, § 2(b).

<sup>96</sup> N.Y. ASSEM. R. III, § 3(a); N.Y. SEN. R. VI, § 2.

<sup>97</sup> N.Y. ASSEM. R. III, § 3(a); N.Y. SEN. R. VI, § 2.

<sup>98</sup> See Stock, *supra* note 71, at 55.

<sup>99</sup> WARD, *supra* note 1, at 114.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Stock, *supra* note 71, at 56 Figure 5-1; Eric Lane, *Legislative Process and its Judicial Renderings: A Study in Contrast*, 48 U. PITT. L. REV. 639, 645 (1987).

<sup>103</sup> ADELMAN & ROWE, *supra* note 83, at 126; Lane, *supra* note 102, at 645.

<sup>104</sup> ELLEN M. GIBSON, NEW YORK LEGAL RESEARCH GUIDE 39 (1988).

<sup>105</sup> *Id.* at 37.

<sup>106</sup> Lane, *supra* note 102, at 645.

*D. Introduction*

When the review process is completed, the legislator who is sponsoring the bill must submit the bill draft to the revision clerk in the appropriate house.<sup>107</sup> The clerks in each respective house then work closely with the Legislative Bill Drafting Commission to do a final review of the bill.<sup>108</sup> The clerk then assigns a bill number and the “official date of introduction.”<sup>109</sup> If the bill is introduced in the assembly, the number is preceded by the letter “A.”<sup>110</sup> If the bill is introduced in the senate, the number is preceded by the letter “S.”<sup>111</sup> For example, the thirty-third bill introduced in the senate is referred to as S.33. The 10,000th bill introduced in the assembly is referred to as A.10000.

Once introduced, the bill is a one-house bill, a companion bill, or a uni-bill. As discussed above, a one-house bill does not have a sponsor in the other house and has little chance of becoming law.<sup>112</sup> A companion bill has an identical counterpart in the other house, but the sponsors introduced the bills separately.<sup>113</sup> A uni-bill has an identical counterpart in the other house, and the two bills were introduced simultaneously by a sponsor in each house.<sup>114</sup>

In addition to the bill draft that is introduced, the sponsor must also submit an introducer’s memorandum to the revision clerk.<sup>115</sup> This introducer’s memorandum contains the purpose and intent of the legislation.<sup>116</sup> This memorandum will also contain an explanation and justification for the legislation and a summary of any fiscal impact the legislation may have.<sup>117</sup>

When the bill and memorandum are submitted to the respective clerks in each house, each clerk then ensures that the bill gets printed and is placed on the desk of every member for

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<sup>107</sup> GIBSON, *supra* note 104, at 39.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Stock, *supra* note 71, at 59.

<sup>111</sup> *Id.*

<sup>112</sup> ABDO BAAKLINI & CHARLES S. DAWSON, THE POLITICS OF LEGISLATION IN NEW YORK STATE: HOW A BILL BECOMES A LAW 32–33 (1979).

<sup>113</sup> *Id.* at 32.

<sup>114</sup> *Id.*

<sup>115</sup> N.Y. ASSEM. R. III, § 2(a), available at <http://www.assembly.state.ny.us/Rules/?sec=r3#s2>; N.Y. SEN. R. VI, § 1, available at <http://open.nysenate.gov/legislation/bill/R338-2011>.

<sup>116</sup> Stock, *supra* note 71, at 59.

<sup>117</sup> GIBSON, *supra* note 104, at 40, 108.

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review.<sup>118</sup> At the same time, the Legislative Bill Drafting Commission enters the bill information into the Legislative Retrieval Service (LRS), which is a system that allows for public tracking of bills introduced in both houses.<sup>119</sup> Copies of the legislation must also be made available for public inspection.<sup>120</sup> With the advent of technology, most bills are now accessed online. Legislation can be accessed through the LRS or on the assembly and senate websites.<sup>121</sup> For those without online access, the senate and assembly each maintain a document room where anyone can go and request a copy of any piece of legislation.<sup>122</sup> Even with the advances in technology, and access to bills through the document rooms, a hard copy of a bill must still be presented to every member of the house before final passage can occur.<sup>123</sup>

### *E. Committee Action*

Once a bill is officially introduced, the leaders of the assembly and senate assign the newly introduced legislation to a standing committee for committee action.<sup>124</sup> In the senate, there are thirty-two standing committees.<sup>125</sup> In the assembly, there are thirty-seven standing committees.<sup>126</sup> Membership on these committees is determined by the rules of each house; the rules state how many members will serve on a given committee.<sup>127</sup> In all cases, per each house's rules, the majority party will have more members on every committee than the minority party.<sup>128</sup> The leaders in both houses then select the legislator that will serve as the chair for each standing committee.<sup>129</sup>

Every standing committee has a defined topic area, and the

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<sup>118</sup> N.Y. ASSEM. R. III, § 2(a); N.Y. SEN. R. VI, § 3.

<sup>119</sup> See GIBSON, *supra* note 104, at 39.

<sup>120</sup> See *id.*

<sup>121</sup> See *Bill Text, Status, Summaries, Sponsor Memos, Floor Votes*, N.Y. STATE LEGISLATURE, <http://public.leginfo.state.ny.us/menuf.cgi> (last visited May 15, 2011); *New York State Bill Search*, N.Y. STATE ASSEMBLY, <http://www.assembly.state.ny.us/leg/> (last visited May 15, 2011); *Search Legislation: Open Legislation*, N.Y. STATE SENATE, <http://www.nysenate.gov/legislation> (last visited May 15, 2011).

<sup>122</sup> GIBSON, *supra* note 69, at I-44.

<sup>123</sup> N.Y. ASSEM. R. III, § 2(a); N.Y. SEN. R. VI, § 3.

<sup>124</sup> Stock, *supra* note 71, at 59; N.Y. SEN. R. VI, § 1.

<sup>125</sup> N.Y. SEN. R. VII, § 1.

<sup>126</sup> N.Y. ASSEM. R. IV, § 1(a).

<sup>127</sup> *Id.* at R. IV, § 1(a)–(c); N.Y. SEN. R. VII, § 1.

<sup>128</sup> N.Y. ASSEM. R. IV, § 1(b); N.Y. SEN. R. VII, § 1(c).

<sup>129</sup> Stock, *supra* note 71, at 51.

leader in each house refers legislation to a committee on the basis of the topic of the legislation.<sup>130</sup> When a bill is assigned to a committee, the real scrutiny of the legislation begins. At this point, the bill is reviewed not only by the committee chair, but also by the committee staff, the public, and other groups that are impacted by the legislation.<sup>131</sup> For important bills of “special public interest,” the committee may hold a public hearing on the bill or the topic generally.<sup>132</sup>

No time frame is set for when a committee chair needs to act on legislation that is referred to the committee, unless the sponsor files a motion to discharge.<sup>133</sup> The committee chair has discretion over what bills will be acted upon by the committee and when.<sup>134</sup> Given the volume of bills introduced each session, most bills remain in committee and never have a chance to become law.<sup>135</sup>

After reviewing the legislation in committee, there are several possible outcomes. First, the chair of the committee can decide to support the legislation and act to move it out of committee into the next phase of the legislative process.<sup>136</sup> This involves putting the legislation on a committee agenda and calling for a vote of the full committee.<sup>137</sup> Even if the committee chair supports the legislation, the legislation cannot advance without an affirmative majority vote from the full membership of the committee.<sup>138</sup> If the full committee votes to approve the bill, it is deemed reported and progresses to the next phase of the process.<sup>139</sup>

Second, the chair can determine that the legislation has merit but that amendments are needed. In this case, the chair may suggest amendments to the sponsor or ask the sponsor to review the legislation and make his or her own changes.<sup>140</sup> The idea for suggested amendments may come from the chair, staff, or other interested groups that have reviewed the legislation.<sup>141</sup>

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<sup>130</sup> *See id.* at 59.

<sup>131</sup> Givens, *supra* note 2, at 85.

<sup>132</sup> N.Y. RED BOOK, *supra* note 32, at 88.

<sup>133</sup> N.Y. ASSEM. R. IV, § 5(a)–(b); N.Y. SEN. R. VII, § 3(e); *see* BAAKLINI & DAWSON, *supra* note 112, at 33.

<sup>134</sup> BAAKLINI & DAWSON, *supra* note 112, at 21, 47, 59.

<sup>135</sup> Stock, *supra* note 71, at 59–60.

<sup>136</sup> N.Y. ASSEM. R. IV, § 5(a); N.Y. SEN. R. VII, § 3(e); *see* ADELMAN & ROWE, *supra* note 83, at 127 fig.6-1.

<sup>137</sup> Stock, *supra* note 71, at 59.

<sup>138</sup> *See id.*

<sup>139</sup> *See id.* at 60.

<sup>140</sup> *See* ADELMAN & ROWE, *supra* note 83, at 126–27.

<sup>141</sup> Givens, *supra* note 2, at 85.

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A bill may also be amended because the sponsor decides to make changes to the original idea or because the sponsor, while negotiating the bill with interested parties, agrees that changes to the bill are necessary.<sup>142</sup> A bill can be amended as many times as is necessary.<sup>143</sup> As explained above, when a bill is introduced, it is assigned a number. If it is introduced in the Senate, the number is preceded by the letter “S.” On the other hand, if the bill is introduced in the Assembly, the number is preceded by the letter “A.”<sup>144</sup> When the bill is amended, a letter of the alphabet is added to the end of the number.<sup>145</sup> For example, if A.10000 is amended once, it will be referred to as A.10000-A. If the bill is amended again, it will become A.10000-B, and so on.

The sponsor of the legislation does not have to make any changes to the legislation. While a bill sponsor has control over his or her legislation, in both houses, someone other than the sponsor can file a motion to amend the bill.<sup>146</sup> The proposed amendment is voted on and is accepted unless a majority of the members in each house do not accept the amendment.<sup>147</sup> If the sponsor is not supportive of the amendment, the chances of the amendment passing are slim at best.<sup>148</sup>

Third, the committee chair can determine that the legislation is unnecessary, ill advised, or simply not needed. In this case, the chair takes no action on the bill and it will not advance.<sup>149</sup> This is known as “dying” in committee.<sup>150</sup>

Finally, as discussed above, if the committee chair does not move the bill, the sponsor of the legislation can file a motion to force a vote in committee.<sup>151</sup> The committee chair must then take a vote within a certain time frame.<sup>152</sup>

When the vote is held, the chair can take one of two actions.<sup>153</sup> First, the committee chair can make a motion to report the bill to

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<sup>142</sup> *Id.*

<sup>143</sup> See Stock, *supra* note 71, at 59.

<sup>144</sup> *Id.*

<sup>145</sup> N.Y. ASSEM. R. III, § 2(c), available at <http://www.assembly.state.ny.us/Rules/?sec=r3#s2>; N.Y. SEN. R. VI, § 3, available at <http://open.nysenate.gov/legislation/bill/R338-2011>.

<sup>146</sup> N.Y. ASSEM. R. III, § 6(c); N.Y. SEN. R. VIII, § 4(a).

<sup>147</sup> N.Y. ASSEM. R. III, § 6(c); N.Y. SEN. R. VIII, § 4(a).

<sup>148</sup> See Givens, *supra* note 2, at 83–84.

<sup>149</sup> Stock, *supra* note 71, at 59–60.

<sup>150</sup> *Id.*

<sup>151</sup> N.Y. ASSEM. R. IV, § 5(b); N.Y. SEN. R. VII, § 3(e).

<sup>152</sup> N.Y. ASSEM. R. IV, § 5(a)–(b); N.Y. SEN. R. VII, § 3(e).

<sup>153</sup> See N.Y. ASSEM. R. IV, § 5(a); N.Y. SEN. R. VII, § 3(e).

the next phase of the process.<sup>154</sup> Second, the committee chair can make a motion to not report the bill. A motion to not report can be done in two ways. The first way is to make a motion to hold the bill in committee.<sup>155</sup> When the motion is to hold, the chair is advising the members of the committee that the bill needs further consideration and should not be reported out of committee.<sup>156</sup> If this motion is successful, the bill is held in committee and cannot complete the legislative process.<sup>157</sup> The second way to not report a bill is to kill the bill in committee. If the committee chair makes a motion to report the bill and fails to get a majority vote of the committee members, the bill is deemed to have died in committee.<sup>158</sup> While the rules allow the sponsor of a bill to force a vote in committee, it is rare for a bill to be reported when the vote is forced.<sup>159</sup> The committee members will usually support the recommendation of the committee chair, unless a committee member has a personal stake in the issue.<sup>160</sup>

*F. Finance, Ways and Means, Codes, and Rules Committees*

Assuming that a committee chair makes the recommendation to report the bill and it receives an affirmative vote from the committee, there are several possible next steps. First, in the assembly, if the bill imposes a fine, “term of imprisonment, forfeiture of rights, or” includes a penal sanction of any sort, the bill must be reported from the standing committee to the Assembly Codes Committee.<sup>161</sup> The bill must then go through the same process as was required by the initial standing committee.

Further, regardless of the house, if the legislation has a fiscal impact on the state, the bill must be reported from the standing committee to either the Senate Finance Committee or the Assembly Ways and Means Committee.<sup>162</sup> Again, the bill must go through the same process as is required in the original standing committee. In the assembly, if, for example, a bill has both a

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<sup>154</sup> See BAAKLINI & DAWSON, *supra* note 112, at 21.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *See id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 47.

<sup>160</sup> *See id.*

<sup>161</sup> N.Y. ASSEM. R. IV, § 6(i), available at <http://www.assembly.state.ny.us/Rules/?sec=r4#s6>.

<sup>162</sup> *Id.* at R. III, § 2(f)(2)(c); N.Y. SEN. R. VII, § 7, available at <http://open.nysenate.gov/legislation/bill/R338-2011>.

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penal sanction and a fiscal impact, it must go through the original standing committee, then Codes, and then Ways and Means.

One final hurdle for a bill may be a review by the Rules Committee in each house. The Rules Committee is not in effect during the entire legislative session. In the assembly, bills reported from any committee on or after June 1 must go through Rules.<sup>163</sup> In the senate, bills reported from any committee on or after the second Friday in June must go through Rules.<sup>164</sup> While the Rules Committee in each house does not formally meet until June, throughout the legislative session the committee is charged with determining what bills will appear on the main legislative calendar each day.<sup>165</sup> The main calendar serves as the agenda for each house on session days.<sup>166</sup> In June, the Rules Committee meets formally and generates the rules calendar, which is the calendar of bills to be acted on immediately.<sup>167</sup> After the dates are set forth in the rules of each house, no bill can get on a rules calendar without approval by the Rules Committee.<sup>168</sup>

### G. Floor Vote

After a bill makes its way through what can be a very complicated committee process, the bill is reported to the floor of the respective house for consideration by the full membership. Once on the floor, the bill is placed on the main calendar.<sup>169</sup> Under the rules of both houses, before any bill can be passed, it must reach a third reading.<sup>170</sup> This means that a bill cannot be voted upon in either the assembly or the senate until the bill has “aged.”<sup>171</sup> A bill ages by sitting on the house calendar “for three legislative days.”<sup>172</sup> This delay, before the final house vote, is designed to allow for a full review of the legislation and to help ensure that every member of the house reviewed the bill before a vote is required.<sup>173</sup>

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<sup>163</sup> N.Y. ASSEM. R. IV, § 6(n).

<sup>164</sup> N.Y. SEN. R. VII, § 5(a).

<sup>165</sup> See N.Y. ASSEM. R. IV, § 6(n); N.Y. SEN. R. VII, § 5(a).

<sup>166</sup> Stock, *supra* note 71, at 60.

<sup>167</sup> See *id.* at 62.

<sup>168</sup> See *id.*

<sup>169</sup> N.Y. ASSEM. R. III, § 7(d); N.Y. SEN. R. VIII, § 2(b).

<sup>170</sup> ADELMAN & ROWE, *supra* note 83, at 128.

<sup>171</sup> MANZ, *supra* note 87, at 38.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

This aging process can be circumvented only if there is a "Message of Necessity" from the governor.<sup>174</sup> The constitution allows the governor to determine that the need for the legislation is so great that it is in the best interests of the state to waive the required three day wait and to call for an immediate vote.<sup>175</sup>

Once a bill has properly aged, it can be voted on at any time. Even after "aging," a bill does not have to be voted on.<sup>176</sup> The bill can remain on the main calendar of the house and never be called up for a vote.<sup>177</sup> The leadership in each house determines which bills will be voted on and which ones will not.<sup>178</sup> If it is the first year of a two-year legislative session, and the session ends, the bills that remain on the calendar must return to the original standing committee the next year.<sup>179</sup> If it is the second year of a two-year legislative session, like all bills, the bills remaining on the calendar are deemed to have died. These bills must be reintroduced during the next session and the legislative process is started all over again.<sup>180</sup>

A bill that has aged, and is called up for a vote by the full house, must receive a majority of the votes in the respective houses in order to pass.<sup>181</sup> In other words, the bill must have a majority of the total votes in each house, not simply a majority of the votes of those present at the time of the vote. In the assembly, with 150 members, a bill must receive seventy-six votes in order to pass. In the senate, with sixty-two members, a bill must receive thirty-two votes to pass.

When a bill is called up for a vote, the vote can be non-controversial or controversial.<sup>182</sup> Non-controversial bills are taken up immediately, and if the bill receives sufficient votes, the bill passes the respective house.<sup>183</sup> Once a bill passes one house, its identical counterpart in the other house must be passed in order for the governor to consider the bill.<sup>184</sup> In other words, if S.31 passes the senate, and A.10000 is the identical counterpart to

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<sup>174</sup> ADELMAN & ROWE, *supra* note 83, at 128.

<sup>175</sup> N.Y. CONST. art. III, § 14.

<sup>176</sup> Stock, *supra* note 71, at 60.

<sup>177</sup> *See id.*

<sup>178</sup> WARD, *supra* note 1, at 114.

<sup>179</sup> ADELMAN & ROWE, *supra* note 83, at 129.

<sup>180</sup> *Id.*

<sup>181</sup> Stock, *supra* note 71, at 55, 61.

<sup>182</sup> BAAKLINI & DAWSON, *supra* note 112, at 38.

<sup>183</sup> *Id.*

<sup>184</sup> Stock, *supra* note 71, at 55.

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S.31, A.10000 must also pass the assembly before the bill becomes law.

When a bill is up for a vote, and the bill's identical counterpart already passed the other house, the bill in question is substituted in its respective house by the bill that already passed the other house.<sup>185</sup> In other words, if S.31 is the senate counterpart to A.10000, and S.31 already passed the Senate, before the members of the assembly take a vote on A.10000, they will substitute A.10000 for S.31. As the senate already passed the bill, the assembly is really passing the senate version of the bill in that house. Conversely, if the assembly bill passed first, the senate would substitute the senate version of the bill with the assembly version and pass the assembly bill.<sup>186</sup> This substitution process ensures that the same bill passes both houses and is ready for the governor's review.<sup>187</sup>

In New York, if even one word is different between the senate version of the bill and the assembly version of the bill, the bills are not identical and they cannot become law.<sup>188</sup> This is very different than the federal system. Under the federal system, the Senate and the House of Representatives can each pass a bill on a topic and use the conference committee system to resolve any conflicts between the bills.<sup>189</sup> There is no conference committee system in New York for resolving discrepancies in bills.<sup>190</sup>

For controversial bills, a vote is not taken immediately, and the bill is laid aside.<sup>191</sup> A bill is laid aside when a member of the house wants to debate the bill, or ask the sponsor a question about the bill before a vote is taken.<sup>192</sup> In the senate, debate on a particular bill is limited to four hours.<sup>193</sup> In the assembly, debate on a particular bill is limited to one-half hour per member.<sup>194</sup>

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<sup>185</sup> N.Y. ASSEM. R. III, § 7(g), available at <http://www.assembly.state.ny.us/Rules/?sec=r3#s7>; N.Y. SEN. R. VIII, § 5, available at <http://open.nysenate.gov/legislation/bill/R338-2011>.

<sup>186</sup> Givens, *supra* note 2, at 85.

<sup>187</sup> *Id.*

<sup>188</sup> See Stock, *supra* note 71, at 55.

<sup>189</sup> *Id.* at 61.

<sup>190</sup> Givens, *supra* note 2, at 85.

<sup>191</sup> BAAKLINI & DAWSON, *supra* note 112, at 38.

<sup>192</sup> *Id.*

<sup>193</sup> N.Y. SEN. R. IX, § 3(d), available at <http://open.nysenate.gov/legislation/bill/R338-2011>.

<sup>194</sup> N.Y. ASSEM. R. III, § 7(b), available at <http://www.assembly.state.ny.us/Rules/?sec=r3#s7>.

Once the debate is closed, a vote is taken.<sup>195</sup>

It is important to note that it is rare for a bill to be defeated on the floor of either house.<sup>196</sup> Usually when a bill reaches the floor and is called up for a vote, it is known that the bill has sufficient votes from members of that house and will likely pass.<sup>197</sup>

#### *H. Governor's Action*

Once a bill passes both the senate and assembly, it is sent to the governor.<sup>198</sup> If the legislature is in session, the governor has ten days to act.<sup>199</sup> If the legislature is adjourned, the governor has thirty days to act.<sup>200</sup> In recent years, the legislature has never officially adjourned, so ten days has been the predominate time frame for the governor's action.<sup>201</sup> While the ten and thirty day rules are supposed to begin as soon as the bill passes, it is customary to extend these limits by holding the bills in each house and sending the bills over for consideration in batches to allow for timely consideration by the governor.<sup>202</sup>

Once received, the governor can either sign the bill into law or veto the legislation.<sup>203</sup> The governor can also take no action and the bill automatically becomes law.<sup>204</sup> If a bill is signed into law, it is assigned a chapter number.<sup>205</sup> A chapter number becomes the official reference for the bill and is assigned in chronological order.<sup>206</sup> For example, if S.31 is the fiftieth bill signed into law by the governor this year, it will be referred to as Chapter 50 of the Laws of 2011.

The governor can also veto the bill. If the bill is vetoed, the governor issues a disapproval message outlining the objections to the bill.<sup>207</sup> This disapproval message "becomes part of the legislative history" and provides insight into the process and

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<sup>195</sup> *Id.*; N.Y. SEN. R. IX, § 3(d)–(e).

<sup>196</sup> Stock, *supra* note 71, at 61.

<sup>197</sup> *Id.*

<sup>198</sup> N.Y. CONST. art. IV, § 7.

<sup>199</sup> *See id.*

<sup>200</sup> *Id.*

<sup>201</sup> *See* Givens, *supra* note 2, at 86.

<sup>202</sup> *Id.* at 87; Stock, *supra* note 71, at 63.

<sup>203</sup> N.Y. CONST. art. IV, § 7.

<sup>204</sup> *Id.*

<sup>205</sup> ADELMAN & ROWE, *supra* note 83, at 128.

<sup>206</sup> GIBSON, *supra* note 104, at 44.

<sup>207</sup> Givens, *supra* note 2, at 88.

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reasons for the veto.<sup>208</sup> Once vetoed, the bill cannot become law unless each house overrides the veto with a two-thirds vote.<sup>209</sup> It is rare for a veto to be overridden.<sup>210</sup> Assuming the bill remains vetoed, the sponsor can reintroduce the bill at any time and go through the legislative process all over again.<sup>211</sup>

During the ten day period the governor has to act, the governor's counsel may seek comments regarding the legislation from state, federal, and local agencies as well as interest groups that are impacted by the legislation.<sup>212</sup> These entities may also submit information even if there is not a formal request.<sup>213</sup> This information becomes part of the public record and is included in what is known as the bill jacket.<sup>214</sup> The bill jacket is part of the legislative history of the bill and includes a copy of the bill, the introducer's memorandum, and any other memorandum, letters, or comments that were received about the bill.<sup>215</sup>

## CONCLUSION

After reading this article and learning more about the history and legislative process in New York, it is easier to understand why "New York State legislative procedures remain an arcane mystery to many of even the most sophisticated counsel."<sup>216</sup>

While the legislative process is detailed and intricate, a true understanding of the procedure and rules can help anyone learn to navigate this complicated system. It may seem that the system is designed to confuse and alienate people, but it is developed to ensure that any legislation undergoes a thorough review—including extensive comments and feedback. By taking a close look at the procedures and rules, anyone can comprehend the process used by the New York State Legislature.

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<sup>208</sup> *Id.*

<sup>209</sup> N.Y. CONST. art. IV, § 7.

<sup>210</sup> WARD, *supra* note 1, at 73, 109.

<sup>211</sup> N.Y. CONST. art. IV, § 7.

<sup>212</sup> Givens, *supra* note 2, at 87.

<sup>213</sup> *See id.* at 84.

<sup>214</sup> *Id.* at 88.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at 80.