

BRENNAN
CENTER
FOR JUSTICE

RECOMMENDATIONS FOR RULES REFORM IN THE NEW YORK STATE SENATE

JULY 2009

The Brennan Center's recommendations for rules reform are presented in this document in roughly the same order that they appear in the current operating rules of the New York State Senate. Changes proposed to preexisting rules are highlighted in yellow. Proposed new rules are noted as such.

While complete and robust reform will include all of these changes, the most critical reforms are the following:

Recommendation F: Committees must hold hearings specific to each bill under their consideration unless a two thirds majority of the committee votes to dispense with a hearing.

Recommendation H: All bills must be read for amendments before receiving a vote in committee unless a two thirds majority of the committee votes to dispense with the reading for amendments and proceed directly to a vote.

Recommendation J: All bills reported to the floor in both chambers must be accompanied by a substantive committee report showing the committee's work on the bill, including a record of all votes, a summary of the majority and minority opinions on the bill, records of all amendments and comments made by members of the committee on the bill, and a transcript of all hearings on the bill.

Recommended language for incorporating these reforms into the Senate rules is provided in this document.

A. Standing committee chairs should have exclusive authority and responsibility to hire and fire their staff and control committee budgets.

The current Rule II § 5 should be amended to read, "He or she shall appoint such officers and employees of the Senate as may be necessary for the work of the Senate, with the exception of committee staff, who shall be appointed by the chairs of each standing committee."

The current Rule VIII should include a new § 8 which reads, "Pursuant to a resolution adopted by the house, committee chairs and ranking members will receive funding for necessary staff. The adopted resolution shall state the exact amount each committee is to receive for staffing purposes. Funds shall be allocated to committee chairs and ranking members proportionate to the percentage of committee seats held by the majority and minority parties. In no case shall a committee's ranking member receive less than thirty-three percent of the funds allocated to the committee for staffing purposes. Committee chairs and ranking members shall have the authority to hire their own staff and to terminate the same with cause."

B. Members should have the right to have all bills drafted within a reasonable period of time.

Bill numbers must be provided within 48 hours of the bill's filing with the Clerk of each house.

The current Rule VI § 1 should be amended to read, "Introduction. Bills and resolutions shall be introduced by a Senator, or on the report of a committee, or by message from the Assembly, or by order of the Senate, or by the Governor pursuant to Article VII of the Constitution. All members of the Senate shall have the right to the drafting assistance of the staff of the The Legislative Bill Drafting Commission within a reasonable period of time. Every bill introduced shall be in duplicate and shall have endorsed thereon a title and the name of the bill's sponsor and shall be accompanied by the introducer's memorandum in quadruplicate. Such memorandum shall contain a statement of the purposes and intent of the bill and, if the member deems it appropriate, may set forth such other statements that the member feels necessary including, but not limited to, statements relating to economic impact, environmental impact or the impact on the judicial system of the bill. A Committee, where it deems necessary, may require that the introducer's memorandum be amended to include such appropriate statements.

Bills introduced by Senators shall be deposited with the Revision Clerk for the purpose of having such clerk examine and correct bills to avoid repetition of introduction and ensure accuracy in the text and references. Upon introduction, each bill shall be deemed to have had its first and second reading, unless otherwise ordered and shall be given a number as soon as is practicable and immediately referred to the appropriate standing committee by the Temporary President or an officer designated by the Temporary President in accordance with a set of guidelines to be published annually by the Temporary President setting forth

the respective statutes over which each of the standing committees shall have subject matter jurisdiction for purposes of referral. Such referrals shall reflect the subject matter having predominance in the bill as determined by the Temporary President.”

C. The rules of both chambers should clearly state that only the introducer of a bill can request that a bill be recommitted to committee after it has passed the full chamber in the first term of a session. This request can be granted only by majority vote of the chamber.

The current Rule VI § 8 should be amended to read, “Any Senate bill introduced in the first year of the term of the Senate which during that regular Legislative Session was not reported from a Standing Committee or if reported and later recommitted to a Standing Committee is deemed to be automatically reintroduced for the second year of the term of the Senate. ~~All bills which remain~~ **No bill that remains** on the calendar at the end of the first year of the term of the Senate shall be recommitted to committee **unless specifically requested by the introducer of the bill and agreed to by a majority vote of members present and voting. All votes regarding recommitting bills shall be recorded and made available to the public on the Senate website.**”

D. At least one-fourth of the membership of a committee should be able to vote to convene a meeting.

The current Rule VII § 3(a)(2) should be amended to read, “Standing committees may hold special meetings in case of necessity upon the call of the chair when the announcement is made from the floor during session, or the ranking minority member of the committee consents thereto, or upon the call of **a majority one fourth** of all the members thereof, entry of which fact shall be made on the records of the committee and announced by the Secretary of the Senate.”

E. All attendance records, meeting agendas, committee votes, and minutes of committee meetings should be recorded and made available to the public on the Internet at least once a month.

Rule VII § 3(a)(1) should be amended to read, “Standing committees shall hold regular meetings at such time and on such day as scheduled by the Deputy Majority Leader for Legislative Operations in consultation with the chair and such schedule shall be published one week in advance of the date of such meeting and shall be posted on the Senate committee board. The attendance of the members of the committee shall be recorded at each meeting, and a copy of such report shall be filed with the Journal Clerk of the Senate **and made available to the public on the Senate website within 10 days.** Each chair of a standing committee shall, at least four days in advance of each regular meeting, furnish to

the Temporary President and Minority Leader, and make available to each member of such committee, a copy of the agenda of such regular meeting together with a copy of the introducer's memorandum for each bill listed on such agenda for such regular meeting. In addition, copies of such agenda for such regular meeting shall be made available to representatives of the news media and to the general public **on the Senate website as soon as is practicable**. However, in case of necessity, the chair may add or delete items on the agenda and, where practical, members shall be notified of such additions or deletions at least twenty-four hours in advance of the committee meetings. Each standing committee chair shall decide all procedural issues which arise during meetings of standing committees.”

F. Committees must hold hearings specific to all legislation under their consideration.

The current Rule VII § 4(a) Should be amended to read, “Committee hearings. Chairs of standing committees **may shall** call public hearings to permit interested persons, groups or organizations the opportunity to testify orally or in writing on **legislation or issues** each bill pending before such standing committee **unless two thirds of such committee votes to dispense with a hearing**. ~~Chairs may request that~~ The Official Stenographer **must** make a stenographic record of a public hearing, and **transcripts of all hearings must be made available on the Senate website within 10 days**. Official hearings may be conducted in accordance with procedure established by law. No committee may take testimony at a hearing unless at least two of its members are present at such hearing. Prior notice of all public hearings shall be filed by the chair or his or her designee with The Legislative Bill Drafting Commission and the Temporary President and such notice shall contain information as to subject matter, date and place.

G. Each committee and sub-committee must hold an oversight hearing on at least one program or state agency within its jurisdiction at least once per year.

The current Rule VII § 4 should include a new subsection (c) that reads, “The chairperson of each standing committee shall call at least one public hearing after the adoption of the state budget regarding the implementation and administration of programs of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within the jurisdiction of such committee.”

H. All bills must be read for amendments before receiving a vote in committee

The current rule VII should include a new section that reads, "a. Reading Bills for Amendments. No bill not pertaining to appropriations shall be subject to a vote until it has been read before a public meeting of the full committee unless two thirds of the committee votes to dispense with the reading and proceed directly to a vote. Bills shall be read aloud, first in full, and then one section at a time, by the committee clerk. By majority vote, the

committee may dispense with the first reading and proceed immediately to the section-by-section reading.

Notice of the reading of a bill shall be given to the bill's author at least 48 hours in advance. A bill may not be considered in the absence of the author without her consent, except when the bill is presented by the author's representative who is authorized in writing.

Upon the conclusion of the clerk's reading of each section of the bill, the chair shall ask if there are any amendments to the section. At this time, it shall be in order for any member of the committee to introduce an amendment.

b. Committee Amendments. (1) Amendments must be filed with the committee chair in writing twenty-four (24) hours in advance of the reading of the bill and provided in printed form to all committee members, the clerk, and the chair before the reading begins, unless the amendment is a verbal amendment, accepted at the chair's discretion as described below. The chair shall request the clerk to read each amendment upon the member's introduction.

(2) Committee members may also make verbal motions to amend during the reading of the bill, which the chair shall consider in order unless she deems the amendment not germane, too complex to be reasonably understood in spoken form, or concerning a matter that could have reasonably been addressed in an amendment filed in advance. Verbal amendments shall be dictated to the committee clerk, who will transcribe the amendment and read it back to the committee before the author considers the friendliness of the amendment, and again before the amendment is subject to a committee vote.

(3) Committee members may propose verbal revisions to amendments after the amendment is introduced but before the amendment receives a vote. The chair shall consider these revisions in order unless she deems the amendment not germane to the amendment under consideration. Verbal revisions shall be dictated to the committee clerk, who will transcribe the revision and read the amendment as revised back to the committee. Revisions to amendments shall receive a vote before the amendment itself, and shall be incorporated into the amendment under consideration by majority vote of the committee members present and voting.

(4) The chair shall put the question to the author of whether each amendment is friendly or unfriendly. If the author has waived her right to attend or be represented by a proxy at the reading of the bill, all amendments are automatically deemed friendly.

(5) The committee shall vote on all amendments. This vote shall be a voice vote unless a member of the committee requests a roll call vote and another committee member seconds the motion. If this request is so made, a roll call vote on the amendment shall be taken and each member's vote on the amendment shall be recorded and made available on the Senate website. Any amendment receiving a majority vote shall be formally recommended to the sponsor for adoption, and a note to this effect shall be made in the record. Amendments may be incorporated into the bill by consent of the sponsor.

(6) The text of all amendments proposed and a note as to whether or not they are incorporated into the bill shall be made available on the Senate website within 14 days of the

date that a committee concludes with reading a bill for amendments and puts the bill to a vote.”

I. No member’s vote on any matter before committee should be counted unless the member is physically present to cast her vote.

The current Rule VII § 5 (a) should be amended to read, “No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection on the Senate website within 10 days. A member's vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair must be cast by personal vote of the member at the committee meeting during which the bill in question is discussed.

Any standing committee having secondary subject matter jurisdiction over a bill may request the chair of the committee having primary subject matter jurisdiction over said bill (which is the committee to which the said bill has been referred by the Temporary President pursuant to Rule VI) to commit the bill to the committee with secondary subject matter jurisdiction either when the bill is still in the primary committee or after it has been reported to the calendar. If the chair of the primary committee refuses said request, then the committee having secondary jurisdiction, through its chair, may request the Temporary President to consider such secondary referencing. If a secondary reference is so made, the secondary committee shall consider the bill forthwith and return said bill to the primary committee or the calendar, as the case may be, along with the secondary committee's recommendations.

Any bill which is referred to a standing committee other than the Committee on Codes and which imposes or changes any fine, term of imprisonment, forfeiture of rights or other penal sanction, or relates to the procedure by which such fine, term of imprisonment, forfeiture of rights or other penal sanction is imposed or changed, shall, if favorably reported by the committee having original jurisdiction, be referred to the Committee on Codes for the purpose of reviewing and considering the penalty or procedural provisions of such bill. In the event that such a bill is not referred to the Committee on Codes, the chairperson of such Committee may require such referral, subject to the approval of the Temporary President.

All committee reports, after a date to be designated by the Temporary President, but no earlier than the third Thursday in May, shall be made directly to the Committee on Rules. Notwithstanding any provision of Rule VI, the Committee on Rules shall have the authority to introduce and refer bills to itself and shall also have the authority to refer to itself any bill from any standing committee.

Every report of a committee upon a bill which shall not be considered at the time of making the same, or laid on the table by a vote of the Senate, shall stand upon the calendar in the order of first report with the bill and be entered upon the journal.”

J. All bills reported to the floor in both chambers must be accompanied by a substantive committee report showing the committee’s work on the bill

The current Rule VII § 5 (b) shall be amended to read, "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 and said reports shall be filed with the journal clerk **and made available to the public on the Senate website within 10 days.** The report of a committee upon any matter referred to it shall ~~upon request~~ include a brief statement of the opinion of any member or members of the committee voting in either the majority or minority, **transcripts of all hearings held on the legislation, and records of all amendments and comments made by members of the committee.**”

K. Each committee and subcommittee in should submit an annual end-of-term report to the Majority Leader and the Temporary President of the Senate detailing the work of the committee.

The current Rule VII § 5 should include a new subsection (e) that reads, “Annual reports by standing committees. On or before December fifteenth in each year each standing committee shall make a report to the Majority Leader and the Temporary President of the Senate of its activities together with its legislative proposals.”

L. Any member should have the ability to object to the consideration of a bill with fiscal implications on the grounds that it lacks a substantial and sufficient fiscal note.

Actuaries who prepare fiscal notes must attest to no conflict of interest.

The current Rule VII § 7 should be amended to read, “Finance Committee. A bill or resolution providing for an appropriation or creating or increasing a charge upon the State Treasury shall, when reported by any committee other than the Finance Committee, be referred to the Finance Committee, and the committee reporting such bill or resolution shall, at the time of making such report, recommend the further reference thereof to the Finance Committee. At the request of the Temporary President or the Chair of the Finance Committee, any such bill or resolution shall, at any time before final reading or adoption, be referred to the Finance Committee, which may consider and report upon any features in the bill or resolution creating or increasing such charge.

The sponsor of a bill providing for an increase or decrease in state revenues or in the appropriation or expenditure of state moneys, without stating the amount thereof, must, before such bill is reported from the Finance Committee or other committee to which referred, file with the Finance Committee and such other committee a fiscal note prepared by an actuary who attests to no conflict of interest which shall state, so far as possible, the amount in dollars whereby such state moneys, revenues or appropriations would be affected by such bill, together with a similar estimate, if the same is possible, for future fiscal years. Such an estimate must be secured by the sponsor from the Division of the Budget or the department or agency of state government charged with the fiscal duties, functions or powers provided in such bill and the name of such department or agency must be stated in such note. It shall be in order for any member to object to the consideration by any committee of any bill that has potential fiscal impact that is not accompanied by a substantive fiscal note.”

M. Adopt a formal rule stating that no messages of necessity should be approved by the Governor unless at least two-thirds of the members of the chamber in question have voted to request that message.

The current Rule VIII § 1 should be amended to read, “No bill shall be passed unless it shall have been printed and upon the desk of each Senator in its final form at least three calendar legislative days prior to its final passage, unless the Governor or acting Governor shall have certified, under his or her hand and the seal of the State, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of all Senators in final form, not necessarily printed, before its final passage. No bill shall be passed pursuant to a message of necessity unless a two thirds majority of the Senators vote to approve the use of such message.”

N. Allocate member resources equally

The current rule IX should include three new sections that read, “§ []. Staffing. All Senators shall receive the same allocation of funds for staffing their offices. Pursuant to a resolution passed by the house funding for central staff shall be allocated on a proportional basis with the majority to receive a percentage based upon the number of majority members divided by the total number of members and the minority to receive a percentage based upon the number of minority members divided by the total number of members; provided however, that in no case shall the minority party receive less than thirty-three percent of the funds allocated for central staff; and provided further that this proportional allocation of central staff shall not include those staff whose performance is necessary to the operations and functions of the Senate.

§ []. Resources. All Senators shall have access to all resources of the Senate, including but not limited to, office supplies, communications and audio visual resources, and mail privileges.

§ []. District offices. All Senators will receive funds to maintain a district office. Rents of District offices shall be based on cost formulas of office rental costs of an equal class of commercial office space based on the prevailing rent in the community which the Member chooses to have his or her District office. Additionally, a Senator whose district is over two-hundred square miles or whose district spans more than one New York City borough shall receive supplemental funding to maintain a satellite office.”

O. Allow motions to discharge before all committees by a majority vote of members present and voting.

Make votes on petitions for consideration public.

The current Rule XI § 2 (b) should be amended to read, “A motion to discharge a bill out of committee may be brought either before the Standing Committee to which the bill or resolution is assigned or before the house, and such motion shall require that a majority of the members appointed to the Standing Committee to which the bill is assigned, or a majority of members elected to the house present and voting agree to such motion; ~~provided, however, that no such motion shall be put before the Committee on Rules.~~ All votes on such petition shall be recorded and made available to the public on the Senate website. No such motion shall be noticed until the Standing Committee to which the bill is assigned has had twenty days from the date the sponsor of such bill has, in writing, requested that such committee consider such bill, nor shall such motion be in order on or after the fourth Tuesday in April except with unanimous consent of the members or in the discretion of the Temporary President where proper notice specifying the date the motion is to be made has been given prior to the fourth Tuesday in April. The question shall either be put to the Standing Committee to which the bill or resolution has been assigned whether a majority of the members appointed to such committee or to the house whether a majority of members elected agree with the action to discharge the bill out of committee. No motion to discharge a bill out of committee on any single bill or resolution may be put before both the appropriate Standing Committee and the house.”

P. Allow members to place bills on the active list over the wishes of the majority leader by either a motion for consideration or a petition for consideration.

The current Rule XII should include a new section that reads, “Motion for Consideration.

a. No motion for consideration shall be in order until such printed bill has been on the third reading calendar for a period of ten days.

b. A motion for consideration shall be brought before the house and such motion shall require a majority of members present and voting agree to such motion. The question shall be put to the house whether a majority of members present and voting agree to such motion. Upon a successful motion for consideration the bill which is the subject of the motion shall be placed upon the next session day’s active list. During the last four calendar session days a bill which is the subject of a successful motion for consideration shall be

considered for final passage immediately after the motion for consideration calendar is completed.

c. Each motion for consideration, when timely made, shall be placed on a Motion for Consideration Calendar. No motion for consideration may be considered by the house until such motion has been on such calendar for a period of one calendar legislative days.

d. Nothing in this rule shall limit the provisions of Rules VI, VIII and X.

e. In addition, a petition shall allow a majority of members elected to the senate to request a bill be considered. Upon the showing of a petition for consideration signed by a majority of members elected the bill which is the subject of the petition shall be placed upon the active list for the next session day. During the last four days of the session calendar, a bill which is the subject of a valid petition for consideration shall be considered for final passage immediately after the motion for consideration calendar is completed.

c. Each petition for consideration, when timely made, shall be placed on a Motion for Consideration Calendar. No petition for consideration may be considered by the house until such petition has been on such calendar for a period of one calendar legislative day.”

Q. When bills addressing similar subject matter pass both houses, a conference committee should be convened by request of the primary sponsor, chair of the committee of original jurisdiction, or the leaders of both chambers.

The Conference Committee should consist of members from each party proportionate to the parties' representation in each chamber, and no less than one member of the minority party from each chamber.

The current Joint Rule II § 1 should be amended to read, “The Temporary President of the Senate and the Speaker of the Assembly, or the primary sponsors of legislation in question in each chamber, or the chairs of the committees of original jurisdiction in each chamber, may jointly convene a Joint Committee on Conference to consider and report upon substantially similar but not identical legislation that has passed each House of the Legislature. Such committee shall be constituted by the filing of a joint certificate by the Temporary President of the Senate and the Speaker of the Assembly convening parties from each chamber with the Secretary of the Senate and the Clerk of the Assembly, and shall consist of the same number of members from each House. Unless otherwise provided in the certificate, there shall be five members on such committee from each House to be appointed by the Temporary President of the Senate who shall appoint the members from the Senate and the Speaker of the Assembly who shall appoint the members from the Assembly; provided, however, that each House's delegation at least is apportioned according to each party's representation in each chamber and no less than one member shall represent the minority in each House. The Temporary President of the Senate and the Speaker of the Assembly shall each appoint a co-chairperson of the committee and such co-chairpersons shall convene and recess meetings of the committee. Meetings jointly convened by the co-chairpersons shall be subject to the provisions of Article 7 of the Public Officers

Law. The committee shall file a written report setting forth the joint recommendations of a majority of each House's delegation with the Secretary of the Senate and the Clerk of the Assembly or such other committees or officers as may be set forth in the certificate and such report may include specific bill language that would implement the joint committee's recommendations. No report shall be filed except upon the affirmative vote of a majority of the members of each House's delegation on the committee.”