

# *REFORM NEW YORK:*

## 10 STEPS ON THE PATH TO CHANGE ALBANY



*Endorsed by:*  
Citizens Union  
Common Cause/NY  
League of Women Voters/N.Y.S.  
New York Public Interest Research Group

*Written by:*  
Blair Horner

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### **Citizens Union**

Citizens Union of the City of New York, a non partisan force for good government for over 100 years, works to inform and engage the citizens of New York to ensure local and state government values its citizens, addresses critical issues, and operates in a fair, open, and fiscally sound manner.

### **Common Cause/NY**

Common Cause is a non-partisan citizens' organization whose goal is to ensure open, honest, accountable and effective government at the federal, state, and local levels. Common Cause seeks by sustained and focused lobbying campaigns, grassroots activities, and other efforts:

- To strengthen public participation and public faith in our institutions of self-government:
- To ensure that government and the political process serve the general interest, rather than special interest:
- To curb the excessive influence of money on government decisions and elections:
- To promote fair and honest elections and high ethical standards for government officials: and
- To protect the civil rights and civil liberties of all Americans.

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The League of Women Voters of New York State supports the active and informed participation of citizens in government. The League is a unique, multi-issue, nonpartisan political organization that influences public policy through advocacy and education.

### **New York Public Interest Research Group (NYPIRG)**

The New York Public Interest Research Group (NYPIRG) is New York State's largest student-directed consumer, environmental and government reform organization. We are a nonpartisan, not-for-profit group established to effect policy reforms while training students and other New Yorkers to be advocates.

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107 Washington Avenue

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**REFORM NEW YORK:  
10 STEPS LAWMAKERS CAN TAKE TO CHANGE ALBANY**

**EXECUTIVE SUMMARY**

After a disastrous two-year session, the Governor and state legislators are rushing to position themselves as reformers. It is not surprising that they would want to do so: two state legislators and one top-ranking Pataki Administration official have been sent to prison and another lawmaker resigned in disgrace all for violating the public trust. Coupled with an inability to address even the most important issues facing the state, politicians are increasingly confronted by an angry electorate.

As organizations committed to reforming state government, we welcome this new interest by the Governor and state lawmakers. However, without a clear roadmap to reform, politicians could end up further feeding public cynicism by appearing to be more interested in reform rhetoric than reform reality.

This report offers ten important steps toward reform that, if implemented, would result in the most sweeping change in Albany's government in nearly a century. Openness, accountability and democracy would finally be the hallmarks of New York State government.

- STEP 1: Redistricting.** Support the creation of an independent redistricting commission based on the state of Iowa's successful model.
- STEP 2: Campaign Finance.** The Senate should support the Governor's campaign finance legislation and go to conference committee with the Assembly.
- STEP 3: Public Authorities.** The Governor should convene a "summit" on public authorities reform.
- STEP 4: Elections.** The legislature should re-activate the HAVA conference committee and pass legislation to implement HAVA early in 2005 session.
- STEP 5: Freedom of Information.** The Governor should issue an executive order to modernize the state's Freedom of Information Law by requiring "FOIL-able" documents to be available via the Internet.
- STEP 6: Ethics.** The Governor and legislators should agree to ban gifts from lobbyists and create an independent ethics commission.
- STEP 7: Budget.** The Governor should approve budget reform legislation and work to strengthen it in 2005.
- STEP 8: Legislative rules.** Publicly support legislative rules reforms.
- STEP 9: Lobbying.** The Governor should drop his opposition to meaningful lobbying reforms and the Senate should begin a conference committee on the issue.
- STEP 10: Constitutional Convention.** Support change to the selection process for constitutional convention delegates.

# REFORM NEW YORK

## TABLE OF CONTENTS

<b>Chapter 1</b>		<b>Page</b>
<i>STEP 1:</i>	<b>Redistricting.</b>	2
<i>STEP 2:</i>	<b>Campaign Finance.</b>	8
<i>STEP 3:</i>	<b>Public Authorities.</b>	15
<i>STEP 4:</i>	<b>Elections.</b>	18
<i>STEP 5:</i>	<b>Freedom of Information.</b>	21
<i>STEP 6:</i>	<b>Ethics.</b>	24
<i>STEP 7:</i>	<b>Budget.</b>	26
<i>STEP 8:</i>	<b>Legislative rules.</b>	29
<i>STEP 9:</i>	<b>Lobbying.</b>	34
<i>STEP 10:</i>	<b>Constitutional Convention.</b>	47

## ***REFORM NEW YORK: 10 STEPS LAWMAKERS CAN TAKE TO CHANGE ALBANY***

### **Albany's Broken**

New York State government is at a crossroads. Never before has there been such a consensus that Albany is in need of change. The state's top policymakers seem incapable of negotiating agreements, the budget has been approved late for twenty years, local governments are screaming over increasing burdens mandated by the state, while the quality of services declines. In addition, powerful special interests hold sway over policymaking, further eroding public support for its own democracy and fanning the flames of an already widespread public cynicism. Policymaking, such as it is, is shrouded in secrecy. In short, New York State government is in shambles.

The drumbeat of calls from editorial boards, academics and advocates for fundamental reforms have reached deafening proportions. Reformers have decried the growing gap between the governed and those who govern.

There is increasing evidence of voter unrest. In the recent September primary, three incumbent legislators lost and others were seriously challenged. While there are different reasons for these electoral challenges, incumbents have given to their opponents one important weapon – a rationale for an upset.

As nonpartisan organizations, we have no interest in advancing or defeating candidates for state office. However, as interest in changing Albany grows, candidates for state office need to consider measures to restore the public's confidence in government – confidence that is now in tatters due to scandals and a sense of governmental unaccountability.

State government is out of control and while there are many areas in desperate need of reform, however, we believe that there are ten steps that individuals interesting in change should support.

**STEP 1: REDISTRICTING.  
SUPPORT THE CREATION OF AN INDEPENDENT  
REDISTRICTING COMMISSION BASED ON THE STATE OF  
IOWA'S SUCCESSFUL MODEL**

*“Government is more than the sum of all interests; it is the paramount interest, the public interest. It must be the efficient, effective agent of a responsible citizenry, not the shelter of the incompetent and corrupt.”*

*-- Adlai Stevenson*

At the heart of the public's discontent is a feeling that state lawmakers rig the system for their own political gain. Nowhere is this more apparent than in the way legislative district lines are drawn.

Currently, the State Senate Republicans and the State Assembly Democrats are allowed to draw the lines for their respective houses. The only check on this system is whether the Governor chooses to allow this practice to continue or use his veto powers to force changes. As in so many areas of reform, this Governor has shown no leadership on this important issue.

We believe that creation of an independent redistricting commission must be a top priority for those interested in reform. **We therefore urge that the Senate and Assembly hold joint public hearings across the state and produce a report for action next legislative session. The Governor should address this issue in his annual State of the State message.**

**New York State Lacks Competitive Elections.**

New York State elections are incredibly one-sided. Incumbent state legislative candidates are re-elected at a staggering rate. Over the past 22 years, only 30 incumbents have been beaten in the general elections.<sup>1</sup> In good economic times and bad, during changes in administrations in both Albany and Washington, incumbents overwhelmingly continue to win. Even the enormous political change in 1994, which led to the first Republican-controlled House of Representatives in

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<sup>1</sup> For the purposes of this analysis, only the races in which an incumbent ran on a major party line and lost would be counted. All primary losses by incumbents are not counted (since not all voters can participate).

decades, had no significant effect on incumbency in the New York State Legislature.

How can that be? Are New Yorkers so consistently happy with their state representatives that they continue to support them? Even when an incumbent retires, his or her replacement is almost always a member of the incumbent's political party. Is New York so uniquely politically polarized that citizens in all regions of the state vote like their neighbors?

In the 2002 election, incumbents overwhelmed challengers, with few incumbents losing in the general election.<sup>2</sup> The average margin of victory in 2002 was 63 percent in the Senate and 56 percent in the Assembly.

<b>Margin of victory 2002<sup>3</sup></b>	<b>Senate Republicans</b>	<b>Senate Democrats<sup>4</sup></b>	<b>Assembly Democrats</b>	<b>Assembly Republicans</b>
Unopposed	9	3	8	5
70% to 100%	7	9	43	7
25% to 70%	18	12	36	26
11% to 25%	2	1	9	6
10% or less	1	0	6	4 <sup>5</sup>

In the 2002 election, in only 19<sup>6</sup> of the 212 legislative districts was a candidate able to win in a district in which the opposing party had an enrollment edge. In the Assembly, the Democrats have 6 incumbents who win in districts with a

<sup>2</sup> A total of five incumbents lost: Assemblyman Sanford (who was paired against an incumbent due to redistricting); Assemblyman Dinga (also paired with an incumbent); Senators Espada and Santiago (both of whom lost in the Democratic primary and ran on the Republican line); and Senator Gentile).

<sup>3</sup> *The New York Times*, [Results for New York State Senate and New York State Assembly](http://www.nytimes.com/ref/elections2002/2002NYlocalsenate.html), 11/7/02, [www.nytimes.com/ref/elections2002/2002NYlocalsenate.html](http://www.nytimes.com/ref/elections2002/2002NYlocalhouse.html), and [www.nytimes.com/ref/elections2002/2002NYlocalhouse.html](http://www.nytimes.com/ref/elections2002/2002NYlocalhouse.html), official results will not be available until 12/13/02.

<sup>4</sup> Once the election was over, one Senate Democrat switched to the Republican Party. Since she ran as a Democrat without publicly announcing her plans to switch parties, she is counted as a Democrat for this analysis.

<sup>5</sup> One Assemblymember, Ron Tocci, a long-time Democrat lost the 2002 Democratic primary and ran on the Republican line in the general election – which he won. Tocci was seated as a Democrat during the legislative session. This analysis counts him as a Republican.

<sup>6</sup> One of these districts is unique. Assembly Democrat Ron Tocci was beat in the Democratic primary, but ran and won on the Republican line in the general election. Tocci has continued as a Democrat in the Assembly.

Republican enrollment edge. The Assembly Republicans have been able to take 4 seats where there is a Democratic enrollment advantage (with one additional seat with a Democratic advantage won by a long-time Democrat who had lost the Democratic primary and ran on the Republican line in the general election – which he won. This Assemblymember will be seated as a Democrat in the Assembly).

In the Senate, the Republicans have taken 8 seats in which there is a Democratic enrollment edge – in some cases a substantial enrollment advantage. These eight seats allow Republicans to control the Senate.

**Redistricting Decisions Limit Competitiveness.** How district lines are drawn has a dramatic effect on the lack of competitive elections. Only 25 of the 212 legislative districts (11 percent) have close enough enrollments that could allow frequent competitive elections.

Of the 62 state senate districts, 26 are drawn to give one political party an enrollment edge of 40,000 or more (all are Democratic enrollment-advantage districts); 17 grant an enrollment edge of between 20,000 and 40,000 (11 with Republican advantages). Normally, it would be extraordinarily difficult for minority party challengers to take on an incumbent in these districts. However, campaign finance advantages have helped Senate Republicans to take 7 of these Democrat-enrollment advantage districts (SD 11, 15, 22, 34, 35, 38, 56). Only 11 are “competitive districts,” those in which the enrollment differences between the major parties is 13,000 or fewer (10 have Republican advantages, and all 11 have been won by Republicans). Each Senate district has roughly 300,000 constituents.

**Differences in Major Party Enrollments -- Senate Districts<sup>7</sup>**

Difference in major party enrollment – 2002	Number of Republican districts	Number of Democratic districts
0 to 13,000	10	1
13,000 to 20,000	8	0
20,000 to 40,000	11	6
Over 40,000	0	26

In the 150 state assembly districts (with roughly 120,000 constituents), 68 grant an enrollment edge of 20,000 or more (63 are Democratic-advantage districts); 40

<sup>7</sup> New York State Board of Elections, Total Enrollment by Senate District, 11/1/02, report created on 11/12/02, categories by our groups.

grant an enrollment edge of between 10,000 and 20,000 (26 are Republican-advantage districts). Only 14 are “competitive districts,” those with enrollment differences of 5,000 or fewer (10 are Democratic-advantage districts).

**Differences in Major Party Enrollments -- Assembly Districts<sup>8</sup>**

<b>Differences in major party enrollment – 2002</b>	<b>Number of Republican districts</b>	<b>Number of Democratic districts</b>
0 to 5,000	4	10
5,000 to 10,000	14	14
10,000 to 20,000	26	14
20,000 to 30,000	4	21
30,000 to 40,000	1	13
Over 40,000	0	29

Clearly, the vast majority of districts are drawn to benefit one party. In the Senate, Republicans – who control re-districting in that house – have “packed” as many Democrats in as few seats as possible. Republicans then draw as many districts as possible with Republican majorities. However, they only have majorities in 29 districts – campaign finance advantages help add seats.

In the Assembly, Democrats – who draw districts in that house – limit the size of majorities in “Republican” districts. Thus, Democrats are able to use their sizable campaign finance edge to keep the pressure on the Republican minority, making it difficult for them to mount serious challenges to Democratic “marginals.”

**Redistricting decisions play a critical role in having maintained Albany’s legislative status quo for decades.**

In the last 20 years, America has changed. Twenty years ago, the Internet and “hip-hop” music were nowhere to be found. Yet, when it comes to majority party dominance, not much has changed. Since the Democrats took control of the Assembly in the 1970s – and redrew the maps in 1980 – the majority party margins have been incredibly consistent over time.

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<sup>8</sup> New York State Board of Elections, Total Enrollment by Assembly District, 11/1/02, report created on 11/12/02, categories our groups.

**Party advantage in the state legislature 1980 through 2000<sup>9</sup>**

<b>Year</b>	<b>Senate</b>	<b>Assembly</b>
1980	35-25	88-62
1982	35-26	98-52
1984	35-26	96-54
1986	35-26	94-56
1988	34-27	92-58
1990	35-26	95-55
1992	35-26	101-49
1994	36-25	94-56
1996	35-26	97-53 <sup>10</sup>
1998	36-25 <sup>11</sup>	98-52
2000	36-25	99-51
2002	38-24 <sup>12</sup>	103-47 <sup>13</sup>

Redistricting reform is part of the solution to Albany’s lack of competitive elections.

Competitive elections are the lifeblood of democracy. Only through the clash of ideas can voters intelligently understand complex public policies and think through the implications of policy alternatives. Competitive elections stimulate voter interest in elections and in state government generally. New York’s policies that determine legislative districts and set campaign finance practices smother competitive elections – thus endangering democracy.

**RECOMMENDATION: Create a nonpartisan redistricting commission to draft the state legislative and Congressional political boundaries for the 2012 elections.**

New York State’s redistricting process is incredibly partisan. The legislative leadership controls the drawing of district lines for each house. The Republican-controlled Senate draws its lines and the Democrat-controlled Assembly does the same. Both houses agree to the other’s plan, and the legislation is sent to the Governor for his approval.

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<sup>9</sup> All information obtained from New York State Board of Elections and the Red Book. Analysis conducted by NYPIRG.

<sup>10</sup> One Assemblymember switched from Republican to Democrat.

<sup>11</sup> One Senator switched from Democrat to Republican.

<sup>12</sup> After the election, one Democrat switched to the Republican Party.

<sup>13</sup> One long-time Assembly Democrat who, after losing the Democratic primary, was elected on the Republican line has publicly stated that he will serve as a Democrat.

There are alternatives. Some states have a non-partisan redistricting system. The state of Iowa,<sup>14</sup> for example, has a non-partisan system of redistricting that could be followed in New York in time for the 2012 changes. Civil service-like technicians make the first draft of the district lines. These staff are not allowed to consider incumbents' home addresses or to use the party affiliation of voters in considering district lines. The proposed district lines are sent to state lawmakers for approval or disapproval – the legislature is not permitted to amend the proposal. The courts are empowered to step in if there is no agreement.

According to observers, Iowa's elections have become more competitive. Janice McNelly, President of the Iowa League of Women Voters has estimated that one-third of all Iowa races were competitive and reported, "The nonpartisan commission on redistricting is no longer controversial. The process now has broad public and legislative support and has resulted in a more competitive electoral process."<sup>15</sup>

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<sup>14</sup> Iowa Code, Chapter 42 [See appendix].

<sup>15</sup> Phone conversation.

***STEP 2: CAMPAIGN FINANCE.***  
**THE SENATE SHOULD SUPPORT THE GOVERNOR'S  
CAMPAIGN FINANCE LEGISLATION AND GO TO  
CONFERENCE COMMITTEE WITH THE ASSEMBLY**

*“It is necessary that laws should be passed to prohibit the use of corporate funds directly or indirectly for political purposes: It is more necessary that such laws should be thoroughly enforced.”*

*-- President Theodore Roosevelt*

The second area of reform is campaign finance. New York State's disgraceful system has long been criticized by independent researchers and the public at large. Indefensibly high contribution “limits,” coupled with disgracefully inadequate disclosure requirements and nonexistent enforcement, create a system that cries out for change.

The State Assembly has regularly passed legislation that we support (A.11353). This legislation would address the numerous shortcomings of New York's campaign finance system as well as creating a voluntary system of public financing that would reduce the influences of the rich and powerful, while strengthening the possibility of challengers have resources to take on incumbents. It is the model that we support.

The Governor has proposed a comprehensive campaign finance plan that is similar to the Assembly legislation, except it does not include a system of public financing (S.5392). He has not, however, pushed the Senate to act on his plan. Unfortunately, the Senate has not offered its own comprehensive reform plan and has blocked more limited measures for reforming the system.

The State Assembly has publicly committed to a conference committee on the issue if the Senate agrees to the Governor's reform proposal. The Governor should use his considerable political leverage with the Senate to urge action on his legislation. The Senate should act on the Governor's proposal and take the Assembly up on their conference committee offer.

### **Introduction – New York’s disgraceful campaign finance system.**

State lawmakers have long been on notice about the failure of New York’s campaign finance law. Over ten years ago, the final report of the Commission on Government Integrity was sent to the Governor and state legislative leaders. The Commission’s report condemned New York’s lax ethical standards calling them “disgraceful” and “embarrassingly weak.” In addition, the Commission scolded state leaders for failing to act saying, “*Instead partisan, personal and vested interests have been allowed to come before larger public interests.*”<sup>16</sup>

The now-defunct Commission was created fifteen years ago in response to scandals that rocked the political establishment in both New York City and New York State. The Commission, led by Fordham Law School Dean John Feerick and other luminaries including former U.S. Secretary of State Cyrus Vance, was charged with examining the way political business is conducted in New York State and developing a blueprint for reform.<sup>17</sup>

One decade later, New York City now has the most far reaching and effective system of financing campaigns for city office – in fact a model for the nation – and it has placed significant limits on the efforts of special interests to control government decision-making.

Yet in Albany, nothing has changed. By 1990, the Commission had released 23 reports, including recommendations for sweeping campaign finance and ethics reforms for both state and municipal governments. State lawmakers in Albany ignored these recommendations.

Despite the Commission’s statement that “The campaign finance law of the State is a disgrace and embarrassment,”<sup>18</sup> there have been no significant changes in that law. New York still has sky-high campaign contribution limits, allows unlimited contributions to party “soft money” accounts, permits unfettered campaign fundraising during the legislative session, and fails to enforce the state’s already too weak penalty provisions. Not only has the failure of Albany to act left powerful special interests with a huge say over policymaking, it has become a blatant way for lawmakers to subsidize their personal lifestyles. Some lawmakers, for example, now legally use their campaign contributions to lease luxury cars, pay for country club memberships, and travel abroad.

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<sup>16</sup> New York State Commission on Government Integrity.

<sup>17</sup> Executive Order No. 88.1, creating a Commission on Government Integrity. Governor Mario Cuomo, April 21, 1987.

<sup>18</sup> New York State Commission on Integrity in Government.

### **Biggest problems with New York’s campaign finance law.<sup>19</sup>**

- 1. Soft money.** Like the pre-McCain-Feingold situation at the national level, New York State law allows campaign donations of unlimited size to the political parties’ “housekeeping” accounts. Unlike the action at the national level, New York has not closed this loophole.

The “soft money” loophole allows individuals, PACs and corporations to exceed New York’s already high “hard” money contribution limits by giving more to the parties. While the law prohibits the use of these donations directly on behalf of candidates, parties use these monies to poll, launch get-out-the-vote drives, “hard” money fundraising and – sometimes – to launch “attack” ads.

- 2. Sky-high campaign contribution limits.** Unlike federal law and much of the nation, New York State allows extremely large campaign contributions. Political parties are allowed to receive annual contributions of \$84,400; statewide candidates can receive contributions of nearly \$50,000 (including up to \$14,700 for a primary) for an election cycle; state senate candidates can receive \$8,500 for the general election (an additional \$5,400 for a primary); and assembly candidates can receive \$3,400 for the general (an additional \$3,400 for a primary). In addition, New York law allows for a cost-of-living-adjustment for contribution limits every four years. In other states, however, contribution limits are much lower. Nationwide, the contribution limit an individual can give to a gubernatorial candidate averages about \$3,500 per primary or general election. For legislative candidates, the limit averages about \$1,200 per primary or general election.<sup>20</sup>
- 3. Transfers from one political committee to another.** On top of the sky-high contribution “limits,” political parties (state parties, county parties, senate republicans and democrats, and assembly democrats and republicans create these committees) are allowed to transfer donations of unlimited size from their accounts to the candidates of their choice. In this way, political parties can easily circumvent contribution limits that would otherwise apply to statewide and state legislative candidates.
- 4. Campaign fundraising during the legislative session.** Unlike 27 states, New York imposes no additional limits on campaign fundraising during

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<sup>19</sup> Article 14 of New York State’s election Law.

<sup>20</sup>National Conference of State Legislatures, The State of State Legislative Ethics: A Look at the Ethical Climate and Ethics Laws for State Legislators, July, 2002, P. 75.

the legislative session, nor does it impose any unique limitations on lobbyists' involvement in campaign activities.<sup>21</sup> In 2004, 200 fundraisers were held for lobbyists and their clients during session.

- 5. Limited disclosure.** Unlike federal law, contributors do not have to disclose the names of their employers or even the names of those who actually delivered the contributions (a.k.a. “bundlers”). Moreover, New York State does not computerize campaign finance data at the local government level and thus cannot enforce corporate contribution limits properly.
- 6. Poor enforcement.** New York State's Board of Elections is underfunded and limited by law in its ability to punish election law scofflaws. Candidates too often refuse to pay fines and the agency is unable to act quickly on violations. The Board is unable to even levy serious penalties for repeat offenders.
- 7. Use campaign contributions for “personal” uses.** While New York forbids contributions for strictly personal use, candidates can use these monies for any purchase in their role as a candidate or as a public or party official. Incumbents often use these donations for junkets, country club memberships, flowers, leased cars, and other purchases.
- 8. Heavy reliance on special interests for elections funds and the extreme difficulties for challengers to raise money.** New York's combination of huge contribution limits and the commonplace practice of incumbents holding fundraisers near the Capitol during session, promotes a heavy reliance on those with the financial resources to fund elections – typically special interests with business before government. Moreover, relying on powerful special interests makes it extraordinarily difficult for challengers to mount significant challenges, thus denying voters real choices in elections.

**RECOMMENDATION: Enact comprehensive campaign finance reform.**

*Solution #1: Create a voluntary system of public financing modeled on New York City.*

Many states have developed voluntary systems of public financing – nearly half the states operate some sort of public financing program.<sup>22</sup> However, New York

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<sup>21</sup> Ibid. p. 78.

State lawmakers do not have to look far for a model of how to reform its campaign finance system. Described by *The New York Times* as “the best and fairest way for candidates to run for political office,”<sup>23</sup> New York City has a system of public financing of elections that is a model for the nation. As a result of its 4 public dollars for every 1-dollar raised from small private donations, New York City now has competitive elections in which average citizens have a shot at elective office. Moreover, once in office, those legislators now owe little to rich special interests. It is the model that state lawmakers should emulate in Albany.

According to the City’s Campaign Finance Board, the recent expansion in its system of public financing from a \$1 to \$1 match to a \$4 to \$1 match has led to:

**New York City Election Statistics – 1997 and 2001<sup>24</sup>**

	<b>2001</b>	<b>1997</b>	<b>Percentage Increase</b>
# of participants	353	190	86%
# of participants on the ballot for primary or general election	280	141	99%
Public funds paid to date	\$41.5 million	\$6.9 million	501%
% of participants on ballot receiving public funds	71%	58%	22%
# of contributions	139,000	71,600	95%
# of matchable claims	121,000	67,000	81%
Estimated # of contributors	102,000	58,000	76%
<b>Total contributions</b>	<b>\$54.7 million</b>	<b>\$29.5 million</b>	<b>85%</b>

Clearly, New York City’s system of public financing is creating a robust, competitive election atmosphere. The number of candidates is up, the percentage

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<sup>22</sup> National Conference of State Legislatures, *The State of State Legislative Ethics: A Look at the Ethical Climate and Ethics Laws for State Legislators*, July 2002, p. 77. (Alabama, Arizona, Florida, Hawaii, Idaho, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, North Carolina\*, Ohio, Rhode Island, Utah, Vermont, Virginia, Wisconsin). \*NC’s funding system has never generated enough funds to make the public financing system viable.

<sup>23</sup> New York Times editorial, *Money and the Mayoral Race*, 1/25/01.

<sup>24</sup> New York City Campaign Finance Board, “An Election Interrupted ...: The Campaign Finance Program and the 2001 New York City Election, Part 1: Report,” September 2002. p. 17.

of participating candidates is up, and the number of matchable contributions is up. Candidates cannot simply overwhelm their opponents with truckloads of money. They must compete with “shoe leather” and policy proposals. In this environment, the public is certainly the big winner. Voters can choose candidates whose policies they agree with, rather than vote for the candidate with the greatest name recognition.

*Solution #2: Overhaul existing campaign finance law.*

Moreover, strengthen existing law for those who opt not to participate in the voluntary system. New York State can only create a *voluntary* system of public financing, it cannot force all candidates to participate. Unless significant changes are made to the existing campaign finance law, the benefits of a public financing system will be limited.

Luckily, there appears to be a consensus that New York’s campaign finance law needs to be reformed. Governor Pataki has proposed legislation (Senate bill 5392) that overhauls campaign finance law in manner remarkably consistent with Assembly Speaker Silver’s legislation (Assembly bill 11353). The bills major difference is that the Speaker calls for the creation of a voluntary system of public financing and the Governor’s plan does not. The bills are in virtual agreement in many other areas, with only small differences:

- **Both bills ban soft money.** The federal government now bans “soft money” donations to the political parties. Yet, the federal law allows state and local parties to continue to receive these huge donations. New York State should close the soft money loophole.
- **Both bills dramatically lower contribution limits.** Both bills lower contribution limits, but to different levels.
- **Both bills close significant loopholes.** Both bills eliminate the loophole that allows corporations to circumvent New York’s \$5,000 annual aggregate corporate limit by funneling contributions through subsidiaries.
- **Both bills expand disclosure.** Both bills require disclosure of the name of the employer or the occupation of the contributor.
- **Both bills strengthen enforcement.** The Governor’s bill goes beyond the Assembly bill by creating a new enforcement agency with the power to crack down on election law “scofflaws.”

*Solution #3: Require candidates for local government to report their contributions in electronic format and post those filings on the Internet like contributions for state office.*

The Governor's legislation also requires the current statutory requirement that candidates for state office must file contribution disclosures to the State Board of Elections in electronic format. The Assembly has acted on this issue (A.6562-C), but the Senate companion legislation (S.2373) has been blocked by Senator Bruno – formally a supporter of the legislation. This proposal is critically important not only by helping inform the public, but by helping enforce the law. New York limits corporate contributions to a \$5,000 annual aggregate limit, for example, but corporate disclosures are kept on file at both the state and county levels. The State Board is required to enforce the law, but has no capacity to monitor filings kept at the local level. Electronic disclosure made available on the Internet would close that enforcement loophole.

*Solutions #4: Limit the use of campaign contributions to those activities directly involved in campaigning.*

New York State law not only allows the use of campaign contributions for purposes relating to a candidacy, but also to spending relating to an official's role as a public or party official.<sup>25</sup> This loophole allows incumbents – who are rarely challenged in elections – to use campaign donations for essentially personal uses. This loophole should be closed.

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<sup>25</sup> New York State Election Law §14-130.

**STEP 3: PUBLIC AUTHORITIES.  
THE GOVERNOR SHOULD CONVENE A “SUMMIT” ON  
PUBLIC AUTHORITIES REFORM**

Enron, WorldCom, Global Crossing. Those names symbolize the greed and arrogance of the nation’s greatest corporate scandals in generations. Millions of Americans lost money due to the fabricated investment performance and illegal accounting moves by these three corporations and many others.

Even domestic diva Martha Stewart is on her way to jail.

That same mentality of arrogance and deception has seeped into government. In New York, state governmental entities have ignored basic principles of openness and public accountability. According to State Comptroller Alan Hevesi, public authorities were “created to benefit the public,” but instead have become a “semi-secret fourth branch of government with little or no accountability and many have developed a culture of arrogance.”<sup>26</sup>

Earlier this year, Comptroller Hevesi released a report and major reform legislation. In his report, Hevesi described scores of instances of scandals and corruptions at New York State authorities. These authorities were originally established to help the state build and expand major transportation systems, public universities and other programs. They have now become havens stuffed with jobs for political cronies and a funding stream for well-connected lobbyists and campaign contributors.

Here are four of the stories in the Hevesi report:

- In 2003, the New York Racing Authority admitted wrongdoing in conjunction with federal indictment proceedings on charges of conspiracy to commit tax evasion. NYRA paid a \$3 million fine.
- In 2003, the Long Island Power Authority paid its interim – and politically well connected – chief financial officer a whopping \$580,000 for 14 months under a contract that was not submitted to the Comptroller for approval as is required. LIPA was also found to have used funds in 2000

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<sup>26</sup> New York Office of the State Comptroller, Public Authority Reform: Reining In New York’s Secret Government, February 2004.

to pay for “political polling” to gauge Long Island ratepayers’ support for US Senate candidates Lazio and Clinton.

- In 2003, the Canal Corporation apparently rigged a contract that granted exclusive development rights along a portion of the Erie Canal for \$30,000 to a campaign contributor. The Executive Director of the Canal Corporation also alleged that he was fired for refusing to re-bid a contract for a developer that had hired a lobbying firm with ties to Governor Pataki.
- In 2003, the Metropolitan Transportation Authority was found to have cooked its books to misstate the need for a fare hike. The MTA’s Security Chief was removed after he alleged widespread corruption at the authority. Hevesi also reported on former US Senator D’Amato’s intervention in a MTA real estate deal that allowed D’Amato to receive \$500,000 for one phone call to the then-MTA Chairman. Also, Hevesi reported that a large campaign contributor was able to obtain a MTA contract within days of making \$100,000 in campaign donations to the Republican State Committee.

These are just some of the stories, there are scores more. Some recent, some older – some from the Cuomo era.

As a result of this scrutiny, as well as the work done by the Assembly Corporations Committee, there appears to be broadbased agreement that the state’s authorities be subject to greater public scrutiny and oversight. After that philosophical agreement, there is little overlap in how to do it.

*The Comptroller/Attorney General Plan:*

The Comptroller – joined by Attorney General Eliot Spitzer – proposed a broad package of reforms that would overhaul the ways these authorities operate. Key authority reforms were modeled on the corporate reforms advanced by Spitzer and others in response to the Enron and WorldCom scandals. The plan also calls for the creation of a Commission – modeled on the commissions used by Washington to shut down unnecessary military facilities – to examine each of the state’s authorities to determine whether they should be re-organized or shut down altogether.

*The Governor’s Plan:*

Governor Pataki used his executive powers to create an internal panel to review authorities’ corporate practices. Creates Public Authority Governance Advisory Committee to review and make recommendations regarding each authority’s corporate governance plan. The panel, headed by the respected financial expert Ira Millstein, is charged with examining authorities’ practices.

*Senator Leibell's Legislation (S.7292-A)*

- Requires those lobbying for authority contracts to register with the State's Temporary Commission on Lobbying.
- Increased public disclosure to the Public Authority Control Board, Senate Finance Committee and Assembly Ways and Means Committee; for those authorities already required to report to said bodies.
- Same authorities must also give their approved budget and independent audit to the yet to be created Independent Budget Office.
- Annual independent audits.
- State Comptroller must audit each authority every three years, rather than every five as currently required by law.

*Assemblymember Brodsky's Legislation (A.9010-C)*

- Requires those lobbying for authority contracts to register with the State's Temporary Commission on Lobbying.
- Creates the office of the Public Authorities Inspector General, the attorney general would appoint the Inspector General.
- Enables the IG to investigate and report his or her findings and to work on policies to avoid corruption and other abuse, including improper lobbying, in public authorities.
- Creates the Public Authorities Independent Budget Office.
- The Comptroller would appoint the head of the Public Authority Independent Budget Office. Requires the IBO to collect, distribute and assess information about the yearly budget for each authority .

We urge that the Governor convene a "summit" on the issue of public authorities reform. The Governor should invite the Comptroller, the Attorney General, Senator Leibell and Assemblyman Brodsky and other interests parties to publicly hammer out changes to reform the way authorities are held accountable.

The Governor should convene this summit before the November election with an eye toward having the summit issue an agreement by the end of the year. In this way, such recommendations can be addressed by the Legislature in 2005.

**STEP 4: ELECTIONS.**  
**THE SENATE AND ASSEMBLY SHOULD**  
**RE-ACTIVATE THE HAVA CONFERENCE COMMITTEE**  
**AND PASS LEGISLATION TO IMPLEMENT HAVA EARLY IN 2005**

The Help America Vote Act (HAVA) was passed by Congress in 2002. The HAVA was enacted largely in response to the voting fiasco in Florida’s 2000 Presidential election. The intent of the legislation was to modernize and standardize the election process and to make sure every eligible voter was enfranchised and had their vote counted. Congress also sought to curtail any perceived voter fraud. The congressional “reform” included requiring many first-time voters to produce photo identification before they could cast a ballot. While this reform may be less likely to do damage in communities where most citizens have a drivers license, it risks disenfranchising eligible voters in urban centers who do not have a license or other easily obtainable identification – especially in New York.

In 2001, the State Senate, State Assembly and a Governor’s Task Force held hearings to examine ways to improve the way elections are conducted in New York. In the Spring, a consensus emerged and was reflected in the Governor’s Bi-Partisan Task Force Report. Unfortunately, other than the report, the state did nothing. The federal government then passed flawed HAVA legislation with a promise of monies to fund modernization of states’ elections systems. State implementation was mandated. The Governor appointed a HAVA implementation Task Force which met for a short period and accomplished nothing. Our organizations urged that New York State must act to minimize the damage done by the federal legislation while acting to modernize its system of elections.

Finally, in 2004, both houses of the legislature passed legislation to address the major concerns found with HAVA.

**Comparison of HAVA Reform Legislation, 2004**

<b>Issue area</b>	<b>Assembly Legislation</b>	<b>Senate Legislation</b>
Statewide voter registration database, voter ID.	Creates database, allows for long list of allowable forms of ID. Counties maintain control over initial registration process. (A.8842), long list of	Creates database, tracks federal HAVA ID requirements. Counties maintain control over initial registration process (S.6205)

	acceptable voter IDs, including college identification cards.	and S.6201) Creates a statewide hotline for voters to check their registration status.(S.6201) Authorizes funding for database. (S.6203)
Voting Machine Standards	Mandates adoption of a single machine statewide. Sets strict voting machine standards, including verifiable paper trail, digital screens, requires random audits of machines for accuracy. (A.8847).	Allows State BOE to set machine standards, requires verifiable paper trail, establishes vvpt as official tally if certain conditions met, requires, electronic displays and government access to source codes. (S.6207)
Complaint processes	Requires agency response within 90 days of a complaint, allows for an independent grievance if agency fails to respond. (A.8841)	Requires agency response within 90 days of a complaint, allows for an independent grievance if agency fails to respond. (S.6204)
Machine ownership, worker training and pay.	Counties own voting machines, poll workers get stronger training, minimum pay is increased, 16 and 17 year olds are allowed to be poll workers. (A.8833)	The State Board of Elections contracts for the purchase of voting machines and provides such machines to municipalities. (S.6207)
Allocation of federal HAVA funds.	Designates federal funds to purchase new voting machines for the counties. (A.8847)	Creates a HAVA implementation fund in the joint custody of the comptroller and the state board of elections. The state board of elections issues an annual report on how the fund monies were spent. (S.6202)
Public committee for machine selection.	The State Board of Elections appoints a “citizen's voting machine selection advisory committee.” The committee includes representatives from watchdog groups and disability rights organizations. (A.8847)	Establishes a “citizens election modernization advisory committee.” The committee includes individuals from the State Board of Elections, the director of the office for technology, and the state advocate for persons with disabilities. (S.6207)

After a failed attempt to negotiate an agreement through a conference committee process, an agreement was reached that fails to protect the public from the weaknesses of the federal HAVA.

The primary defect in the legislation is its failure to offer clear guidance to local Boards of Elections over the scope of federally mandated ID checks of certain first-time voters on Election Day. The Legislature could have assisted voters and provided guidance to election officials by including a wide variety of sample IDs that would be acceptable at the polls. By failing to do so, local boards of elections will be forced to make those decisions themselves. That could easily lead to different types of ID being considered valid in different parts of the state. There is no reason that voters in Buffalo, Binghamton or the Bronx should be subject to different standards at the polls on Election Day. Unfortunately this legislation will enable that to occur.

The second major provision of the legislation concerns implementation of a verification process of voter registration applications submitted by New Yorkers. The legislation seeks to relieve voters of potentially burdensome ID checks at the polls if their voter registration information can be matched in a statewide database. The intent of this provision is commendable, and the Legislature deserves credit for addressing it. However, its success will depend on individual Boards of Elections implementation efforts and on the details of the state's database management efforts. For example, will each local Board of Elections consider a missing middle initial or a hyphenated last name on one of the records a match or a failed match for identification purposes? There is also the possibility that the provision may actually mean that more voters will face ID checks in jurisdictions that had been considering voters' registration forms complete in absence of the verification system.

While this legislation may reduce the chance of chaos at the polls this Election Day, it does little to guarantee it. It is our hope that the Legislature will get it right next time, next year when this law expires.

**STEP 5: FREEDOM OF INFORMATION LAW  
THE GOVERNOR SHOULD ISSUE AN  
EXECUTIVE ORDER TO MODERNIZE THE FREEDOM OF  
INFORMATION LAW BY REQUIRING “FOIL-ABLE”  
DOCUMENTS TO BE AVAILABLE ON THE INTERNET**

*“Knowledge will forever govern ignorance,  
and a people who mean to be their own  
governors, must arm themselves with the  
power knowledge gives. A popular  
government without popular information or  
the means of acquiring it, is but a prologue  
to a farce or tragedy or perhaps both.”*

*-- James Madison*

**New York’s Freedom of Information Law**

New York State’s 25-year-old Freedom of Information Law (FOIL) is designed to ensure that the public has the access to governmental information it needs to hold policymakers accountable. The legislature made its intentions clear in the legislative findings of the new law:

“The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

“As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

“The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public's business and that the public, individually and

collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.”<sup>27</sup>

**New York’s Freedom of Information Law is one of the weakest in the nation.**

It is very difficult to compare states’ Freedom of Information Laws. Each state has different statutes and cultures of openness. However, in a recent analysis of state FOI laws, New York State was graded a D+, or 29<sup>th</sup> in the nation.<sup>28</sup> The analysis considered five criteria:

- The amount of time a public agency or department has to respond to a citizen’s request for a public document;
- The process a citizen must go through to appeal the decision of an agency to deny the request of a public record;
- Whether an appeal is expedited when it reaches the court system;
- Whether the complaining party, upon receiving a favorable judgment in court, is awarded attorney fees and costs;
- Whether an agency that has wrongfully withheld a record is subject to any civil or criminal punishment.

While New York State’s Committee on Open Government does an admirable job interpreting the law, weaknesses limit the effectiveness of the law.

**Strengthening and Modernizing the Freedom of Information Law.**

After 25 years, weaknesses of the FOIL have become apparent. Legislation to strengthen and modernize law is needed. Reforms should build on recommendations of the Department of State’s Committee on Open Government to strengthen the current Freedom of Information Law and modernizes the law by requiring that future government documents will be available via the Internet and requires some current information be available as well. Here’s how:

**The Governor should require public electronic access to records.** A modern FOIL would allow the public easy access – via the Internet – to many FOIL-able documents. The Governor should require that records be made available where there is a “*substantial public interest in electronic access.*” Not all records should necessarily be made accessible. Reforms should include steps to require how localities should follow suit.

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<sup>27</sup> New York State Public Officers Law, Article 6 §84.

<sup>28</sup> Investigative Reporters and Editors, FOI Laws in the USA by the Better Government Association, [www.ire.org/foi/bga/foiatable.html](http://www.ire.org/foi/bga/foiatable.html).

Currently, there is no such requirement. Information that is collected in electronic format is often available as such. Internet access is restricted to when there is either a legal requirement to do so – for example campaign contribution data or physicians’ malpractice history – or an agency decides to put the record on the Internet.

Increasingly, the public is obtaining information from sources on the Internet. The federal government and some states now have a requirement that citizens can access agency records via the Internet. Making access in such a manner enhances openness, reduces agency costs and helps educate the public.

In addition, lawmakers should act to plug loopholes in the current FOIL, by:

**Broadening the current allowance for attorney’s fees when a citizen brings a successful FOIL action against a stonewalling agency.** Current law allows for attorneys fees, however, the standard for success is quite high requiring that plaintiffs prove that the record in question was “of clearly significant interest to the general public” and that the agency “lacked a reasonable basis” for withholding the information. The single biggest complaint heard about New York’s FOIL is the difficulty citizens have in obtaining government records. There is a widespread belief that agencies make it unnecessarily difficult for the public to access records. This section sets a more reasonable standard for attorneys’ fees when the plaintiff “substantially prevailed” in bringing legal action. This provision should help knock down unnecessary barriers to public access.

**Loopholes should be closed.** Reforms should tighten up and streamline the current trade secret exemption. The process is greatly simplified by granting such exemptions for one year, renewable. Any reform should make it much more difficult for agencies to copyright public records. Moreover, confidential information is to be narrowly granted in both paper and electronic form. The bill requires that agency information in electronic format be easily manipulated to both foster electronic access to the public and protect confidentiality when appropriate.<sup>29</sup>

The Governor should take the lead in modernizing the state’s FOI law by issuing an executive order requiring that all FOIL-able documents be made available via the Internet.

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<sup>29</sup> Legislation has been introduced that includes our reform recommendations: Assembly bill 2644-B (McLaughlin).

**STEP 6: ETHICS.**  
**THE GOVERNOR AND LEGISLATORS SHOULD AGREE  
TO BAN GIFTS FROM LOBBYISTS AND CREATE AN  
INDEPENDENT ETHICS COMMISSION**

*“Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example.”*

*-- Justice Brandeis (in Olmstead v. U.S.)*

Nowhere is the public’s trust more susceptible to harm than when lawmakers act in ways that skirt not only the letter, but also the spirit, of ethical considerations. New York State has seen its share of those revelations, yet little is done.

Prison convictions, scandals and other complaints of ethical misconduct have been on the front pages of New York State’s newspapers. As a result, how New York State regulates political ethics is a front burner issue. Unfortunately, little is clear when it comes to New York State’s ethics law.<sup>30</sup> The law is loophole-riddled and poorly – if at all – enforced. These weaknesses have been long identified. In 1990, the New York State Commission on Government Integrity commented:

*“Overall we have found that the unwillingness of New York’s political leaders to embrace major ethics reforms in the many areas referred to erodes government integrity ... In our view, the leaders of both major parties have failed the citizens of New York by not insisting upon much needed ethics reforms ... Instead partisan, personal and vested interests have been allowed to come before larger public interests.”<sup>31</sup>*

**Recommendations: Raise the ethical bar.** New York State ethical standards must be raised. An agenda for reform must include the following:

- **A ban on gifts from lobbyists to lawmakers and other top policymakers.** Allowing lobbyists to offer gifts to lawmakers is inappropriate. It was, in fact, at the heart of the Philip Morris/lobbying

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<sup>30</sup> See section 73, 73-a and 74 of the Public Officers Law.

<sup>31</sup> New York State Commission on Government Integrity, *Integrity and Ethical Standards in New York State Government*, September 1990.

scandal. Some states have a “zero tolerance” standard for gift-giving. Massachusetts, South Carolina and Wisconsin are such states.<sup>32</sup> New York State should adopt this standard.

- **A ban on lawmakers accepting honoraria.** Giving speeches and being available to the public are part of a legislator’s official duties. Allowing groups to offer state lawmakers honoraria allows special interests to subsidize the income of these officials. In doing so, the practice creates an obvious conflict-of-interest. Twenty-three states prohibit honoraria if they are offered in connection with a legislator’s official duties. New York State is one of the remainder that does not.<sup>33</sup> It should.
- **Create a new, independent ethics oversight agency for both the executive and legislative branches.** Thirty-nine states provide external oversight of state government through an ethics commission. New York is one of six of those states (the others are Illinois, Michigan, North Carolina and Ohio) whose commissions do not have authority over the legislature.<sup>34</sup> New York State should create a new, independent ethics watchdog for both the executive and legislative branches.
- **The establishment of a full one year “cooling off” period for all legislative staffers and top party officials.** New York State currently places such limits on state legislators, elected officials in the executive branch and staff of the executive branch to begin lobbying immediately after leaving their government jobs. However, legislative staff and party officials enjoy far weaker restrictions. A minimum one year “cooling off” period would ensure that no one could immediately cash in on political contacts by lobbying their former colleagues.
- **The elimination of the loophole that prohibits prosecutors from investigating ethical misconduct.** If either the state attorney general or local prosecutors wish to investigate political corruption, there should be no legal barrier to such activities.
- **Ensure that the public knows the fate of prosecutorial actions.** The enforcing agency must be required to announce the outcome of any publicly filed complaint as well as other information that will allow the public to know of the agency’s decisions.

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<sup>32</sup> National Conference of State Legislatures, “The State of State Legislative Ethics: A Look at the Ethical Climate and Ethics Laws for State Legislators,” July 2002. p. 62-3.

<sup>33</sup> Ibid. p. 55.

<sup>34</sup> Ibid. p. 8.

**STEP 7: BUDGET.**  
**THE GOVERNOR SHOULD APPROVE BUDGET REFORM  
LEGISLATION AND WORK TO STRENGTHEN IT IN 2005**

On the eve of the 20<sup>th</sup> straight late budget, Senate and Assembly negotiators unveiled a compromise on reforming the way the state budget is developed. By the end of June, budget reform was passed that included:

- Creates a “contingency” budget, which would kick in whenever a budget is late. This is designed to make sure that some form of a budget is in place if the Governor and the Legislature cannot agree.
- Creates an Independent Budget Office, modeled on the Congressional Budget Office, to conduct nonpartisan budget analyses. The IBO would also issue a binding decision on whether the contingency budget is balanced. If not, across the board cuts are enacted.
- Require that state agencies’ budget requests to the Governor become public.
- Mandate that the millions of tax dollars spent outside the normal budget process be made publicly accountable.
- Change the beginning of the fiscal year from April 1 to May 1.

**Proposed Contingency Budget.**

The flashpoint of the current debate is the proposal to create what’s called a contingency budget. The contingency budget would automatically go into effect if the budget were late. It would essentially be the prior year’s budget. Once the contingency budget went into effect, the legislature would be free to change it – subject to the Governor’s veto.

Both the Senate and Assembly supported the bill. But the Governor has – characteristically – been silent on his view of the package. We urge him to approve this important reform measure.

Currently, the Governor introduces his budget and the legislature must fully act on his budget – by either approving it as is or rejecting it – before it can develop one of its own.

If the budget is late, the Governor and legislature must agree to short term extenders in order to keep government running – which usually means that the

current year's budget is left in place – while they try to hammer out a new budget agreement.

Typically after a protracted battle the Governor and legislature eventually agree on a new negotiated budget. For 20 years, state budgets have been late.

So how would a contingency budget work?

As is currently the case, the Governor would introduce his budget. On May 1, if there were no budget agreement, the contingency budget would be put in place. Under the proposal, the contingency budget frees the legislature to begin developing its own budget. The legislature will either negotiate directly with the Governor or be subject to his veto.

What are the real life differences? Under the new plan the legislature and Governor would begin negotiations sooner. Once May 1 rolls around, the legislature would negotiate its own budget, subject to the Governor's veto, or convince him to participate and agree with the product – as is largely the case now. The contingency budget removes the incentive for the Governor to try to wait out the legislature. As a result, it should make it more likely that budgetary negotiations occur.

After 20 years of budgetary failures, something must be done. The budget reforms advanced by the legislature help open the budget process, ensure more accountability in the spending of taxpayers' dollars and ensure that a state budget will be in place.

The reforms are changes worth making. We urge the Governor to approve the legislation and then introduce additional measures to strengthen the package. We recommend that he propose a:

- **Prohibition on messages of necessity for final passage of budget bills.** A budget process that ultimately ends with lawmakers' first examination of actual budget bill language during the floor debate undermines any notion of an open, democratic process. Voting on budget bills still warm from the copier is a practice that should be ended. We urge that legislators have the minimum three days called for in the constitution to ensure that billions of dollars in the state budget is spent wisely. Furthermore, it is impossible for the public to respond to budget agreements without adequate examination of the final budget bill language.

- **Requirement that all lawmakers – from the Governor to legislators – work full workweeks in Albany until a late budget is approved.** Approving a state budget must be a top priority for all state lawmakers. Missing the April 1<sup>st</sup> deadline for final approval of the state budget must lead to drastic consequences, such as requiring the Governor and state legislators to work Monday through Friday each and every week until there is a budget consensus.
- **Strengthening of the conference committee process.** Last year we argued that the conference committee process be strengthened in a number of ways. We urged that the conference committee process begin earlier, that the conference committee process be used to reconcile revenue estimates, that appointments to the conference committees' subcommittees be announced before the February budget hearings begin, and that the subcommittees reconcile differences in budget language as well. We continue to believe that these are necessary steps to further strengthen the conference committee process.

***STEP 8: LEGISLATIVE RULES.***  
**PUBLICLY SUPPORT LEGISLATIVE RULES REFORMS**

Democracy demands public participation in public policy decision-making. Backroom dealing and secrecy undermine public confidence and breed public cynicism and apathy. Central to all policymaking are rules by which legislatures decide what to do.

Public confidence in the rules that govern the legislative process is a cornerstone in public support for lawmaking. Public distrust of the legislative process erodes democracy.

Until the New York State Assembly pushed for legislative reforms in the late 1970s, the legislature allowed for little public scrutiny. In addition to opening committee meetings to the public, the Assembly advanced a reform that allowed members to require that committees vote on their bills, rather than being unilaterally blocked by the committee chairperson. This rule is still in place in the Senate.

Over the past decade, there have been efforts to further open the legislature to public scrutiny. In 1994, both Houses of the Legislature passed concurrent resolutions allowing bills, state laws and other public data to be placed on the Internet for broad public access. In 1995, newly elected Senate Majority Leader Bruno called for legislative changes that included creation of a New York State “C-SPAN.” Both houses also agreed to allow for the use of joint conference committees to negotiate legislative differences between the houses. In 2001, both Houses agreed to “webcasting” coverage of their floor deliberations. In 2002, the Assembly went one step further and allowed cable TV access to its webcasting “feed.”

However, during that same period the partisan Majority in both Houses took measures to impose dramatic restrictions on the ability of the minority party to oppose policy initiatives. As a result, in both houses of the legislature, these changes have greatly limited the ability of the minority parties to raise policy challenges, or force votes on important issues.

In 2004, the Brennan Center for Justice at New York University released a report examining legislative rules for all 50 states. It concluded that “New York’s legislative process is broken” and that Neither the U.S. Congress nor any other

state legislature so systematically limits the roles played by rank-and-file legislators and members of the public in the legislative process.”<sup>35</sup>

Democracy is fundamentally about the process under which citizens decide issues. In a representative form of government, the rules under which the legislature makes its decisions can significantly affect the policy choices open to lawmakers. New York State’s legislative rules should move toward more openness and democracy.

**The State Legislature needs greater openness and accountability.**

The legislature makes most of its decisions in secret. Experts have argued that New York’s legislative rules and practices are among the most undemocratic in the nation.<sup>36</sup> Any serious reform package must include opening the New York State Legislature up to greater public scrutiny. Below are important reform recommendations for both houses.

- All bills reported to the legislative floor must be accompanied by a public committee report that contains, at a minimum, purposes of the bill, change in current law, section-by-section analysis, procedural history, committee or subcommittee votes, and any members’ views of the bill.
- Allow for a “Form 99” process in the Senate. The Assembly already allows for a “Form 99.” Under the Assembly rules, any member can force a committee vote on legislation introduced by that member. The Senate should allow members the ability to force committee votes as well.
- All committees shall remain in operation throughout the legislative session. Under current Senate rules, committees are shut down during the last month of session. All legislation is then moved to the leadership-controlled Rules Committee for possible action. Shutting down committees at the end of session – precisely when most legislation is coming before the house for action limits the power of the committees and minimizes public participation on the process. Committees should remain in operation until the session finishes its work. In addition, new limits should be placed on the practice of calling committee meetings “off the floor.” Such meetings should only be allowed under agreement between the majority and minority members of the relevant committee.

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<sup>35</sup> Creelan, J. and Moulton, L., The New York State Legislative Process: An Evaluation and Blueprint for Reform, Brennan Center for Justice at NYU School of Law.

<sup>36</sup> Gurwitt, R., *Yesterday’s Legislature*, Governing, March 2000, p. 26. Also see, Lane, E. *Albany’s Travesty of Democracy*, City Journal, Manhattan Institute, Spring 1997, p. 49.

- Create a real “C-SPAN” for New York State. The federal C-SPAN has created a neutral platform which any legislator can use to air his or her views and for holding state government accountable. Both houses of the legislature have publicly stated their support for the creation of a state “C-SPAN,” but little has been done to create such programming. In a television age, the public has no real ability to understand and participate in state issues without a “C-SPAN.”
- Improvements in the Freedom of Information Law. The legislature is exempt from the New York State FOI law. While the houses’ rules state that they will comply with the law, both sets of rules allow for additional exemptions. Both houses should adopt rules, and ultimately pass legislation, that expands the scope of the FOI law to include the legislature.
- Allowing full and open debate on the most important issues of the day. Closed door party conferences cannot substitute for open debate on the floor of the legislature.
- Allowing full use of the motion to discharge. Minority parties need an institutional mechanism for airing their views and for holding the majority accountable. In addition, current time limits on debates should be liberalized.
- Require that all committees must post their agendas on the Internet a full two days in advance of the meeting (with exceptions only for those additions that are agreed to by the ranking minority member of the committee).
- Legislative Process Reform. There should be a prohibition on proxy voting. Legislators should attend committee meetings to insure that their constituents’ views are fully represented in decision-making.
- Conference committees on similar legislation. Under current rules, a conference committee process can begin if approved by the leadership in each house. As a result, very few non-budget conference committees have been appointed to negotiate legislative differences between similar bills. Granting to legislative sponsors the right to create a conference committee would greatly enhance the use of these committees to negotiate agreements.

- Post “debate lists” on the Internet a full business day before the legislation is taken up on the floor of the house (with exceptions only for those additions that are agreed to by the minority leader of the respective house).

### **Fairer allocation of resources**

New York State allows partisan affiliation to drive how the legislative leadership allocates resources. The legislative leaders allocate staff and other resources to those members of the majority with the most seniority, to committee chairs and those members who may face tough re-elections. New Yorkers deserve equal representation in their state legislature – irrespective of whether their representatives are part of a legislative majority or not.

We agree that committee chairs and top legislative leadership should receive more resources than rank-and-file members. However, beyond that fairly limited number of members, resources should be fairly equally allocated.

- Each committee shall be authorized to hire its professional staff. Adequate funding for professional staff, facilities and equipment shall be provided to each committee, and shall be allocated on a proportional majority-minority split.
- For standing committees, proportional representation and staffing for Majority and Minority members.
- Uniform personnel allotments for all state legislators.

### **Rules reforms**

There are some legislative practices that should be changed. Use of legislative resources that promote incumbency should be banned as well as rules that allow the leadership or the majority unfair control over the respective Houses.

- End the abuse of mass mailings. Currently both houses have rules that inadequately limit the use of taxpayer-funded legislative mass mailings during the election season. We recommend that the “black-out” period begin as soon as candidates announce their re-election effort.
- End the “starring” power of the Senate Majority Leader. The Senate rules grant the Majority Leader unprecedented power to halt legislation. The rules allow the Majority Leader to “star” legislation on the Senate floor.

Once legislation is “starred,” it cannot be voted on until the star is lifted by the Majority Leader.

- Legislation shall be reported to the legislative floor only:
  - (1) By a vote of a majority of those members of a standing committee;
  - (2) By a petition signed by a majority of the house’s membership; or
  - (3) By motion to discharge a bill from a standing committee.
  
- Tighter ethical standards. A new rule should be passed that prohibits the acceptance of gifts valued at more than \$25. Under the current rules of the Assembly, legislators can essentially accept as many gifts as they like from lobbyists. There should be a strict limit on the acceptance of such gifts. Moreover, the legislative ethics committee must become a real ethics watchdog. We urge that the legislature appoint an independent enforcer of a stronger set of ethical standards.
  
- Open bill sponsorship to all members. The majorities in both houses often prohibit minority party legislators from co-sponsoring legislation. There should be no such prohibition.
  
- End the abuse of the messages of necessity. New York State’s Constitution requires that all legislation must be available to legislators a full three days before a house can take any action.<sup>37</sup> This requirement can be ignored when the Governor issues a “message of necessity” which allows for immediate action on legislation. The Constitution created this loophole in order to allow lawmakers to act on issues that required immediate attention.<sup>38</sup> This loophole has been abused by the Governor and the legislative leaders to such an extent that many important decisions are now approved with a message of necessity. The messages are used usually in an attempt to limit public debate over important issues. The legislature should act to carefully limit the use of these messages and to prohibit their use in budget negotiations.

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<sup>37</sup> New York State Constitution, Article III, §14.

<sup>38</sup> Ibid.

**STEP 9: LOBBYING.**  
**THE GOVERNOR SHOULD DROP HIS OPPOSITION TO  
MEANINGFUL LOBBYING REFORMS AND THE SENATE  
SHOULD BEGIN A CONFERENCE COMMITTEE ON THE  
ISSUE**

*“Secrecy and a free, democratic  
government don’t mix.”*

*-- President Harry Truman*

Lobbying is a lucrative business. Lobbyists get contracts worth hundreds of thousands of dollars to represent powerful special interests. Their goals are simple: influence governmental decisions. New York State lobbyists and their clients reported spending well over \$100 million in 2003 persuading and cajoling state officials to grant favors or block policies that may affect them.<sup>39</sup>

However, New York’s lobbying law is one that narrowly defines reportable activities. Unlike many other states, for example, New York does not require lobbyists or their clients to report efforts to influence agency purchasing decisions. Thus, efforts to influence agency decisions on billions of dollars in purchases fall under the public’s “radar screen.” This “stealth lobbying” is extremely lucrative and has led to some questionable and sometimes illegal purchasing decisions by New York State agencies.

**The “Stealth” Loophole: Lobbying for Government Contracts.**

New York State law *does* require individuals or entities involved in lobbying state agencies to report their activities if such advocacy is directed at executive decisions regarding regulations, rules or ratemaking.<sup>40</sup> Attempts to influence other executive decisions, such as government purchases, awarding government contracts, enforcement actions or granting permits, are *not* considered lobbying.

Perhaps the greatest area of agency lobbying involves governmental purchasing. Most New Yorkers probably assume that government contracts are awarded based on the lowest bids offered. In some cases that is true. However, in many cases

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<sup>39</sup> New York Temporary State Commission on Lobbying, *2003 Annual Report*.

<sup>40</sup> Legislative Law, Article 1-A, section 1-c (c).

New York State allows agencies to award contracts to those entities that are the most “qualified.” It is in this area that most lobbying appears to occur.

A State Inspector General investigation offers a “bird’s eye view” into lobbying efforts to influence an award of a government contract. The report was issued at the conclusion of a State Inspector General investigation into illegal and improper State University of New York decisions in awarding agency contracts. The report found that several construction projects at SUNY Old Westbury had been improperly awarded.<sup>41</sup>

The IG report makes clear the prevalence of agency procurement lobbying,

“Predictably, the Fund frequently receives requests to meet prospective consultants from *lobbyists*, legislators, other government officials as well as consultants themselves.” [Emphasis added.]

The report concluded, “procurements are not immune from external considerations.”<sup>42</sup> In the Old Westbury case, the Inspector General clearly identified an instance where political connections had led to choice of a government contractor allegedly based on favoritism, not solely on merit. *Unfortunately, there have been other such cases.*

### **Allegations Of Misconduct, Unethical And Criminal Actions Regarding State Contracts**

The secrecy surrounding contracting decisions too often creates an environment of lax ethical behavior by interest groups and public servants. Many of those controversies have been publicly reported. Below is a listing of such controversies – or outright illegalities – disclosed to the public in which special interests were able to “game the system.”

#### **Publicly reported procurement lobbying controversies.**<sup>43</sup>

##### *1. 1995 Port Authority*

PA official pled guilty to taking nearly \$58,000 in bribes from agency contractors.

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<sup>41</sup> State of New York, Office of the Inspector General, *Review of Contract Awards by the State University Construction Fund and the State University of New York at Old Westbury to Hudson Design*, March 2002.

<sup>42</sup> *Ibid.* p. 50.

<sup>43</sup> Unless otherwise noted, the source of the listed allegations is from a report of the State Comptroller, Public Authority Reform: Reining in New York’s Secret Government, February 2004.

2. *1997 Metropolitan Transportation Authority*

Long Island firm, which had been out of the running for work on the Queens-Midtown Tunnel in New York City, gets a contract after \$100,000 in campaign donations were made. Campaign finance records show the firm that was eventually awarded the contract, and others connected to the company's president, donated \$60,000 to the State Republican Party on May 28, 1997, just two days before the MTA contract was awarded to that company. Within three days of firm getting the \$97 million contract, a political action committee founded by the owner gave the Republican State Committee \$40,000.

3. *1997 MTA*

The MTA leased a maintenance facility to Philip Morris, and then the MTA leased it back. Philip Morris agreed to pay the MTA \$24 million and it was expected that the tax benefit was estimated to be worth considerably more than that amount. According to news reports, the deal was completed as hundreds of thousands of dollars were donated to important state and federally based campaign committees.<sup>44</sup>

4. *1999 MTA*

Former United States Senator Alphonse D'Amato was paid \$500,000 to help move along a real estate deal involving the Metropolitan Transportation Authority. He had helped do so by making a phone call in 1999 to the then-MTA Chairman.

5. *1999 Empire State Development Corporation*

The bidding process for the sale of Pilgrim State Psychiatric Center became the focus of a grand jury investigation into the activities of the Empire State Development Corporation Chairman. The state offered to sell the property in 1997, the 560 acre tract of undeveloped Long Island real estate was awarded to a Long Island based real estate investment trust in December of 1998. The announcement prompted the losing bidders to complain that the property was awarded unfairly. Some brought their complaints to the Manhattan district attorney, claiming that the winning bidder received inside information about other bids as a result of their partnership with a developer and prominent Republican contributor with ties to the Pataki administration.<sup>45</sup> ESDC responded to the complaints by bringing in an independent firm to review the bidding process,

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<sup>44</sup> Bernstein, A., D'Amato and the MTA Inhale Tobacco Cash, *New York Observer*, March 10, 1997.

<sup>45</sup> Riley, J. and Harris, A., Deals Land Questions: Exploring a developer's ties to Pataki administration, *Newsday*, February 14, 2000

instead of referring it to the state Inspector General. In November of 1999, news reports began circulating about the grand jury investigation into the land deal.<sup>46</sup> Within days the ESDC cancelled the winning bid.<sup>47</sup>

6. *1999 Urban Development Corporation*

A former top State economic development official pleads guilty to accepting more than \$30,000 in bribes to place a statue in Battery Park City. The investigation later broadened to focus on Chairman's role in nearly every aspect of its work, but was closed without explanation and without filing of criminal charges on January 22, 2001.

7. *2000 Dormitory Authority*

Chief of New York City court projected for the New York State Dormitory Authority pleads guilty to rigging bids, accepting bribes and stealing more than \$500,000 in City funds.

8. *2000 Dormitory Authority*

The State's Dormitory Authority selected a firm for a \$28-million dormitory contract over competitors with more experience, through a process that gives State officials considerable discretion over whom they choose. The company was owned by brothers who were significant fundraisers for elected officials. Despite misrepresenting their qualifications and a long history of bad debts and delinquent tax payments, the company won more than \$37 million in State and county contracts and subsidies.

9. *2000 Thruway Authority*

State Government Integrity Commission reported that 64 of 68 engineering firms on a former Governor's list of prospects to be solicited contributed to the campaign, and that all but 11 of the 64 had contracts with the State Thruway Authority and State Department of Transportation.

10. *2001 Office of General Services*

A senior leasing agent pleads guilty to accepting a bribe to steer a major contract to redevelop a building in downtown Troy. The building was to be converted into the regional headquarters for the State Health Department.<sup>48</sup> The guilty plea came as a result of a four year FBI investigation. The former OGS employee's guilty

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<sup>46</sup> Bagli, C., Investigation of State Development Agency Focuses on L.I. Land Deal, *New York Times*, November 10, 1999.

<sup>47</sup> McCoy, K. and Rashbaum, W., Agency Chief Eyes Taking New Bids on L.I. Psych Center, *Daily News*, November 13, 1999.

<sup>48</sup> Lyons, B., Guilty Plea Made in State Lease Deal, *Times Union*, September 6, 2001.

plea was conditional on his cooperation towards further arrests with regards to the bribery scheme.<sup>49</sup>

*11. 2001 Office of Parks, Recreation and Historic Preservation*

A *Newsday* investigation revealed that SFX Entertainment won a 20 year contract extension to promote events at Jones Beach Amphitheater despite being outbid \$3.6 million by House of Blues, a rival concert promoter. SFX, now Clear Channel Entertainment, retained the services of former U.S. Senator Al D'Amato's lobbying firm, Park Strategies, just weeks before submitting their bid.<sup>50</sup>

*12. 2001 State University Construction Fund*

A report by the Inspector General found serious and inappropriate actions on the part of officials at SUNY Old Westbury and at the Construction Fund in the Fund's procurement process. The report found that calls were made by several administration representatives on behalf of the Governor's neighbor and relative by marriage.

*13. 2002 MTA*

MTA's proposal to renovate new headquarters resulted in a tripling of costs, poor construction, weak oversight and an indictment of seven men for siphoning \$10 million from the project.

*14. 2002 MTA*

The MTA awarded the largest contract in its history for the production of as many as 1,040 subway cars. The contract was expected to be worth as much as \$3 billion over the ten years. Former U.S. Senator Alfonse D'Amato was hired by *Alstom*, the French transit giant, to represent its interests. Former New York State GOP Chairman William Powers was hired by Japan's *Kawasaki Corporation*. The influence such well-connected lobbyists may have had on behalf of their clients was obvious to insiders. According to one non-voting member of the MTA board, "Maybe you hire an Al D'Amato and you become a favorite – I don't know. *I think a contractor should get it on the merits, but that doesn't always happen.*"<sup>51</sup> [Emphasis added]

*15. 2002 Housing Finance Agency*

The New York State Housing Finance Agency approved \$100 million in tax-free bonds to be awarded to each of three luxury housing projects. Two of the

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<sup>49</sup> Lyons, B., *FBI Probe Stalls as Sentencing Delayed*, *Times Union*, July 6, 2002.

<sup>50</sup> Barrett, W., *Bush's Voice of America*, *Village Voice*, April 8, 2003.

<sup>51</sup> Blood, M., *Seeking Inside Track on Subway Contract*, *New York Daily News*, April 29, 2002.

developers of the projects had donated over \$458,000 in campaign contributions to candidates at the State level and \$221,000 at the city level.

*16. 2002 Various*

At least \$2.85 billion in goods and services contracts were entered into by agencies without a procurement integrity officer in place in 1999-2000, according to data by the State Comptroller's Office. Some agencies that lacked a procurement officer include the Metropolitan Transportation Authority, Thruway Authority, Battery Park City Authority and Empire State Development Corporation.

*17. 2003 MTA*

MTA Security Chief and deputy were removed from their duties by MTA Chairman after receiving a report from the agency's inspector general recommending their termination. The chief had accused his bosses of trying to cover up widespread corruption, including alleged bid-rigging and bribery, that he said cost the agency millions of dollars and could threaten efforts to protect the city's transit system from terrorism.

*18. 2003 Canal Corporation*

Executive Director of Corporation alleged he was fired for refusing directive to re-bid a contract for development of Inner Harbor; developer had hired lobbying firm with ties to Governor.

*19. 2003 Long Island Power Authority*

State Comptroller's audit finds that LIPA bypassed its own bidding requirements when it paid Strategic Planning Systems \$45,000 to conduct "political polls." LIPA is required to put contracts of \$5,000 or more up for competitive bid "to the maximum extent possible."

*20. 2003 Long Island Power Authority*

An investigation by Assemblymember Richard Brodsky revealed that LIPA awarded a \$120,000 a year no-bid contract to former top advisors to Governor Pataki, Kieran Mahoney and Michael McKeon. McKeon and Mahoney recently left the Pataki administration to become private political consultants.<sup>52</sup>

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<sup>52</sup> Mahoney, J., Two Drop No-bid Gig as Gov. Ties Surface, *New York Daily News*, July 4, 2003.

21. *2003 Dormitory Authority*

State Ethics Commission accused chief project manager of the Dormitory Authority of accepting two golf outings paid by a contractor he chose for State work.

22. *2003 Canal Corporation*

One bidder, who had contributed \$6,000 to gubernatorial campaign, was awarded exclusive land use rights along a portion of the State canal system by the State Thruway Authority for only \$30,000. Canal Corporation does not solicit additional proposals, even though a few years earlier 32 other companies had expressed interest in canal development.

23. *2003 Port Authority*

Former U.S. Senator used his political influence to persuade the Port Authority to stop the award of a \$21 million contract at LaGuardia Airport and re-open the bidding process to benefit a losing bidder.

24. *2003 MTA*

Manhattan DA released six indictments alleging a Brooklyn plumbing firm scammed the agency of millions of dollars with the help of three MTA officials. Prosecutors sought to recoup \$18.7 million in funds paid to firm.

25. *2003 Corrections Services Corporation/Gloria Davis*

Former Assemblymember Gloria Davis pled guilty to taking bribes in an effort to steer government contracts to Correctional Services Corporation.<sup>53</sup>

26. *2004 The Senator Velella Scandals*

Senator Guy Velella pled guilty to illegally accepting fees for representing clients before state agencies. According to the indictment against him and others, the Velella Law Firm was involved in a series of situations in which the firm was hired to represent clients seeking government contracts.

- In the case of the Brook Avenue Gardens contract to build public housing, the contractor retained the Velella firm to represent it.
- In the case of the Poughkeepsie Housing Project to build public housing, the contractor sought state funding from the Affordable Housing Corporation (a subsidiary of the New York State Housing Finance Agency) and hired the Velella firm to represent him.
- In the case of a contractor seeking state funding from the New York State Division of Housing and Community Renewal for the Tinton Avenue

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<sup>53</sup> Public record, not part of Comptroller's report.

public housing project, the contractor hired the Vellella firm for this project and another contract dealing with a New York City social services contract.

- In the case of the Verrazano Narrows Bridge painting contract, a contractor hired the Vellella firm to represent it before the Triborough Bridge and Tunnel Authority.
- In the case of the Dunn Memorial Bridge contract, the contractor hired the Vellella firm to represent it before the New York State Department of Transportation to throw out existing bids and re-open the contract approval process so that the Vellella client could get their own bid considered. The DOT did throw out the bids.
- A property owner hired the Vellella firm to represent it in contract discussions with the New York State Office of General Services and the New York State Department of Taxation and Finance.<sup>54</sup>

27. *2004 Office of General Services*

Olympia Construction and Thettalia Inc., which were awarded over \$7 million in state contracts for a variety of emergency repairs at state-run institutions, lost their contracts after being accused of attempting to bribe federal officials. The Comptroller suspended the companies from further state work, citing disclosure irregularities by the companies while attempting to secure the contracts.<sup>55</sup>

28. *2004 Assemblymember Roger Green*

Assemblymember Roger Green pled to a misdemeanor for improper reimbursement for free travel offered to him by Correctional Services Corporation. His conviction stemmed from the earlier conviction of Assemblymember Gloria Davis in 2003.<sup>56</sup>

29. *2004 Emergency Wireless Communications*

The state Office of Technology announced that a Tyco International subsidiary M/A-Com, was the winner of a contract, reportedly worth \$1 billion, to establish a new wireless emergency communications system. There was one other major bidder – communications giant Motorola, which reportedly bid \$3 billion to create the system. In its efforts to get the contract, it's been reported that Motorola hired John O'Mara to represent them. Former U.S. Senator Alphonse D'Amato, was

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<sup>54</sup> Supreme Court of the State of New York County of New York, The People of the State of New York v. Guy J. Vellella, Vincent J. Vellella, Manuel Gonzalez, Hector Del Toro, Finbar O'Neill, Kafci Corporation, Terra Firma Construction Management and General Contracting LLC, May 9, 2002.

<sup>55</sup> Dicker, Frederic, State-Biz Firms in Bribe Rap, *New York Post*, February 10, 2004.

<sup>56</sup> Public record, not part of Comptroller's report.

hired by Tyco to lobby on behalf of its interests and against Motorola. D'Amato was contracted by JHS Associates to represent Tyco. JHS Associates is the lobbying firm of John Sununu – the chief of staff to former President George H.W. Bush – the current President's father.

30. *2004 Labor Commissioner James McGowan*

New York State Labor Commissioner James McGowan was convicted for using his office to lobby for state contracts for a friend who paid him and promised him a job after he left office.<sup>57</sup>

### **The Fight For Reform**

Clearly there is need for greater accountability and better oversight. The New York Temporary State Commission has repeatedly identified agency lobbying as an area in need of additional scrutiny. According to the Lobbying Commission:

“The existing definition of lobbying, when considered in conjunction with the various activities specifically excluded from the definition under the Act, is too restrictive, and *effectively curtails the Commission's ability to obtain disclosure of such activities as attempts to influence the adoption of legislative resolutions, or attempts to influence agency decisions* which do not relate to the adoption or rejection of rules or regulations having the force and effect of law. Accordingly, the definition of ‘lobbying’ should be expanded substantially to include within its parameters a broader range of activities.”<sup>58</sup> [Emphasis added]

The Commission has recommended that the lobbying law be amended by redefining “lobbying” to mean

"communicating directly or soliciting others to communicate with any official, or staff person of any official, in the legislative or executive branch of state or local government for the purpose of influencing any legislative, administrative or official action to be taken by that official or staff person."<sup>59</sup>

The quality of services offered to New Yorkers is often determined by which business or not-for-profit receives the government contract and whether that entity

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<sup>57</sup> Public record, not part of Comptroller's report.

<sup>58</sup> New York Temporary Commission on Lobbying, *2003 Annual Report*, see Legislative Recommendations.

<sup>59</sup> *Ibid.*

has the capacity to deliver the contracted service. In this year of extreme fiscal difficulties, the lobbying for such contracts will be intense. Unscrupulous entities may seek to gain unfair advantage over competitors with unethical lobbying tactics that “fly under the radar” of current disclosure requirements.

**Lobbying Reform in the 2004 Session.**

Both the Governor and the Senate leadership argued that there was a need to toughen New York’s weak lobbying law. However, their legislation is indefensibly narrow and weak compared to the Assembly legislation. Below is a comparison of the Senate bill with the Assembly legislation:

**SENATE BILL 7628 – 2004**

**ASSEMBLY BILL 9062-A – 2004**

(Sen. Flanagan, supported by Governor.)

(Speaker Silver)

<p>Expands lobbying oversight to the awarding, denial, approval or disapproval of any contract or other agreement, or contract, or other agreement for the purchase, sale or lease of real property by covered agencies. Does not address lobbying for executive orders. Creates an advisory council on procurement.</p>	<p>Expands the definition of lobbying to include any action by any public official related to the procurement of goods or services. Expands the definition to cover executive orders and tribal-state compacts.</p>
<p>Excludes contractors who communicate with relevant agencies “in the regular course of procurement planning” and other contracting issues when such communications are made “personally” or through officers or employees who are charged with performing contracting functions, subcontractors involved in the delivery of goods, persons who provide “technical” or “professional” services in limited circumstances. In addition, the bill excludes those communicating with public officials where those public officials do not have the power to make a determination, or are not in a position to influence the outcome of the purchase, or are not authorized to enter into or administer such a contract.</p>	<p>Excludes lobbying for procurement contracts for “preferred” services, participants in open bidding conferences, persons involved in negotiating contracts after a “tentative” award has been made, persons involved in appeals of contracting awards, submission of a bid.</p>
<p>Allows for greater flexibility in assessing fines, including allowing those who have never reported to be granted 15 days to amend inaccurate or late filings.</p>	<p>No such provision.</p>

Expands the membership of the Commission to add two new gubernatorial appointees. Two co-chairs replace the existing chair/vice chair system. One co-chair is appointed by the Governor.	No such provision.
Ban contingency fees as a payment system for procurement lobbyists and local lobbying.	Bans contingency fees for both procurement and local lobbying. Exemption for “commissions,” narrowly defined.
Raises the minimum lobbying disclosure requirement from \$2,000 to \$5,000.	Raises the minimum lobbying disclosure requirement from \$2,000 to \$5,000 for both state and municipal lobbying.
Requires the Commission to follow SAPA requirements and the civil rights law.	No such provision. However, new legislation, A.11861, adds this requirements to A.9062-A.

**Procurement lobbying in the rest of the nation.**

Much of the rest of the nation has lobbying laws that require oversight of procurement lobbying:

**STATES’ DISCLOSURE OF AGENCY LOBBYING<sup>60</sup>**

<i>STATE</i>	<i>AGENCY LOBBYING</i>	<i>CONTRACT LOBBYING</i>
<b>Alabama</b>	Rules, regs <sup>61</sup>	No
<b>Alaska</b>	All	Yes
<b>Arizona</b>	Rules <sup>62</sup>	No
<b>Arkansas</b>	All	Yes
<b>California</b>	Rules, regs	No
<b>Colorado</b>	All	Yes
<b>Connecticut</b>	All	Yes <sup>63</sup>
<b>Delaware</b>	All	Yes
<b>Florida</b>	All	Yes <sup>64</sup>
<b>Georgia</b>	Not covered	Yes <sup>65</sup>
<b>Hawaii</b>	Rules	No
<b>Idaho</b>	Not covered	No
<b>Illinois</b>	All	Yes <sup>66</sup>

<sup>60</sup> NYPIRG survey conducted in March 2004.

<sup>61</sup> Only the lobbying of some agencies is covered, including those that deal with public utilities. Many major state agencies, including the Department of Transportation, are not covered.

<sup>62</sup> Except for “ministerial actions” as defined by Arkansas state law (A.C. A 21- 8- 402 (8)).

<sup>63</sup> For contracts that exceed \$2,000.

<sup>64</sup> For contracts that exceed \$5,000

<sup>65</sup> Enacted through Executive Order (Oct. 2003) and only covers contracts that exceed \$50,000 or \$100,000 in the aggregate for all contracts the lobbyist promotes or opposes in a calendar year.

<b>Indiana</b>	Rules, regs	No
<b>Iowa</b>	Rules, regs	No
<b>Kansas</b>	Rules, regs	No
<b>Kentucky</b>	All	Yes
<b>Louisiana</b>	Rules, regs <sup>67</sup>	No
<b>Maine</b>	Not covered	No
<b>Maryland</b>	All	Yes <sup>68</sup>
<b>Massachusetts</b>	All	Yes
<b>Michigan</b>	Rules, regs	Yes <sup>69</sup>
<b>Minnesota</b>	Most	No
<b>Mississippi</b>	All	Yes <sup>70</sup>
<b>Missouri</b>	All	Yes <sup>71</sup>
<b>Montana</b>	Most	No
<b>Nebraska</b>	Not covered	No
<b>Nevada</b>	Not covered	No
<b>New Hampshire</b>	Not covered	No
<b>New Jersey</b>	Not covered	No
<b>New Mexico</b>	Rules, regs	No
<b>New York</b>	Rules, regs <sup>72</sup>	No
<b>North Carolina</b>	Not covered	No
<b>North Dakota</b>	Not covered	No
<b>Ohio</b>	Rules, regs	Yes
<b>Oklahoma</b>	All	Yes <sup>73</sup>
<b>Oregon</b>	Rules, regs <sup>74</sup>	No
<b>Pennsylvania</b>	Not covered	No
<b>Rhode Island</b>	Not covered	No
<b>South Carolina</b>	All	Yes <sup>75</sup>
<b>South Dakota</b>	Not covered	No
<b>Tennessee</b>	All	Yes
<b>Texas</b>	Most	Yes
<b>Utah</b>	Most	Yes
<b>Vermont</b>	All	Yes

<sup>66</sup> Except if no reportable expenditures are made and (a)if solicitation is limited to either oral inquiry or written advertisements and informative literature; or (b) said goods and services are subject to competitive bidding requirements; or (c) less than \$5,000.

<sup>67</sup> Only covered when legislative oversight is needed and communication is directed to the legislator.

<sup>68</sup> For contracts that exceed \$100,000.

<sup>69</sup> Lobbying of top agency officials is covered. Lobbying of lower level officials is not.

<sup>70</sup> An individual is except from the lobbying law if they are subject to the state purchasing law.

<sup>71</sup> Does not include an individual who attempts to contract with an official authorized to purchase goods or services for a public agency.

<sup>72</sup> Executive order requires some disclosure of lobbying activities to agencies.

<sup>73</sup> Lobbyist registration not required, but disclosure of gifts is.

<sup>74</sup> Only legislative agencies.

<sup>75</sup> If an individual is a registered lobbyist they must disclose efforts to influence procurement decisions. If an individual is not a registered lobbyist, they do not.

<b>Virginia</b>	All	Yes
<b>Washington</b>	Most	No
<b>West Virginia</b>	Most	Yes
<b>Wisconsin</b>	Rules, regs	Yes
<b>Wyoming</b>	Not covered	No

## RECOMMENDATION

The Senate has signaled that it will try to come to an agreement with the Assembly on procurement lobbying reform this year.<sup>76</sup> If so, time is running out. There is near-unanimous agreement that New York State must expand the jurisdiction of the Lobbying Commission to monitor procurement advocacy. The Lobbying Commission has requested such a change, the Assembly has passed legislation, the Senate Democrats support a similar measure, and some Senators – such as Senator Leibell – have offered legislation in a consistent, but more limited, fashion. Both the Comptroller and the Attorney General stand in support. Only the Governor remains opposed. Senator Bruno – once the champion of lobbying reform – can make reform a reality by acting quickly on this important legislation, but only if the Governor drops his opposition.

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<sup>76</sup> Roy, Yancey, Pataki Takes Heat Over Lobbying for State Contracts, *Democrat & Chronicle*, May 11, 2004.

**STEP 10: CONSTITUTIONAL CONVENTION.  
SUPPORT CHANGE TO THE SELECTION PROCESS FOR  
CONSTITUTIONAL CONVENTION DELEGATES**

Under the state constitution, every twenty years New Yorkers vote on the question "Shall there be a convention to revise the constitution and amend the same?" The next scheduled vote is 2017.

The delegate selection process was added to the State Constitution in 1894. Under section 2, of Article XIX of the Constitution voters elect three delegates from every Senate district and 15 at-large delegates. Currently there are 62 Senate districts. Thus, with the 15 at-large spots there are a total of 183 delegates.<sup>77</sup>

For years, there has been concern that under such provisions, a constitutional convention would be controlled by the same powers that current exert control over the state government.

Our groups urge that the selection of these delegates be changed so as to make it more likely that the elections are competitive and more closely reflects New York State's diversity.

Chosen delegates should reflect New York society with representation of women, ethnic, racial, socioeconomic minorities. The candidates' positions on issues and convention goals should be widely publicized to enable voters to cast informed votes at their election.

Currently, Article XIX, section 2 of the New York State Constitution is more than likely in violation of the Federal Voting Rights Act. The Voting Rights Act prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure...which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." The concern under the Voting Rights Act is *vote* dilution—or electoral mechanisms aimed at reducing minority representation. The current Senate delegate process dilutes minority voting and therefore under *Fortson v. Dorsey*, 397 U.S. 73 (1965) and *Burns v. Richardson*, 384 U.S. 73 (1966) would suggest that the use of multi-member Assembly districts would be constitutional, but the use of multi-member Senate

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<sup>77</sup> Article 19, Section 2 of the New York State Constitution.

districts is not. The U.S. Supreme Court has not specifically ruled that multi-member districts are always unconstitutional, but the above-mentioned case law would suggest that.

## **RECOMMENDATION**

We recommend that voters choose one delegate for each Senate district; that present office holders should not be eligible to serve as delegates; and that a system of public financing of campaigns be included in any reform. The legislature should undertake this reform now, since there is increasing interest in convening an unscheduled convention. Reforming the delegate selection process will help ensure that any debate over convening a convention is focused solely on the merits of the issues.

## APPENDIX: STATE OF IOWA REDISTRICTING LAW<sup>78</sup>

### Chapter 42 Redistricting General Assembly and Congressional Districts

#### 42.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. "*Chief election officer*" means the state commissioner of elections as defined by section 47.1.
2. "*Commission*" means the temporary redistricting advisory commission established pursuant to this chapter.
3. "*Federal census*" means the decennial census required by federal law to be conducted by the United States bureau of the census in every year ending in zero.
4. "*Four selecting authorities*" means:
  - a. The majority floor leader of the state senate.
  - b. The minority floor leader of the state senate.
  - c. The majority floor leader of the state house of representatives.
  - d. The minority floor leader of the state house of representatives.
5. "*Partisan public office*" means:
  - a. An elective or appointive office in the executive or legislative branch or in an independent establishment of the federal government.
  - b. An elective office in the executive or legislative branch of the government of this state, or an office which is filled by appointment and is exempt from the merit system under section 8A.412.
  - c. An office of a county, city or other political subdivision of this state which is filled by an election process involving nomination and election of candidates on a partisan basis.
6. "*Plan*" means a plan for legislative and congressional reapportionment drawn up pursuant to the requirements of this chapter.
7. "*Political party office*" means an elective office in the national or state organization of a political party, as defined by section 43.2.
8. "*Relative*" means an individual who is related to the person in question as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

#### 42.2 Preparations for redistricting.

1. The legislative services agency shall acquire appropriate information, review and evaluate available facilities, and develop programs and procedures in preparation for drawing congressional and legislative redistricting plans on the basis of each federal

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<sup>78</sup> See: <http://www.legis.state.ia.us/IACODE/2003SUPPLEMENT/42/>

census. Funds shall be expended for the purchase or lease of equipment and materials only with prior approval of the legislative council.

2. By December 31 of each year ending in zero, the legislative services agency shall obtain from the United States bureau of the census information regarding geographic and political units in this state for which federal census population data has been gathered and will be tabulated. The legislative services agency shall use the data so obtained to:

*a.* Prepare necessary descriptions of geographic and political units for which census data will be reported, and which are suitable for use as components of legislative districts.

*b.* Prepare maps of counties, cities and other geographic units within the state, which may be used to illustrate the locations of legislative district boundaries proposed in plans drawn in accordance with section 42.4.

3. As soon as possible after January 1 of each year ending in one, the legislative services agency shall obtain from the United States bureau of the census the population data needed for legislative districting which the census bureau is required to provide this state under United States Pub. L. 94-171, and shall use that data to assign a population figure based upon certified federal census data to each geographic or political unit described pursuant to subsection 2, paragraph "a". Upon completing that task, the legislative services agency shall begin the preparation of congressional and legislative districting plans as required by section 42.3.

#### *42.3 Timetable for preparation of plan.*

1. Not later than April 1 of each year ending in one, the legislative services agency shall deliver to the secretary of the senate and the chief clerk of the house of representatives identical bills embodying a plan of legislative and congressional districting prepared in accordance with section 42.4. It is the intent of this chapter that the general assembly shall bring the bill to a vote in either the senate or the house of representatives expeditiously, but not less than seven days after the report of the commission required by section 42.6 is received and made available to the members of the general assembly, under a procedure or rule permitting no amendments except those of a purely corrective nature. It is further the intent of this chapter that if the bill is approved by the first house in which it is considered, it shall expeditiously be brought to a vote in the second house under a similar procedure or rule.

2. If the bill embodying the plan submitted by the legislative services agency under subsection 1 fails to be approved by a constitutional majority in either the senate or the house of representatives, the secretary of the senate or the chief clerk of the house, as the case may be, shall at once transmit to the legislative services agency information which the senate or house may direct regarding reasons why the plan was not approved. The legislative services agency shall prepare a bill embodying a second plan of legislative and congressional districting prepared in accordance with section 42.4, and taking into account the reasons cited by the senate or house of representatives for its failure to approve the plan insofar as it is possible to do so within the requirements of section 42.4. If a second plan is required under this subsection, the bill embodying it shall be delivered to the secretary of the senate and the chief clerk of the house of representatives not later than May 1 of the year ending in one, or twenty-one days after the date of the vote by which the senate or the house of representatives fails to approve the bill submitted under

subsection 1, whichever date is later. It is the intent of this chapter that, if it is necessary to submit a bill under this subsection, the bill be brought to a vote not less than seven days after the bill is printed and made available to the members of the general assembly, in the same manner as prescribed for the bill required under subsection 1.

3. If the bill embodying the plan submitted by the legislative services agency under subsection 2 fails to be approved by a constitutional majority in either the senate or the house of representatives, the same procedure as prescribed by subsection 2 shall be followed. If a third plan is required under this subsection, the bill embodying it shall be delivered to the secretary of the senate and the chief clerk of the house of representatives not later than June 1 of the year ending in one, or twenty-one days after the date of the vote by which the senate or the house of representatives fails to approve the bill submitted under subsection 2, whichever date is later. It is the intent of this chapter that, if it is necessary to submit a bill under this subsection, the bill be brought to a vote within the same time period after its delivery to the secretary of the senate and the chief clerk of the house of representatives as is prescribed for the bill submitted under subsection 2, but shall be subject to amendment in the same manner as other bills.

4. Notwithstanding subsections 1, 2 and 3 of this section:

*a.* If population data from the federal census which is sufficient to permit preparation of a congressional districting plan complying with article III, section 37 of the Constitution of the State of Iowa becomes available at an earlier time than the population data needed to permit preparation of a legislative districting plan in accordance with section 42.4, the legislative services agency shall so inform the presiding officers of the senate and house of representatives. If the presiding officers so direct, the legislative services agency shall prepare a separate bill establishing congressional districts and submit it separately from the bill establishing legislative districts. It is the intent of this chapter that the general assembly shall proceed to consider the congressional districting bill in substantially the manner prescribed by subsections 1, 2 and 3 of this section.

*b.* If the population data for legislative districting which the United States census bureau is required to provide this state under United States Pub. L. 94-171 and, if used by the legislative services agency, the corresponding topologically integrated geographic encoding and referencing data file for that population data, is not available to the legislative services agency on or before February 1 of the year ending in one, the dates set forth in this section shall be extended by a number of days equal to the number of days after February 1 of the year ending in one that the federal census population data and the topologically integrated geographic encoding and referencing data file for legislative districting becomes available.

#### *42.4 Redistricting standards.*

1. Legislative and congressional districts shall be established on the basis of population.

*a.* Senatorial and representative districts, respectively, shall each have a population as nearly equal as practicable to the ideal population for such districts, determined by dividing the number of districts to be established into the population of the state reported in the federal decennial census. Senatorial districts and representative districts shall not vary in population from the respective ideal district populations except as necessary to comply with one of the other standards enumerated in this section. In no case shall the

quotient, obtained by dividing the total of the absolute values of the deviations of all district populations from the applicable ideal district population by the number of districts established, exceed one percent of the applicable ideal district population. No senatorial district shall have a population which exceeds that of any other senatorial district by more than five percent, and no representative district shall have a population which exceeds that of any other representative district by more than five percent.

*b.* Congressional districts shall each have a population as nearly equal as practicable to the ideal district population, derived as prescribed in paragraph "a" of this subsection. No congressional district shall have a population which varies by more than one percent from the applicable ideal district population, except as necessary to comply with article III, section 37 of the Constitution of the State of Iowa.

*c.* If a challenge is filed with the supreme court alleging excessive population variance among districts established in a plan adopted by the general assembly, the general assembly has the burden of justifying any variance in excess of one percent between the population of a district and the applicable ideal district population.

2. To the extent consistent with subsection 1, district boundaries shall coincide with the boundaries of political subdivisions of the state. The number of counties and cities divided among more than one district shall be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions shall be divided before the less populous, but this statement does not apply to a legislative district boundary drawn along a county line which passes through a city that lies in more than one county.

3. Districts shall be composed of convenient contiguous territory. Areas which meet only at the points of adjoining corners are not contiguous.

4. It is preferable that districts be compact in form, but the standards established by subsections 1, 2 and 3 take precedence over compactness where a conflict arises between compactness and these standards. In general, compact districts are those which are square, rectangular or hexagonal in shape to the extent permitted by natural or political boundaries. When it is necessary to compare the relative compactness of two or more districts, or of two or more alternative districting plans, the tests prescribed by paragraphs "b" and "c" of this subsection shall be used. Should the results of these two tests be contradictory, the standard referred to in paragraph "b" of this subsection shall be given greater weight than the standard referred to in paragraph "c" of this subsection.

*a.* As used in this subsection:

(1) "*Population data unit*" means a civil township, election precinct, census enumeration district, census city block group, or other unit of territory having clearly identified geographic boundaries and for which a total population figure is included in or can be derived directly from certified federal census data.

(2) The "*geographic unit center*" of a population data unit is that point approximately equidistant from the northern and southern extremities, and also approximately equidistant from the eastern and western extremities, of a population data unit. This point shall be determined by visual observation of a map of the population data unit, unless it is otherwise determined within the context of an appropriate coordinate system developed by the federal government or another qualified and objective source and obtained for use in this state with prior approval of the legislative council.

(3) The "x" co-ordinate of a point in this state refers to the relative location of that point along the east-west axis of the state. Unless otherwise measured within the context of an appropriate co-ordinate system obtained for use as permitted by subparagraph 2 of this paragraph, the "x" co-ordinate shall be measured along a line drawn due east from a due north and south line running through the point which is the northwestern extremity of the state of Iowa, to the point to be located.

(4) The "y" co-ordinate of a point in this state refers to the relative location of that point along the north-south axis of the state. Unless otherwise measured within the context of an appropriate co-ordinate system obtained for use as permitted by subparagraph (2) of this paragraph, the "y" co-ordinate shall be measured along a line drawn due south from the northern boundary of the state or the eastward extension of that boundary, to the point to be located.

b. The compactness of a district is greatest when the length of the district and the width of the district are equal. The measure of a district's compactness is the absolute value of the difference between the length and the width of the district.

(1) In measuring the length and the width of a district by means of electronic data processing, the difference between the "x" co-ordinates of the easternmost and the westernmost geographic unit centers included in the district shall be compared to the difference between the "y" co-ordinates of the northernmost and southernmost geographic unit centers included in the district.

(2) To determine the length and width of a district by manual measurement, the distance from the northernmost point or portion of the boundary of a district to the southernmost point or portion of the boundary of the same district and the distance from the westernmost point or portion of the boundary of the district to the easternmost point or portion of the boundary of the same district shall each be measured. If the northernmost or southernmost portion of the boundary, or each of these points, is a part of the boundary running due east and west, the line used to make the measurement required by this paragraph shall either be drawn due north and south or as nearly so as the configuration of the district permits. If the easternmost or westernmost portion of the boundary, or each of these points, is a part of the boundary running due north and south, a similar procedure shall be followed. The lines to be measured for the purpose of this paragraph shall each be drawn as required by this paragraph, even if some part of either or both lines lies outside the boundaries of the district which is being tested for compactness.

(3) The absolute values computed for individual districts under this paragraph may be cumulated for all districts in a plan in order to compare the overall compactness of two or more alternative districting plans for the state, or for a portion of the state. However, it is not valid to cumulate or compare absolute values computed under subparagraph (1) with those computed under subparagraph (2) of this paragraph.

c. The compactness of a district is greatest when the ratio of the dispersion of population about the population center of the district to the dispersion of population about the geographic center of the district is one to one, the nature of this ratio being such that it is always greater than zero and can never be greater than one to one.

(1) The population dispersion about the population center of a district, and about the geographic center of a district, is computed as the sum of the products of the population of each population data unit included in the district multiplied by the square of the

distance from that geographic unit center to the population center or the geographic center of the district, as the case may be. The geographic center of the district is defined by averaging the locations of all geographic unit centers which are included in the district. The population center of the district is defined by computing the population-weighted average of the "x" co-ordinates and "y" co-ordinates of each geographic unit center assigned to the district, it being assumed for the purpose of this calculation that each population data unit possesses uniform density of population.

(2) The ratios computed for individual districts under this paragraph may be averaged for all districts in a plan in order to compare the overall compactness of two or more alternative districting plans for the state, or for a portion of the state.

5. No district shall be drawn for the purpose of favoring a political party, incumbent legislator or member of Congress, or other person or group, or for the purpose of augmenting or diluting the voting strength of a language or racial minority group. In establishing districts, no use shall be made of any of the following data:

- a. Addresses of incumbent legislators or members of Congress.
- b. Political affiliations of registered voters.
- c. Previous election results.
- d. Demographic information, other than population head counts, except as required by the Constitution and the laws of the United States.

6. In order to minimize electoral confusion and to facilitate communication within state legislative districts, each plan drawn under this section shall provide that each representative district is wholly included within a single senatorial district and that, so far as possible, each representative and each senatorial district shall be included within a single congressional district. However, the standards established by subsections 1 through 5 shall take precedence where a conflict arises between these standards and the requirement, so far as possible, of including a senatorial or representative district within a single congressional district.

7. Each bill embodying a plan drawn under this section shall provide that any vacancy in the general assembly which takes office in the year ending in one, occurring at a time which makes it necessary to fill the vacancy at a special election held pursuant to section 69.14, shall be filled from the same district which elected the senator or representative whose seat is vacant.

8. Each bill embodying a plan drawn under this section shall include provisions for election of senators to the general assemblies which take office in the years ending in three and five, which shall be in conformity with article III, section 6 of the Constitution of the State of Iowa. With respect to any plan drawn for consideration in the year 2001, those provisions shall be substantially as follows:

- a. Each odd-numbered senatorial district shall elect a senator in 2002 for a four-year term commencing in January 2003. If an incumbent senator who was elected to a four-year term which commenced in January 2001, or was subsequently elected to fill a vacancy in such a term, is residing in an odd-numbered senatorial district on February 1, 2002, that senator's term of office shall be terminated on January 1, 2003.
- b. Each even-numbered senatorial district shall elect a senator in 2004 for a four-year term commencing in January 2005.

(1) If one and only one incumbent state senator is residing in an even-numbered senatorial district on February 1, 2002, and that senator meets all of the following requirements, the senator shall represent the district in the senate for the Eightieth General Assembly:

(a) The senator was elected to a four-year term which commenced in January 2001 or was subsequently elected to fill a vacancy in such a term.

(b) The senatorial district in the plan which includes the place of residence of the state senator on the date of the senator's last election to the senate is the same as the even-numbered senatorial district in which the senator resides on February 1, 2002, or is contiguous to such even-numbered senatorial district and the senator's declared residence as of February 1, 2002, was within the district from which the senator was last elected. Areas which meet only at the points of adjoining corners are not contiguous.

The secretary of state shall prescribe a form to be completed by all senators to declare their residences as of February 1, 2002. The form shall be filed with the secretary of state no later than five p.m. on February 1, 2002.

(2) Each even-numbered senatorial district to which subparagraph (1) of this paragraph is not applicable shall elect a senator in 2002 for a two-year term commencing in January 2003. However, if more than one incumbent state senator is residing in an even-numbered senatorial district on February 1, 2002, and, on or before February 15, 2002, all but one of the incumbent senators resigns from office effective no later than January 1, 2003, the remaining incumbent senator shall represent the district in the senate for the Eightieth General Assembly. A copy of the resignation must be filed in the office of the secretary of state no later than five p.m. on February 15, 2002.

#### *42.5 Temporary redistricting advisory commission.*

1. Not later than February 15 of each year ending in one, a five member temporary redistricting advisory commission shall be established as provided by this section. The commission's only functions shall be those prescribed by section 42.6.

a. Each of the four selecting authorities shall certify to the chief election officer the authority's appointment of a person to serve on the commission. The certifications may be made at any time after the majority and minority floor leaders have been selected for the general assembly which takes office in the year ending in one, even though that general assembly's term of office has not actually begun.

b. Within thirty days after the four selecting authorities have certified their respective appointments to the commission, but in no event later than February 15 of the year ending in one, the four commission members so appointed shall select, by a vote of at least three members, and certify to the chief election officer the fifth commission member, who shall serve as chairperson.

c. A vacancy on the commission shall be filled by the initial selecting authority within fifteen days after the vacancy occurs.

d. Members of the commission shall receive a per diem as specified in section 7E.6, travel expenses at the rate provided by section 70A.9, and reimbursement for other necessary expenses incurred in performing their duties under this section and section 42.6. The per diem and expenses shall be paid from funds appropriated by section 2.12.

2. No person shall be appointed to the commission who:

- a. Is not an eligible elector of the state at the time of selection.
- b. Holds partisan public office or political party office.
- c. Is a relative of or is employed by a member of the general assembly or of the United States Congress, or is employed directly by the general assembly or by the United States Congress.

*42.6 Duties of commission.*

The functions of the commission shall be as follows:

1. If, in preparation of plans as required by this chapter, the legislative services agency is confronted with the necessity to make any decision for which no clearly applicable guideline is provided by section 42.4, the legislative services agency may submit a written request for direction to the commission.
2. Prior to delivering any plan and the bill embodying that plan to the secretary of the senate and the chief clerk of the house of representatives in accordance with section 42.3, the legislative services agency shall provide to persons outside the legislative services agency staff only such information regarding the plan as may be required by policies agreed upon by the commission. This subsection does not apply to population data furnished to the legislative services agency by the United States bureau of the census.
3. Upon each delivery by the legislative services agency to the general assembly of a bill embodying a plan, pursuant to section 42.3, the commission shall at the earliest feasible time make available to the public the following information:
  - a. Copies of the bill delivered by the legislative services agency to the general assembly.
  - b. Maps illustrating the plan.
  - c. A summary of the standards prescribed by section 42.4 for development of the plan.
  - d. A statement of the population of each district included in the plan, and the relative deviation of each district population from the ideal district population.
4. Upon the delivery by the legislative services agency to the general assembly of a bill embodying an initial plan, as required by section 42.3, subsection 1, the commission shall:
  - a. As expeditiously as reasonably possible, schedule and conduct at least three public hearings, in different geographic regions of the state, on the plan embodied in the bill delivered by the legislative services agency to the general assembly.
  - b. Following the hearings, promptly prepare and submit to the secretary of the senate and the chief clerk of the house a report summarizing information and testimony received by the commission in the course of the hearings. The commission's report shall include any comments and conclusions which its members deem appropriate on the information and testimony received at the hearings, or otherwise presented to the commission.