

January 1955

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Recommended Citation

Sidney A. Asch, *NEW YORK LEGISLATIVE SESSION-RESUME OF 1955 STATUTES ENACTED AND LEGISLATIVE PROCEDURE*, 1 N.Y.L. SCH. L. REV. (1955).

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LEGISLATION

NEW YORK LEGISLATIVE SESSION—RESUME OF 1955 STATUTES ENACTED AND LEGISLATIVE PROCEDURE

SIDNEY H. ASCH

I. STATUTES ENACTED

THE initial meeting of the 178th Legislature of the State of New York convened on January 5 and was addressed by the first Democratic Governor of the State in twelve years.

This session of the Legislature ran until April 2, two weeks longer than the 1954 session. There were 6,677 bills introduced; 1,199 bills passed by both the Senate and Assembly, and 872 bills approved into law by the Governor. This compares with the 6,314 bills which were introduced during the 1954 session; 1,055 which passed both houses during the regular session, and 820 bills which became law.

Before the session reached adjournment, 204 bills had already become law, having been signed by the Governor. Twenty bills had been vetoed. In the thirty-day bill period following the session, 308 additional bills were vetoed, making a total of 328 vetoes. Of the 871 bills which were approved by the Governor, 667 were signed during the thirty-day period following the session. In 1954 the Governor did not veto any bills while the Legislature was in session. That year the Governor vetoed 235 of the 1,055 bills passed.

A. NEW YORK CITY.—The Governor approved a series of fiscal bills sought by the Mayor of New York City which would:

(1) Allow New York City to levy real estate taxes for operating expenses at a rate of two and one-half per cent of the five-year average of assessed valuations, instead of the existing two and one-quarter per cent, to increase the revenue yield by \$27,600,000; (2) continue the three per cent sales tax on a permanent rather than emergency basis without the power to levy the tax on commercial services; (3) increase the rate of the gross business receipts tax from one-fifth to one-quarter of one per cent, and increase the rate of the financial business tax from four-fifths of one per cent to one per cent, to raise \$18,500,000; (4) allow the funding of old subway pension obligations, amounting to \$3,400,000, and the funding of judgments, claims and state repaving costs, estimated at \$11,000,000; (5) take off the restriction on the amount of budget notes that can be issued.

The Governor also approved a package of five relief traffic bills proposed by the Port of New York Authority and the Triborough Bridge Authority. These would authorize construction of a high-level bridge across the Narrows between Staten Island and Brooklyn and a new East River Bridge (Throggs Neck) between The Bronx and Queens; double-decking of the George

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Washington Bridge and construction of a bus terminal on the New York side; operation by the Port Authority of parking facilities near the New Jersey end of the Lincoln Tunnel; building arterial connections between the new bridge and outer arterial routes.

Other approved measures relating to New York City were bills which: (1) reorganized the Transit Authority with a three-member paid body instead of the present five-member unsalaried agency; and (2) authorized demolition of the Third Avenue elevated line upon the discontinuance of service. At the same time the Legislature passed a resolution urging the Transit Authority to continue service on the elevated line until February 15, 1956, in order to give the new Authority an opportunity to survey the situation. A bill setting up a new sick plan for transit employees that would omit pay for the first day of illness unless the employee was sick nine or more consecutive days was also passed.

The Governor authorized relocation of Hamilton Grange (home of Alexander Hamilton) on the Manhattanville campus of City College. He approved a bill to permit Bronx Borough President, James J. Lyons and Supreme Court Justice Charles S. Colden of Queens to recover pay cuts imposed by the City during the depression. However, the Legislature killed bills that would have permitted former Mayor William O'Dwyer to change the option selected for his pension. Other bills affecting New York City were rejected, including one to set up a special commission to study the State-New York City fiscal relationship (the Governor and Mayor of New York City are setting up such a study independently); and a bill to restore to the City its former five per cent tax on pari-mutual pools at flat tracks.

B. HOUSING AND RENT.—The Legislature continued residential rent control substantially as it has existed in New York City, Westchester, Rockland and five other counties; rent control was relaxed in five counties and removed in seventeen others. The Legislature also continued commercial and business rent control in New York City, with minor modifications.

A program designed to encourage the building of private housing was begun with the approval of six bills on April 18th. The key measure of the program is Chapter 407, which provides for state and municipal financial aid to limited-profit housing companies which will construct housing for those who might not be able to afford private housing but whose income makes them ineligible for low-rent housing.

Provision was made for the temporary relocation of low-income families from buildings to be demolished for new housing projects. Racial or religious discrimination in publicly assisted or federally insured housing was prohibited. The State Commission Against Discrimination was given jurisdiction over discrimination problems in publicly assisted housing. Permission was given to cities to grant partial tax exemptions for improvements to eliminate fire and other hazards in substandard apartments. Legalization of cellar apartments was extended, under certain conditions. The Legislature refused to reduce from four to two the number of boarders, roomers or lodgers to be considered a family and thus to be permitted in apartments. It rejected a

bill to permit New York City to charge, as a prior lien against property, the costs of improvements necessary to eliminate substandard conditions in private housing. By Chapter 75, owners of multiple residences are required to provide adequate light in all public halls and stairs. The Governor vetoed a bill which would have increased the liability of a hotel for guests' property.

C. BUDGET AND TAXATION.—The Legislature approved appropriations totalling \$1,259,000,000, an increase of \$136,000,000 over last year's record high figure. Of this year's total, \$706,000,000 is allocated for state grants to local governments and \$553,000,000 is for the operation of the state government itself. Although bills were passed to continue the ten per cent forgiveness of income tax and to retain unincorporated business tax at three per cent instead of four, the Legislature failed to repass them over the Governor's veto, thereby permitting these taxes to rise to "normal" rates. A series of "humanizing" amendments to the personal income tax law were also vetoed. These would have granted additional exemptions to the aged and blind, permit the deduction of gross medical expenses in excess of three per cent of gross income (instead of five per cent) and allow working mothers and widows to claim additional deductions for the care of small children or incapacitated dependents. Also rejected was a proposal to repeal the weight-distance tax on trucks and substitute a system of special truck registration fees to raise approximately the same amount of money and a measure to raise corporate franchise taxes from five and one-half to six per cent of net income and to make other changes in the law that would have produced \$17,200,000 in new revenue.

D. ELECTION LAW.—Among the approved bills concerning the Election Law were those facilitating direct election of district leaders in New York City; fixing the date for the Fall primary on September 13; establishing a single primary to replace the Spring and Fall primaries, beginning in 1956; and a measure barring persons from accepting the designation of one political party and then withdrawing in favor of the candidate of another party. Minor changes in optional permanent personal registration were passed to permit smoother operation in Nassau County. Proposals for making permanent personal registration compulsory on a state-wide basis were killed, as was Governor Harriman's proposal for establishing a system for the local initiation of constitutional amendments.

E. COURTS AND CRIME.—The Legislature continued for a year the life of the Temporary State Commission on the Courts. While it accepted the Commission's recommendation to establish a new judicial conference to administer the court system of the state, it rejected the proposal to create twenty-one new Supreme Court Justices. The Governor vetoed a bill providing for the transfer of cases from the City Court in New York City to lower courts where the damages sustained are less than the City Court's jurisdictional amount.

The Legislature approved a constitutional amendment making bingo

legal for non-profit organizations beginning in 1958. By refusing to remove the criminal penalties for playing bingo, it rejected a scheme which would, in effect, sanction bingo immediately. A joint legislative committee was established to study wire-tapping. Radio and television stations were protected against libel suits resulting from political speeches they cannot censor. The Legislature refused to give the Attorney-General power to enjoin fraudulent activities on advertising sales. It declined to increase the legal age for consumption of alcoholic beverages from 18 to 21. It defeated a proposal to create a special state commission to study the divorce laws. The Governor vetoed a bill increasing fees of fiduciaries.

The Legislature passed a number of bills seeking to protect young people. It created an eleven-member commission to study juvenile delinquency and it set up a "Division of Youth" in the State Correction Department. At the same time it killed a proposal to make the State Youth Commission permanent. It authorized the State to participate in an interstate compact on juvenile delinquency and it provided that the State will share with localities the cost of institutionalizing juvenile delinquents who are local charges. It also provided for the creation of camps as rehabilitation centers for juvenile delinquents. It authorized New York City magistrates to hold for ten days a person arraigned for sex offenses involving children. It barred the sale or possession with intent to sell, of obscene comic books or publications to persons less than 18 years of age. A bill that would have required court appointed guardians for all children in matrimonial actions was rejected.

New laws which are of special interest to lawyers include statutes which provide for: (1) judicial review of penalties imposed by administrative agencies; (2) clarification of the rule relating to the disclosure of privileged communications between physicians and patients; (3) changes in compilation of a net estate for the purpose of election by the surviving husband or wife applicable to persons dying after May 1, 1955; (4) a three-year statute of limitations for an action to annul a marriage; (5) the attachment of an attorney's lien prior to the commencement of an action by service of notice; and (6) the requirement that waiver of right to counsel in arbitration proceedings must be in writing.

F. EDUCATION.—The Legislature continued the Temporary State Commission on Educational Finance (which is studying the education-aid-formula) for a one year period. State aid to education was probably the most controversial issue of the session. As a result of compromises, the old equalization rates were extended for another year as a basis for state aid to education. Appropriations of \$2,000,000 for special classes for non-English-speaking children, to be allocated by the State Education Commissioner, and \$1,500,000 for special classes for physically handicapped and mentally retarded children were passed. The State Education Commissioner was authorized to provide aid for blind and deaf pupils continuing their education outside the State. Last year's emergency aid grant of \$13 a pupil (at a cost of \$25,000,-

000) was continued, as was the State's program of special financial aid to fast-growing districts and the emergency school building program. It doubled to 3,388 the number of \$350-a-year four-year regents' scholarships available to state residents. It created 300 new \$350-a-year nursing scholarships. The State Dormitory Authority was directed to construct student housing facilities on private college and university campuses, but the Legislature deferred for a year action on a proposed \$250,000,000 State University bond issue. It supplemented pensions for retired teachers whose regular pensions were less than \$1,200 a year. Salaries of supervisory school personnel were raised to 50 per cent above the July 1, 1939 level. New York City school teachers were made exempt from jury duty.

The Governor vetoed bills which would have permitted pupils to enroll in kindergarten and the first grade twice a year in New York City, and which would have required all public school pupils to give the pledge of allegiance to the flag daily.

G. LABOR AND INDUSTRY.—A number of bills relating to unemployment insurance were passed. The law was broadened to cover employers with three or more employees, effective in 1956, and two or more thereafter. Maximum unemployment insurance benefits were increased from \$30 to \$36 a week. However, the legislature refused to repeal the merit rating system for unemployment insurance. It also refused to grant recipients of unemployment insurance the benefits allowances for dependents or to reduce the qualifying period from twenty to fifteen weeks.

It appropriated \$50,000 for the Labor Department to employ job counselors and interviewers who will provide counsel and placement services for persons more than 45 years old. It rejected a bill to limit workmen's compensation for partial loss of hearing resulting from industrial noise to cases in which earnings actually had been lost. It rejected increases in disability compensation benefits and extensions of the benefit period. It rejected a resolution memorializing Congress to establish a minimum national wage of \$1.25 an hour. It rejected the extension of the minimum wage law to cover men as well as women and children.

Several bills affected government employees. The Legislature rejected a proposal to repeal the Condon-Wadlin Law. This provides for the automatic dismissal of public employees who engage in strikes, and limits their right to reinstatement. It set the bi-weekly pay day for state employees and officers on the Friday of each second week. It ordered that railroad employees be paid weekly instead of three times a month. The State Board of Standards and Appeals was given jurisdiction over railroad shops for establishing rules of sanitation and shelter for employees.

The Governor vetoed bills which would have: (1) required registration of union welfare funds with the Superintendent of Insurance; (2) ordered a forty-hour week for city policemen and state parkway policemen; (3) permit an employee of the New York City Transit Authority to appear in person at a grievance hearing or choose his own representative.

H. **MOTOR VEHICLES AND HIGHWAYS.**—The life of the Temporary State Commission on Highway Finance was extended for a year. A constitutional amendment was passed authorizing a \$750,000,000 bond issue for highway construction. At the same time, the gasoline tax was increased from 4 to 6 cents and the diesel fuel tax from 6 to 9 cents, effective January 1 if the bond issue is approved by the voters next fall. The proceeds from the gasoline and diesel fuel tax increases were earmarked to retire the highway bonds.

The Legislature rejected a number of important bills relating to motor vehicles and highways. It defeated a measure to repeal the weight-distance tax on trucks and replace it with an increased registration fee; it failed to pass a bill which would have increased charges against trucks under the weight-distance tax; it rejected proposals to make automobile liability insurance compulsory and a bill which would have required the impounding of uninsured vehicles involved in accidents. A proposal for establishing the uniform motor vehicle code for rules of the road in New York was likewise defeated.

A system of interstate highways to qualify for possible additional federal aid was created and speeding on the Thruway was reduced from a misdemeanor to an offense. The Legislature established a Westchester County Parkway Authority, authorized the use of one license plate and a tab for 1956 and postponed for a year the effective date of the compulsory automobile inspection program.

The Governor vetoed a bill which would have permitted counties to receive their usual 10 per cent of the added fuel taxes, plus an additional 10 per cent if they match it for county highway construction. The measure to name the Thruway the Governor Thomas E. Dewey Thruway was also vetoed.

I. **BUSINESS AND FINANCE.**—The Legislature created a New York Business Development Corporation to spread credit risks in investments in order to expand industry and promote employment. It gave the Public Service Commission authority to regulate charges of movers operating within New York City. It increased the limit on the annual amount of business which insurance companies are permitted to write on their existing capital. And it authorized a joint legislative committee to study state banking laws. Bills to permit savings banks to establish a branch within their home county and to permit savings banks to establish branches in a county adjoining their home city were rejected.

The Governor vetoed bills by which the Legislature exempted bus companies from payment of the two per cent tax on utilities, effective next year, and by which the Legislature increased the classes of investments permitted savings banks.

J. **MISCELLANEOUS.**—A number of miscellaneous bills were approved, including the following measures: (1) a constitutional amendment authorizing the construction of Panther Mountain Dam in the Adirondacks; (2) a bill

making Daylight Saving Time mandatory statewide from the last Sunday in April to the last Sunday in October; (3) a proposal increasing Sandy Hook pilot's fees from \$5.50 to \$6.25 a draft foot; (4) a measure authorizing the creation of a single, non-profit racing association to spend \$45,000,000 in rehabilitating three of the state's four flat tracks; (5) legislation exempting educational institutions from non-profit groups required to register with the State Social Welfare Department; (6) a bill permitting Nassau County to reorganize its planning department; (7) a proposal permitting cities to enter into group life insurance or medical and surgical insurance contracts for their employees; (8) a measure authorizing children under 16 years of age to enter bowling alleys; (9) a bill establishing a commission to study farm irrigation between Buffalo and Rochester; (10) legislation creating Niagara Frontier and Oswego Port Authorities; (11) a measure establishing the rose as the official state flower; and (12) a proposal permitting Civil-Defense workers to help fight natural disasters. It also established a Joint Legislative Committee on Government Operations, with an appropriation of \$75,000.

Among the measures defeated were bills which would have permitted the New York City Council to authorize the opening of stores on Sundays where the owners observed another religious day of rest; which would have allowed the state to build camp sites adjacent to highways in the forest preserve; which would have permitted employers to discharge workers who pleaded possible self-incrimination in loyalty proceedings; which would have given harness tracks half of state revenue above the 1954 record for capital improvement projects; which would have set up state licensing system for chiropractors; and which would have taken away from the State Power Authority jurisdiction over Niagara Power.

The Governor vetoed a bill relaxing the restrictions against the participation of state officers or employees in racing activities and a measure authorizing Suffolk County voters to adopt by referendum a tax on potato growers to be used for potato promotion.

II. LEGISLATIVE PROCEDURE

Even a brief resume of the substantive product of the current legislative session indicates the need for some serious thinking about its procedures. While the New York State Legislature rates high on a comparative basis with the legislatures of other jurisdictions, the machinery for dealing with the many thousands of bills which are introduced each year needs substantial improvement.

This session showed the same crawling start and frantic conclusion which have marked previous sessions. While the myriads of bills were being introduced during the first two months, little of anything else was going on. An overwhelming number of these bills were bills which had often been introduced before. Some bills were identical with those introduced by other legislators. A few relatively unimportant matters were taken care of, and

the budget bills enacted. Then, at one fell swoop, the Legislature went to work with an incredible speed which forestalled deliberate consideration.

Some 1,115 bills were referred to the Ways and Means Committee of the Assembly. Since this Committee does not consider other bills until the budget bills are out of the way, this left about two weeks for consideration of most of the bills. The two-week period was between March 8, when most of the budget bills were passed, and March 23, when the Ways and Means Committee made its last report and the Rules Committee took over its work. The Ways and Means Committee reported out only 267 bills. It is not an unfair suspicion that many hundreds of them were killed without substantial consideration by the members of the Committee. It might be noted, at the same time, that there are Assembly Committees, complete with full-time secretaries, which have very few bills referred to them.

The situation in the Assembly Rules Committee was equally discouraging. The Rules Committee was given the 346 bills which had been approved by the Senate, at a time when the other standing Assembly Committees ceased functioning under the rules. In addition, there were a large number of bills which had been referred to the Rules Committee by the other standing committees when they had completed operations. This tremendous number of bills, of necessity, was disposed of in less than two weeks. While each bill undoubtedly received some attention from the expert staff, it seems fairly apparent that many of these bills could not have received careful consideration from all of the members of this important committee. As a result of its deliberations, the Rules Committee reported out 344 bills, which was probably about half of those submitted to it. Among the bills killed were some good bills, some bad bills—both groups including bills already passed by the Senate.

In the Senate, committee procedure is somewhat better, since all of the standing committees continue work right up to the time for adjournment. But while the Senate is a smaller body than the Assembly, it has almost as many committees, and if all the committees met regularly, it would be difficult to get attendance. As a result, some Senate committees are even more casual than Assembly committees about the formal consideration of bills at meetings. There were 526 bills referred to the Senate Finance Committee, many of these having only a casual relationship with finance. Only 180 were reported out.

The session pointed up the lack of public reaction and discussion. The bill which replaced the old Transit Authority with a new, salaried three-member Authority was introduced in the middle of the last week of the session and was passed three days later. Just as in the past, legislation extending commercial and business rent control was introduced during the last week and passed both houses on the last day—without discussion. The extremely important legislation which authorized the Port Authority to construct the Narrows Bridge and remodel the George Washington Bridge was put in final shape on Wednesday of the last week. These are some of the bills included among the 161 bills which were approved on the last day

of the session. Upon adjournment, the Legislature left 975 bills which the Governor had to act upon within 30 days—an average of 32 every day. Up until ten days before the end of the session, only 224 had been referred to him.

This frantic work at the end of the legislative session seems unwarranted. A frequently discussed remedy is the plan for a split session. Under this suggestion, for a designated period of time, nothing but the introduction of bills would take place. As a matter of fact, there is no requirement that the legislators be in Albany during this period. As the bills came to be introduced, they could be printed and notice of them given to the public. Then interested parties could get in touch with the committees to which the bills had been assigned. Once this initial period was over, no bills could be dropped into the hopper, except through a special and restricted procedure.

After all, or virtually all, the bills were introduced, regular committee meetings would be set up in such a way that each legislator could attend all of the committee sessions to which he had been assigned. At the same time, each committee would have the chance to conduct its deliberations without haste. During this period, public hearings would also be scheduled. At the same time, it might be advisable to have joint committee meetings, or joint committees. The result would be deliberative committee action on each bill that had been introduced in both houses.

During a third period, time could be set aside for action by the Legislature. The legislative leaders could then schedule their sessions so that the bills could be voted upon without haste, and a reasonable number considered each day. Advance notice could be given the members of each house of the bills scheduled to be considered on each day. A few days could be allocated for the last few bills that would be sent over from the other house. This procedure would result in less frantic closing days.

Even if the plan for a split session is not adopted, it is important to devise some system for considering important bills early in the legislative session. A council of legislative leaders representing both parties could bring in a comprehensive bills program prepared to coincide with the Governor's message. It seems fairly apparent that it is desirable to have the important legislation introduced early so as to enable the legislators to give sufficient consideration to each measure.

It is also advisable to make a better distribution of bills among all the committees. Certainly, a committee should not be assigned more bills than its members can reasonably be expected to study seriously. The responsibility lies with the legislators and not with the legislative staff.

Further, there is need for revision of the committees themselves, so that they are not too numerous and so that particular committees are not confined to unimportant topics. It is important that some simple device exist for getting bills that are bottled up in committee onto the floor. Although under the Rules it is technically possible for a majority of the members of each house to discharge a committee from further consideration of a bill, such a motion has not been carried in twenty years. The adoption of a rule that

one-third of the members of a house could compel a committee to report out a bill, might be the solution. This innovation would probably eliminate one of the most obvious defects in procedure—the killing of bills in committee which appear to be certain to pass.

DECEDENT ESTATE LAW—AMENDMENT TO SECTION 26—RIGHT OF AFTER-BORN CHILD, SUBJECT TO POWER OF SALE CONFERRED BY WILL.—Section 26 of the Decedent Estate Law provides that a child born to a testator after the execution of a will (said child having neither been provided for nor mentioned in the will) is entitled to take the same share in his parent's estate as if that parent had died intestate.¹ Section 26 was recently amended as follows: "The right of a child born after the making of a last will shall be subject to a valid power of sale expressed in the will of the testator or implied therein pursuant to the provisions of Section 13 of this chapter."²

The issue which this amendment apparently attempted to resolve was before the courts in 1951 in *Matter of Smith*.³ In that case, a testator died leaving his widow as his sole legatee and devisee. The testator also left a child born posthumously, who was not mentioned or provided for in the will, nor had any settlement been made on him. It was not disputed that the provisions of Section 26 of the Decedent Estate Law for the benefit of an after-born child were applicable. Therefore, the child was entitled to take the same share in the parent's estate as if his father had died intestate—and in this case, the child was entitled to two-thirds of the estate. However, the question that arose in the *Smith* case was whether a general power of sale, given by the testator to the executrix in his will, was affected by the after-born child's rights under Section 26.

The assets of the estate were not sufficient to pay the debts of the testator without either a sale or a mortgage of his real property. The executrix received an offer for the real estate, but the prospective vendee expressed the fear that his title might be affected by the rights of the after-born child. Therefore, in order to obtain a judicial determination of her power to convey marketable title, the executrix brought a proceeding under Article 13 of the Surrogate Court Act to dispose of the testator's real property.

A special guardian for the after-born child made a motion to dismiss the petition for the sale of the real property. He contended that the proceeding involved unnecessary expense and delay in the settlement of the estate, agreeing, however, that such property could be disposed of under the power of sale contained in the will. Thus an issue for adjudication was presented to the court.

While the court granted the motion to dismiss the petition on juris-

¹ N. Y. DEC. EST. L. § 26.

² L. 1955, c. 225.

³ 202 Misc. 64, 107 N. Y. S. 2d 993 (Surr. Ct. Broome Co. 1951).

dictional grounds, the surrogate stated the law as follows: "It is well established that a testator's will is not revoked by his subsequently becoming a parent of a child or children. Except for or aside from a statutory protection of an after-born child, all provisions of the will are as effective and operative as if there had been no after-born child. The fact that a portion of the decedent's estate does not pass pursuant to the provisions of the will does not result in the failure of a general power of sale. Therefore, the provision for a power of sale of real estate is one of the provisions of a will which is unrelated to and unaffected by the circumstance that an after-born child has an interest in the estate. . . . Thus it appears that the present proceeding is not one which this court has jurisdiction to hear and determine. . . ." ⁴

Accordingly, this amendment to Section 26 expresses in statutory form a rule previously stated by the Surrogate's Court.

⁴ *Id.* at 66, 67, 107 N. Y. S. 2d at 996.