

2009 Annual Report
New York State Senate
Judiciary Committee

Senator John Sampson, Chairman
Senator George Maziarz, Ranking Minority Member



February 10, 2010

Senator Malcolm Smith
New York State Senate President Pro Tem
Room 909 Legislative Office Building
Albany, New York 12247

Dear Senator Smith:

As Chairman of the New York State Senate Judiciary Committee, it gives me great pleasure to present you with the Committee's 2009 Annual Report.

This report details the activities of the Judiciary Committee over the past year. Despite a tumultuous legislative session, the Committee took action on a number of measures in areas such as public protection, foreclosure relief for struggling home owners, important updates to the Family Court Act as well as protecting New York's consumers and litigants. I am also delighted to report that through timely and bipartisan action, we preserved over \$250 million in federal matching funds for New York State.

I would like to thank each and every member of the Judiciary Committee especially the Ranking Minority Member, Senator George Maziarz, for their hard work and dedicated service this past year. Their ideas, suggestions and participation in debates during the Committee meetings helped to ensure the Committee's success.

I look forward to working with the members of the Judiciary Committee to ensure that 2010 will be even more productive and successful than 2009.

Respectfully Submitted,

Senator John L. Sampson
Chairman, New York State Senate Judiciary Committee

Committee Members

John L. Sampson, Chairman
George Maziarz, Ranking Minority Member

Sen. Eric Adams
Sen. John Bonacic
Sen. Neil Breslin
Sen. John DeFrancisco
Sen. Ruben Diaz
Sen. Martin Dilan
Sen. Pedro Espada Jr.
Sen. Ruth Hassell-Thompson
Sen. Jeffery Klein
Sen. Andrew Lanza
Sen. Kenneth LaValle
Sen. Michael Nozzolio
Sen. George Onorato
Sen. Bill Perkins
Sen. Michael Ranzenhofer
Sen. Stephen Saland
Sen. Dianne Savino
Sen. Eric Schneiderman
Sen. Dale Volker
Sen. George Winner

Committee Staff

Timothy Spotts, Judiciary Counsel
David Markus, Majority Counsel
Shontell Smith, Majority Counsel
Neal Sellers, Counsel
Dilay Watson, Committee Clerk

Summary of Judiciary Committee Action on Bills

Total bills referred to Judiciary Committee in 2009	225
Total bills reported from Committee in 2009	63
Total number of bills reported by Committee that passed the Senate	32
Total number of Judiciary bills that became law in 2009	23
Total number of Judiciary bills vetoed in 2009	1

Judiciary Budget for 2009

In November of 2008, the Office of Court Administration submitted the annual estimate of the financial needs of the Judiciary. The request totaled \$2.5 billion including \$2.27 billion from the General Fund State Operations and Aid to Localities. The total request represented an increase of \$2.3 million over 2008 which amounted to a less than one tenth of one percent increase. The Office of Court Administration achieved this zero-sum growth through a freeze on filling administrative vacancies as well as strict review of vacancies in court operational positions.

Jurisdiction

The New York State Senate Judiciary Committee is charged with receipt and review of all bills that affect the following areas:

Age of Majority

Commissioner of Jurors

Concurrent Resolutions

The Constitution

Court of Claims

Debtor & Credit Law

Domestic Relations Law except: Article 5 sections 70-73, Article 5-A sections 75a-75z
Article 7 sections 109-117 and sections 240, 240b
and 240c

Eminent Domain Procedure Law

Estates, Powers & Trusts Law

Family Court Act except: Sections 249, 249a, 254 and 254a
Article 3 sections 301.1 through 385.2
Article 5-B sections 580.101 through 580.905
Article 6 sections 611 through 664
Article 7 sections 711 through 784
Article 8 sections 811 through 818
Article 10 sections 1011 through 1085
Article 10-A sections 1086 through 1090

General Business Law: Liens

General Business Law: Article 17-A sections 275 through 279j

General Construction Law

General Obligations Law except Article 5 title 15-A sections 5-1551 through 5-1555

Judiciary Law

Lien Law

New York City Civil Court Act

New York City Criminal Court Act

New York City Domestic Relations Court Act

New York City Interior Court Act

New York City Municipal Court Act

Personal Property Law except:

Article 9 sections 301 through 316

Article 9-A sections 330 through 353

Article 10 sections 401 through 422

Article 10-A section 425 through 431

Article 10-B sections 440 through 448

Real Property Law except:

Mobile Homes (sections 233, 280 & 290a)

Real Property Actions & Proceedings Law

Surrogate's Court Procedure Act

Uniform City Court Act

Uniform Commercial Code

Uniform District Court Act

Uniform Justice Court Act

Judiciary Legislation Enacted Into Law in 2009

Chapter 263 of the Laws of 2009 –S. 2849 Sampson/A. 6921 Weinstein

This law modernizes the procedures for the emergency relocation of court terms. The process for relocating a court during an emergency had not been updated or examined since 1909. The law had become obsolete and was inadequate to meet 21st century threats such as epidemics, terrorist threats or infrastructure failures such as gas leaks or plumbing failures. Additionally, the former law did not allow relocation without prior approval of numerous State, county or local officials such as mayors and county executives. This legislation will centralize the decision to relocate with the governor in consultation with the Chief Judge of the Court of Appeals or with the Chief Judge if the governor is unavailable. The 1909 law also mandated that a court term had to be relocated to a location within a court's "district". This mandate could cause difficulties if an entire "district" was under the same emergency condition (a blizzard for example). The new law allows more flexibility in deciding on temporary locations for courts and helps to ensure that courts are functioning properly even in the face of a catastrophic emergency. Finally, the Office of Court Administration will bear the costs of relocation so that the temporary accommodations will not become an unfunded mandate on any New York localities.

Chapter 143 of the Laws of 2009—S. 2851 Sampson/A. 7561 Bradley

This law modifies section 177 of the domestic relations law to provide that parties in a divorce proceeding are made aware of the potential loss of health insurance coverage. Section 177 was enacted in 2007 with the purpose of notifying parties in matrimonial actions that they may or may not be eligible for coverage under their spouse's health insurance. However, this law proved cumbersome and caused delays in matrimonial actions as both parties had to agree to statutorily mandated language. This was true even if the parties had a stipulation about health coverage already in place. The old law also caused delays because spouses that had defaulted and disappeared had to be found so that they could sign off on the statutorily mandated language. Chapter 143 retains the noble intent of section 177, providing notice to parties in matrimonial actions about their health insurance coverage while at the same time allowing judges greater flexibility and discretion in determining how the notice is provided.

Chapter 92 of the Laws of 2009—S. 4030 Sampson/ A. 2762a Weinstein

This law modernizes the Estates and Trusts law by clarifying the disposition of property when persons die simultaneously. The former law forced the court to determine, often through graphic and disturbing testimony which person died first in an accident, fire or other calamity. Thus, parties in an action were forced to hear grueling testimony about their loved ones' last moments. This legislation streamlines and simplifies the procedure for the distribution of estates by creating simple rules and guidelines. Courts will no longer have to determine exactly which person died seconds before the other.

Chapter 224 of the Laws of 2009—S. 800 Breslin/A. 2369 Cusick

The New York State Court of Appeals West-Fair case (87 N.Y.2d 148, 661 N.E.2d 967, 638 N.Y.S.2d 394) had placed the risk of non-payment by a construction project owner on the contractors. The contractors reacted to the West-Fair case by placing the risk on subcontractors by requiring a subcontractor to exhaust all other legal remedies (bonds, liens etc) prior to filing a claim against the contractor. By the time a subcontractor exhausted its other legal remedies, the statute of limitations had already expired against the contractor. This placed an unfair burden on the subcontractor. Chapter 224 declares agreements that force subcontractors to “exhaust all other remedies” against contractors to be against public policy and void. This legislation will allow subcontractors to pursue all legal remedies available to them immediately.

Chapter 229 of the Laws of 2009—S. 4533 Sampson/A. 7570 Weinstein

Chapter 229 includes the loss of health insurance coverage in the determination of maintenance and the equitable distribution of marital property. The factors for maintenance had not been updated since the original law was enacted thirty years ago. Health care costs have risen dramatically as have the cost of prescription drugs. Should a spouse lose their health coverage in a divorce it may be a major economic blow to them in the event that they have to purchase health coverage or pay for their own prescriptions out-of-pocket. Chapter 229 will address these concerns by allowing a court to consider the loss of health care coverage in determining maintenance and equitable distribution.

Chapter 215 of the Laws of 2009—S. 4214b Sampson/A8977 Weinstein

This law establishes definitions of “cash medical support”, “reasonable in cost” and “reasonably accessible” in child support proceedings. This legislation complies with federal child support regulations by including these three definitions within statute. Chapter 215 defines “Cash medical support” to mean the amount ordered to be paid toward the cost of health insurance provided by a public entity or by a parent through an employer or for health care expenses not covered by insurance. “Reasonable in cost” is defined to mean that the cost of health insurance benefits does not exceed 5% of the combined gross parental income. The cost of benefits means the cost of the premium and deductible attributable to adding the child to existing coverage or the difference between such costs for self-only and family coverage. Finally, the new law defines “Reasonably accessible” to mean that the child lives within the geographic area covered by the plan or lives within 30 miles or 30 minutes travel time from the child’s home to the services covered by health insurance benefits. This limitation may be rebutted for good cause shown including, but not limited to, the special health needs of the child. Failure to enact this legislation would have resulted in the loss of over \$250 million in federal matching funds for child support.

Chapter 32 of the Laws of 2009—S. 2975 Sampson/ A. 2578 Weinstein

This law repeals section 516 of the family court act relating to agreement or compromise of support in family court proceedings. Section 516 dated back to 1962 during a time when blood tests to establish paternity were extremely unreliable. A settlement in a paternity case offered the mother, the child, putative father as well as the State the option of a certain outcome and financial support. Thus, section 516 offered a benefit to all parties. Settlement under section 516 precluded all future litigation on support obligations. After the enactment of the Uniform Support Guidelines section 516 became unconstitutional because in-wedlock children and out-of-wedlock children were treated differently for support purposes. Parents of in-wedlock children could petition for modification of support at any time while parents of out-of-wedlock children who entered settlement were precluded from any modifications regardless of changes in circumstances, parental income etc. Chapter 32 eliminates the unconstitutional distinction between out-of-wedlock children and in-wedlock children in New York State.

Chapter 72 of the Laws of 2009—S. 2970 Sampson/A. 2574 Weinstein

This law establishes automatic orders at the start of matrimonial actions. These automatic orders will prevent one spouse from draining bank accounts, running up credit card balances, selling valuable property such as stocks and bonds or other valuable assets prior to or during a matrimonial action without prior approval of the other spouse. In addition to preserving assets so they can be fairly distributed, this law will save judicial time and resources because courts will no longer have to decide allegations that one spouse acted to the detriment of the other at the start of proceedings.

Chapter 260 of the Laws of 2009—S. 2782 Adams/ A. 6139 Brennan

This law increases the time a court has to confirm the appointment of a standby guardian from sixty to one hundred eighty days. Under the former statute, courts did not have sufficient time to confirm the appointment of a standby guardian in the event that a primary guardian became incapacitated. This unfortunate situation led to the ward being in “legal limbo” during the time between the incapacity of the guardian and the confirmation of the standby guardian. This “limbo” did not allow a guardian to make timely decisions concerning a ward’s safety, health and wellbeing. Chapter 260 will help to ensure a smooth transition between an incapacitated guardian and a new guardian if necessary.

Chapter 234 of the Laws of 2009—S. 2967a Krueger/ A. 1569a Bing

This law relates to the definition of “qualified leasehold condominiums”. Pursuant to the New York City Educational Construction Fund Act, the City of New York conveyed land to the Fund at no cost for the development of twelve schools. Currently, the non-school residential portions of the Fund projects consist of leasehold co-ops. The Fund was unable to market these non-school portions as residential leasehold condominiums. The new law will allow the fund to market these residential units as condominiums rather than co-ops. This will make them more attractive to buyers. Allowing the Fund a greater flexibility in marketing its property will help to ensure the success of the Educational Construction Fund Program.

Chapter 256 of the Laws of 2009—S. 2350 Sampson/A. 1132 Dinowitz

Chapter 256 excludes Saturdays, Sundays and public holidays from the notice period prior to a 3-day eviction. This new law addresses the fundamental unfairness of “sewer service” which allows service on a Friday and eviction on a Monday in cases of a 3-day notice of eviction. It is tremendously difficult, if not impossible to secure an attorney and initiate a proceeding in Housing Court on a weekend. Through this measure, tenants who are served with a 3-day notice on Friday will have a fair opportunity to challenge their evictions in a timely fashion.

Chapter 281 of the Laws of 2009—S. 3847a Krueger/ A6017a Gottfried

This law requires a court to fully describe stipulations of agreement in summary proceedings to recover possession of real property to a party without counsel. Agreements in landlord tenant cases are often settled through the use of stipulations. These stipulations are read and disposed of very quickly. Tenants who are not represented by an attorney are often lost and confused by these hasty legal arrangements. Tenants are often subject to the terms of stipulations without understanding these agreements. Chapter 281 will ensure that unrepresented persons will have their rights and duties clearly explained to them by the judge in their case.

Chapter 265 of the Laws of 2009—S. 2871a Espada/A. 7247 Meng

Chapter 265 extends the provisions of subdivision 10 of Article 778 of the Real Property Actions & Proceedings law. This law gives authority to the City of New York to “evaporate” (reduce to zero) liens held by the City in the case of money expended to repair and maintain an abandoned building. This program allows the City to find new, responsible owners who will keep the property in good condition as well as being responsive to tenant needs and concerns. The new owners pledge to maintain the building and in exchange are allowed to start ownership fresh rather than taking with liens.

Chapter 225 of the Laws of 2009—S. 2461 Sampson/ A. 2500 Pretlow

Courts had determined that the Attorney General did not have the statutory authority to seek court costs in rental security deposit cases. This new law clarifies that the Attorney General does have authority to seek court costs. In addition, Chapter 225 grants the Attorney General the authority to take testimony and issue subpoenas during the investigatory phase of any potential case.

Chapter 457 of the Laws of 2009—S. 5554 Breslin/A. 8355 McEneny

This law will allow the district attorney of Schenectady county to appoint a grand jury stenographer residing in Schenectady county, Albany county or any other county of the third judicial district.

Chapter 103 of the Laws of 2009—S. 2076 Klein/ A. 4790 Weinstein

Chapter 103 extends the provisions of Chapter 455 of the laws of 1997 until 2014 conferring certain powers on New York City Marshalls.

Chapter 12 of the Laws of 2009—S. 2225 Huntley/ A. 2003 Weisenberg

This law makes technical correction to the provisions designating surrogate decision-making committees as guardians of mentally retarded persons.

Chapter 4 of the Laws of 2009—S. 1728 Sampson/ A. 4392 Weinstein

This law delays from March 1, 2009 until September 1, 2009 the effective date of amendments to the provisions of law providing for powers of attorney.

Chapter 242 of the Laws of 2009—S. 178 Seward/ A. 1674 Lifton

Chapter 242 allows the County of Courtland to create a new county seal. The old seal became worn and unrecognizable. Chapter 242 will allow Courtland County to officially adopt a new, modern seal.

Chapter 17 of the Laws of 2009—S. 2353 Sampson/ A. 4393 Weinstein

This law makes a technical correction to chapter 326 of the laws of 2008 for the expiration of family courts to hear certain ex parte applications for orders of protection.

Judiciary Bills Vetoed by the Governor in 2009

Veto # 71—S. 5358 Lavallo/A. 7288 Pretlow

This bill would have authorized the comptroller to pay the proceeds of the estate of Howard J. Geyer to certain persons. This measure was vetoed by Governor Paterson because it was felt that this legislation allowed an “end run” around the distribution scheme of the EPTL law. The Governor indicated that those who stood to inherit under the provisions of Senate bill 5358 had already been determined ineligible to inherit by a court of competent jurisdiction.

Judiciary Bills Enacted into Law Through Ballot Proposals

Ballot Proposal #1

Approved November 3, 2009—S.2802 Little/A. 8284 Sweeney

This measure authorizes the State to convey certain lands to National Grid to facilitate construction of an additional power line to ensure that power to the Tri-Lakes region is more stable and reliable. National Grid will spend approximately \$30 million for the project. National Grid also agreed to convey property to New York State to be preserved as forest lands. Thus, New York will not lose any green space to the construction of the new power line. This measure was supported by the voters with a better than 2-1 margin with over 850,000 “yes” votes.

Ballot Proposal #2

Approved November 3, 2009—S. 4124 Hassell-Thompson/A. 5598 Aubry

This measure authorizes the legislature to provide that prisoners may voluntarily perform work for not-for-profit organizations. This measure was approved by the voters with over 850,000 votes in the affirmative. It will allow inmates to develop the written, verbal and business experience that will help them to succeed after release from prison. In addition, it will allow not-for-profit corporations to receive volunteer help that will enable them to better serve their clients and the general public.