

The New York State Legislature: How Albany Controls the City

by Alan Rothstein

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The state capitol may be 140 miles from New York City, but in reality it is a lot closer. State government plays an enormous role in the everyday life of the city. Although New York is often considered the most powerful city in the world, it is truly amazing how little it can control (See Gotham Gazette's [article on the upstate-downstate divide](#)). Want to change the school system, the tax structure, rent regulation? The State Legislature just began its 2001 session. Try your luck in Albany.

ALBANY 101

The state's authority over the city derives from the basic notion that cities are creations of the state, very much like corporations. They have charters, but only have the powers the state assigns to them. There is a Municipal Home Rule Law, which gives cities certain authority, and there are supposed limitations on actions the Legislature can take with regard to individual cities. But the state can easily sidestep those requirements and do virtually whatever it wants.

Thus, the city has little power to control its own taxing authority, outside of the property tax. The Mayor and City Council must go hat in hand to Albany each year to beg for the right to change a tax, and often get rebuffed. On the other hand, the state can eliminate a city tax without the city's consent, as it did with the commuter tax in 1999. The state can also force city spending, such as by passing legislation that increases benefits to retired city workers. What unions cannot win at the bargaining table they can try to gain through Albany.

The state also exercises control over education in the city. The Board of Education and the school boards were created through state legislation and the 1997 reallocation of powers between the Schools Chancellor and the community boards resulted from state law. The City University is a creature of the state. Similarly, Albany runs the framework by which rents are regulated in the city. Many of the requirements imposed on city social service programs also come from upstate (as well as the federal government). A state authority operates subways and busses, bridges and tunnels.

This year, the State Legislature will again be addressing a range of issues of deep concern to New York City residents. Electric power rates and supply (will we face what California is going through?) will be a crucial issue, but must be left to the state. One of the major fights will be

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over state education aid, which is indispensable to the city's schools. Proposals to change laws regarding drug offenders, gun trafficking, businesses-related taxes and reform of the voting system are all on Albany's agenda. All impact the welfare and economy of our city, but are beyond the city's control.

We in the city do not pay too much attention to the way Albany works, but we should. Here's a brief description. The Governor, George Pataki, has substantial power to set the state 's agenda and prepares the state budget, the major governing document, which must be approved by the Legislature. The Legislature has two Houses, a 150-member Assembly and a 61-member Senate. For the past 25 years, different parties have controlled the two Houses of the Legislature -- the Republicans run the Senate and the Democrats run the Assembly. Regardless of the public opinion trends in the country and conditions in the state, incumbents rarely lose, particularly in a general election.

THE TOOLS OF THE TRADE

The first thing to learn about Albany is that the Legislature, and legislators, are very good at self-preservation. Here are the tools that make this possible:

- The Legislature controls the drawing of legislative districts. The Senate Republicans and the Assembly Democrats have each given the other free rein to draw districts to their liking. Even members from the minority parties receive favorable treatment, though not at the expense of the majority. It is not unheard of, for instance, for districts to be drawn so as to exclude a potentially strong challenger to a particular incumbent. The result in each House has been permanent majority party control and districts drawn to the incumbents' liking.
- The state 's election law is the most arcane in the nation. The process of getting on the ballot is unreasonably difficult and, of course, those in power will not make it any easier for challengers to surface.
- Legislative campaign committees collect a lot of money, given the state 's unusually lax campaign finance laws, and spend it to preserve power and incumbents.
- Portions of the state budget are allocated by legislative district, with the local legislators able to take credit. In addition, legislators receive budget funds called "member items", which they can spend on anything in their district and which have the feel of a direct contribution from a legislator.

LOCKED OUT

In this atmosphere, legislators owe their continuation in office to their leader. It is thus not surprising that the two people who run the Legislature are the Senate Majority Leader, Joseph Bruno, and the Speaker of the Assembly, Sheldon Silver, who are elected by their respective Houses. Indeed, along with the Governor Pataki, these are the "three men in a room" who make

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all the key decisions, often without adequate consultation with members of their House or even their party. The Speaker and Majority Leader have accumulated tremendous power, and they know how to use it. Play along, or risk losing leadership opportunities, campaign funds, extra stipends (called "lu-lu's") given to committee chairs and others, and other perquisites. Some members have even been locked out of their office.

The leaders pay special attention to members in "marginal" districts, those where the Democratic and Republican enrollments are so close that it seems as if either party can win. There are fewer of these seats than you might think, because the districts are drawn to minimize competition, and in reality these districts seldom change parties. But legislators in "marginal" districts are likely to receive more visibility and resources. On the other hand, the leaders have no need to lavish help on legislators in "safe" districts.

How does all this affect the representation you get? It is fair to ask whether constituents are being fairly treated when some legislators can get bills passed or have access to the trappings of power while others are frozen out of the process, often simply on the whim of a leader who, after all, only represents one of the districts. But those legislators who rise up to demand more say face swift punishment -- as did many who challenged the Speaker's leadership last year. The members put the leader in power but after that, watch out.

BEHIND CLOSED DOORS

This concentration of power does not foster representative government. Many of the important governmental decisions, including the state budget, are negotiated in secret--even many members don't know what's going on--and are passed before they are read, let alone digested, by our elected representatives.

Sometimes, unfortunate leadership decisions are held up to public scrutiny. In 1999, the Democrats tried to wrestle a Senate seat away from Republican control in a special election to fill a vacancy. To curry favor with the voters in that Rockland County district, the leaders double-dared each other into repealing the city's commuter tax, costing the city hundreds of millions in lost revenue. The Democrat lost anyway.

Just recently, a New York Supreme Court Justice ruled that the funding of the city's schools violates the state constitution by providing an inadequate education for the city's school children. The Justice found, not surprisingly, that the funding inadequacy was a state responsibility, and took particular note of the method by which the "three men in a room"

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manipulate supposedly sophisticated formulas to match a backroom deal they made, a deal which he said has consistently under funded the city.

POWER OF THE PEOPLE

This little primer of Albany should not be meant to suggest that the legislators, including the leaders, are not people of good will who have the best interests of the state and their constituents in mind, and some excellent laws have resulted. But the process has evolved to the point where they don't have to care. Little can shake the power hold or undermine incumbency. There is no way that the public can act directly through initiative or referendum, which may well be good, given the California experience. But it does mean that the acts and omissions of the Legislature go unchallenged.

The only check on the state government is an informed electorate, which holds its legislators and the Governor accountable. While the Governor's actions tend to be in the public eye, those of the legislators are not. Make sure your Assembly Member and Senator hear from you. If you are not comfortable with the concentration of authority in the legislative leaders, you should say so. No office holder has the right to remain in office, but should be subject to careful scrutiny and challenged when necessary. City residents, with so much at stake in Albany, should take note.

Alan Rothstein is Chair of the Committee on State Legislation of Citizens Union, and formerly was its Legislative Director. He now serves as General Counsel to The Association of the Bar of the city of New York. The views expressed in this essay are his own.