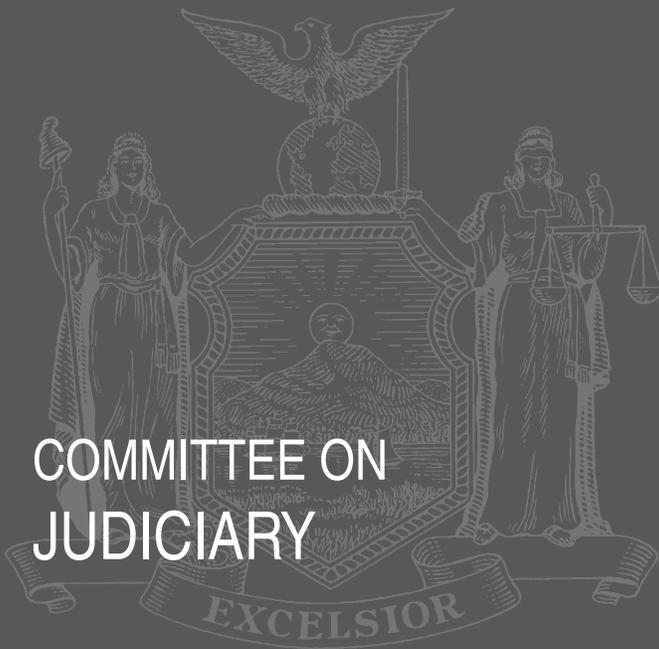


# NEW YORK STATE ASSEMBLY

# ANNUAL REPORT

# 2020

COMMITTEE ON  
JUDICIARY



CARL E. HEASTIE  
SPEAKER

JEFFREY DINOWITZ  
CHAIR



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MEMBER  
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CHAIRMAN  
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December 15, 2020  
The Honorable Carl E. Heastie  
Speaker of the Assembly  
Room 932, Legislative Office Building  
Albany, New York 12248

**Re: Annual Report of the Committee on Judiciary – 2020**

Dear Speaker Heastie:

As Chairperson of the Assembly Standing Committee on Judiciary, I am pleased to present to you the Committee's Annual Report for the 2020 Legislative Session.

The Annual Report reviews the work of the Committee on Judiciary and highlights many of its major initiatives. It also includes a brief overview of various budgetary matters that concern the courts of the state and other areas within the committee's purview.

The Judiciary Committee tackled many high-profile issues in 2020, including protections for domestic violence victims, children and families, tenants and homeowners, workers and consumers and the elderly and disabled.

A top priority of the Committee each year is ensuring that funding is added to the state budget for civil legal services for low-income New Yorkers. The Judiciary Committee remains a strong advocate for providing civil legal services to those in need. This year, the Assembly continued its support for civil legal services in New York State by restoring its traditional funding as well as an increased appropriation for civil legal services through the Judiciary budget.

I would like to acknowledge the hard work of the members of the Committee on Judiciary and all of the members of the Assembly for their continued commitment to its work and to progressive legislation. As always, your continued support is deeply appreciated.

Sincerely,

Jeffrey Dinowitz, Chairperson  
Assembly Standing Committee on Judiciary

**2020 ANNUAL REPORT  
NEW YORK STATE ASSEMBLY  
STANDING COMMITTEE ON JUDICIARY**

**Jeffrey Dinowitz, Chair**

**MEMBERS OF THE STANDING COMMITTEE**

**Majority**

Michele R. Titus  
Charles D. Lavine  
Kenneth Zebrowski  
David I. Weprin  
Edward C. Braunstein  
Aravella Simotas  
Dan Quart  
David Buchwald  
Phillip Steck  
Rebecca A. Seawright  
Latoya Joyner  
Thomas J. Abinanti  
Tremaine S. Wright  
Monica P. Wallace  
Latrice Walker

**Minority**

Anthony H. Palumbo, Ranking Member  
Michael A. Montesano  
Andrew Goodell  
Michael J. Norris  
Mary Beth Walsh  
Marjorie Byrnes

**Staff**

Marty Rosenbaum, Assistant Secretary for Program &  
Policy  
Kerry Mierzwa, Associate Counsel  
Joann Butler, Executive Secretary

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## **I. COMMITTEE JURISDICTION**

The Assembly Committee on Judiciary has jurisdiction over legislation affecting all aspects of both state and local courts. It has primary jurisdiction over most amendments to the Civil Practice Law and Rules and amendments to the Judiciary Law, Uniform Court Acts, Family Court Act, Surrogate's Court and Procedure Act, Domestic Relations Law, Estates Powers and Trusts Law, Uniform Commercial Code, Lien Law, Debtor-Creditor Law, General Obligations Law, Real Property Law, Real Property Actions and Proceedings Law, Civil Rights Law, Partnership Law, Eminent Domain Procedure Law and Indian Law. The Committee also shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means Committee. In addition, all proposed amendments to the New York State Constitution are considered by the Judiciary Committee.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2020.

## II. SUMMARY OF LEGISLATIVE ACCOMPLISHMENTS<sup>1</sup>

### **A. PROTECTING DOMESTIC VIOLENCE VICTIMS, CHILDREN AND FAMILIES**

#### **Relates to name changes upon marriage - Chapter 78 - A.9785 (Simotas) / S.7180 (Kaplan)**

The original chapter provided a simple and effective way for a spouse to change their middle name upon marriage or divorce. To implement this bill, the Department of Health would need to modify its current systems and implement new procedures. As such, this law provides that the implementation timeframe provided for be extended to allow more time to effectuate the purpose of the original legislation.

#### **Relates to prohibiting a party to an order of protection from remotely controlling any connected devices of a person protected by such order - Chapter 261 - A.10039 (Rozić) / S.7926 (Bailey)**

This law prohibits a party from remotely using a technical device related to the home, vehicle or property when there is an order of protection. For example, a person subject to an order of protection may not open a garage door of the protected person using a remote control or code, or adjust the temperature in the home of the protected party with a smart phone.

**The following bills were reported by the Assembly Judiciary Committee and were pending at the conclusion of session.**

#### **Prevents a judge from prohibiting a parent from undergoing a gender reassignment when making a determination in a child custody case - A.861-A (Simotas) / S.432-A (Hoylman)**

This legislation makes clear a Judge cannot prohibit a parent from undergoing gender reassignment as a condition of receiving custody.

#### **Authorizes the solemnization of marriages by former mayors of cities and villages within the state - A.9918 (McDonald) / No Same As**

This legislation would include current mayors of a city or village as someone who can perform a marriage ceremony.

### **B. PROTECTING TENANTS, HOMEOWNERS AND PROPERTY OWNERS**

#### **Requires the office of court administration to promulgate certain housing court documents in the seven most common languages in the City of New York - Chapter 223 - A.2145 (Joyner) / S.1951 (Bailey)**

This law requires translation of certain housing court documents in New York City. A Spanish version of the Notice of Petition will now be provided along with the English one, as well as a notice written in the 6 next most common languages in NYC on how to see this same form on OCA's website in those languages. A phone number will be provided by OCA to provide information on the

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<sup>1</sup> All references to chapter laws, except where otherwise noted, are to chapters of the laws of 2020.

eviction process in each of those same languages.

**Establishes time restrictions for court issued consent orders for work performance to remove or remedy conditions - Chapter 251 - A.2625 (Dinowitz) / S.3320 (Jackson)**

This law sets time requirements for landlords to complete court-ordered repairs within 60 days unless good cause is shown.

**Requires lenders foreclosing on home equity conversion reverse mortgages to provide notice to the Department of Financial Services and the mortgagors - Chapter 337 - A.5627 (Weinstein) / S4408 (Gounardes)**

This law requires a lender foreclosing on a reverse mortgage to provide notice of such action to the Department of Financial Services and to the mortgagor (borrower), and further directs the Department to provide notice to the mortgagor of legal service organizations that may assist the mortgagor in default and foreclosure matters. In order to better protect borrowers during the foreclosure process, the law also prohibits lenders from making advance payment of debts on the mortgaged property.

**Expands the definition of "tenant" for the purposes of required notice during a mortgage foreclosure action - Chapter 354 - A.6370 (Williams) / S. 5357 (Comrie)**

This law revises the definition of tenant in a mortgage foreclosure action to include any tenant in occupancy, not just tenants who were in occupancy at the time the foreclosure action was commenced. This is important given that these actions often take time, sometimes due to mortgagees (lenders) delaying the process in an effort to time the market; newly occupying tenants might not have been protected under the former law.

**Relates to including the name and telephone number of the mortgage servicer for a plaintiff in a mortgage foreclosure action on certain documents pertaining to such action - Chapter 269 - A.6976 (Wallace)/ S.4190 (Kennedy)**

This law requires that a loan servicer's name and telephone number be included at specified points in certain documents filed in a mortgage foreclosure proceeding.

**Relates to the definition of a campground - Chapter 68 - A.9006 (Jones)/ S.7063 (Little)**

This chapter amendment to L. 2019, c.654 clarifies that the definition of campground, for certain purposes, does not include certain properties owned by the State of New York.

**Prohibits certain evictions during the COVID-19 emergency - Chapter 127 - A.10290-B (Dinowitz) / S.8192-B (Hoylman)**

This law helps keep residential tenants and other lawful occupants who have suffered financial hardship during the COVID-19 covered period in their homes by allowing money judgments, but not eviction, for unpaid rent during the period of the COVID-19 state disaster emergency.

**Relates to eviction and foreclosure protections - Chapter 381 - A.11181 (Dinowitz) / S09114 (Kavanagh)**

This law addresses public health concerns about mass evictions and foreclosures by allowing a temporary stay, until May 1, 2021, for tenants, small landlords and property owners who are suffering a financial hardship. The law will also protect the public health by reducing the number of persons who are required to appear in court during this pandemic period.

The law also limits reporting and discrimination against certain borrowers who avail themselves to these protections; and extends the Senior Citizens' Homeowner Exemption (SCHE) and Disabled Homeowner Exemption (DHE) without requiring recertification.

**The following bills were reported by the Assembly Judiciary Committee and were pending at the conclusion of session.**

**Prohibits non-disclosure clauses in leases of real property to be used for hydraulic fracturing - A.3158 (Englebright) / No Same As**

This legislation would prohibit non-disclosure clauses in leases of real property where the property will be used for hydraulic fracturing. Any lease provision that violates this prohibition would be rendered invalid.

**Provides for the establishment of the New York State Home Equity Conversion Information Summary. A.5628 (Weinstein) / S.2373 (Carlucci)**

This legislation would require the Department of Financial Services to issue a reverse mortgage information summary sheet to the originators of such financial products, which would be required to include consumer rights information. Providing this information would help senior citizens and other consumers better understand the reverse mortgage process.

**Requires a plaintiff in a mortgage foreclosure action to maintain the subject property in good faith - A.6477 (Wright) / S.4819 (Parker)**

This legislation would require banks to maintain in good faith residential properties that become vacant during the foreclosure process.

**Requires landlords to mitigate damages when commercial tenants vacate premises in violation of the terms of the lease - A.8482 (Otis) / S.7053 (Liu)**

This legislation would require commercial landlords to make reasonable efforts to re-let commercial premises when vacated by a commercial tenant.

**Relates to requiring the inclusion of suicide prevention resource information with a warrant of eviction - A.10127 (Dinowitz) / S.9093 (Sepulveda)**

This legislation would amend the Real Property Actions and Proceedings Law to require that warrants of eviction include suicide prevention information. The goal is to help assure that persons subject to eviction can more readily seek and obtain assistance, if needed, to help them address the impact of eviction on their mental health.

### **C. ADMINISTRATION OF JUSTICE**

**Relates to increasing penalties for failure to execute and file with the proper clerk proof of a satisfied judgment of \$5,000 or more - Chapter 227 - A.1026 (Rosenthal L.) / S.2719 (Krueger)**

For judgments over \$5,000, this law increases the penalty for a creditor failing to file a satisfaction of judgment (once paid) from a \$100 penalty to \$500.

**Requires awarding of costs and attorney fees in frivolous actions involving public petition and**

**participation - Chapter 250 - A.5991-A (Weinstein) / S 52-A (Hoylman)**

This law clarifies the language "action involving public petition and participation" to include cases involving controversy over a public application or permit as well as cases involving constitutional free speech rights. The law also requires a court to award costs and attorney's fees for frivolous SLAPP lawsuits, including fees resulting from successful motions to dismiss and for summary judgment.

**Requires judges who recuse themselves to provide the reason for the recusal – Chapter 376 - A.9542 (Wallace) / S.8831 (Kaminsky)**

This law improves transparency in the court system by requiring judges to provide the reason for their recusal on the record, except where the result would be because embarrassment or the basis is extremely personal.

**Relates to disclosing if property subject to a lien is real property improved or to be improved with a single-family dwelling - Chapter 84 - A.9786 (Buchwald) / S.7191 (Harckham)**

This chapter amendment to L. 2019, c. 538 clarifies that the lien document filed in a mechanics lien proceeding shall identify whether or not the lien is on real property improved (or to be improved) with a single-family dwelling.

**The following bills were reported by the Assembly Judiciary Committee and were pending at the conclusion of session.**

**Relates to special proceedings - A.850 (Simotas) / No Same As**

This legislation would allow CPLR Article 78 petitions challenging a denial of release by the Board of Parole to be brought in the county of conviction, in addition to the county of incarceration and Albany County.

**Requires the Chief Administrator of the Courts to submit an annual report on the Drug Treatment Court Program - A.3983 (Aubry) / S.7638 (Comrie)**

This legislation would require the Chief Administrator of the Courts to submit an annual report on the administration, function and effectiveness of the Drug Treatment Court Program during the preceding year. It would amend section 212 of the Judiciary Law.

**Provides that for settlements that require a court order the order shall provide for the payment of interest on the settlement amount at the statutory rate - A.5620 (Weinstein) / S.4238 (Hoylman)**

This legislation would amend the Civil Practice Law and Rules and the Surrogate's Court Procedure Act to address delays in payment when court approval of a settlement agreement is required. It would provide that interest on the settlement amount accrue and be paid for the period of such delay in actions involving children, incompetent persons, and in wrongful death actions.

**Relates to expediting actions involving insurance claims for damages resulting from a state disaster emergency - A.7183 (Dinowitz) / No Same As**

This legislation would establish an expedited path for court proceedings against insurers commenced

by persons seeking to recover for costs and/or damage incurred during a state disaster emergency declared by the Governor.

**Relates to the substitution of parties in litigation involving a public officer, body, board, commission or other public agency - A.7524 (Buchwald) / No Same As**

This legislation would amend CPLR 1023 to require that, in an action brought by or against a public official or entity, an individual or entity be named by official title rather than by the name of any individual or individuals who hold the office. The amendment would repeal, as therefore unnecessary, the option in CPLR 1019 of naming the person rather than the official title.

**Relates to securing payment of wages for work already performed; creates an employee lien - A.9008 (Rosenthal L.) / S.7256 (Ramos)**

This legislation would strengthen current laws by increasing the likelihood that victims of wage theft would be able to secure payment from employers for work already performed. The bill would work within the existing mechanic's lien law to create an "employee's lien," which would allow for attachment of certain of the employer's assets during the pendency of the court proceedings. The bill would also authorize employees victimized by wage theft to seek financial recovery from among the ten largest shareholders when the employer is a non-publicly-traded corporation.

**Relates to state liability for potholes on state highways - A.9668 (Abinanti) / S.7913 (Kennedy)**

This legislation would remove an existing limitation on state liability for potholes and similar road hazards during the portions of the winter season and allow liability year-round based on common legal principles involving actual or constructive notice of roadway defects.

**Increases the amount of the award to a person initiating a qui tam action when such action relates to the misuse of government funds during a state of emergency - A.10461 (Dinowitz) / S.8353 (Kaminsky)**

During a declared state disaster emergency, this legislation would increase by up to an additional five percent the amount an individual may recover for reporting the fraudulent use of government funds.

**D.PROTECTING CONSUMERS**

**Relates to the docketing of adjudications of certain violations of laws enforced by the New York City Department of Consumer Affairs – Chapter 205 - A.8511-A (Epstein) / S.8787 (Thomas)**

This legislation authorizes the Department of Consumer Affairs (DCA) in NYC to more promptly docket as judgments in court certain administrative determinations against business entities in the City of New York. The law will expedite DCA enforcement against certain commercial businesses and enable it to more readily collect fines and restitution based on certain improper business practices.

**The following bills were reported by the Assembly Judiciary Committee and were pending at the conclusion of session.**

**Provides that a foreign corporation's application for authority to do business in this state constitutes consent to jurisdiction of the courts of this state - A.7595 (Weinstein) / S.6352**

**(Kaplan)**

This legislation would expressly recognize jurisdiction and allow court proceedings in New York when an out-of-state business entity has, in some official manner, obtained permission to conduct business in New York.

### **E.TRUSTS AND ESTATES AND GUARDIANSHIPS**

**Establishes the right of publicity and provides for a private right of action for unlawful dissemination or publication of a sexually explicit depiction of an individual - Chapter 304 - A5605 (Weinstein) / S.5959-D (Savino)**

This law formally establishes a right of publicity for deceased individuals, including protection for digital replicas created by advanced technologies. It provides for the creation of a registry by which persons and descendants may post their privacy interest, thereby reaffirming the intention to invoke and enforce such privacy protections.

**Reforms the statutory short form and other powers of attorney for purposes of financial and estate planning – Chapter 323 - A.5630-A / (Weinstein) / S.3923-A (Hoylman)**

This law reforms the statutory short form and other powers of attorney that are often used to facilitate estate planning and the concluding of financial matters. The law will allow more efficient use of instruments by which persons may authorize others to negotiate and complete certain transactions on their behalf.

**The following bills were reported by the Assembly Judiciary Committee and were pending at the conclusion of session.**

**Requires the petitioner for appointment of a guardian for an incapacitated person to identify all other persons who may be able to manage the affairs of such person – A.5609 (Weinstein) / S.4722 (Carlucci)**

This legislation would help ensure the court is informed of potential family members or other persons who may be appropriate candidates for appointment as a guardian. The bill would also assist the court in avoiding default appointment of a nursing home or other entity seeking appointment that may be motivated, primarily or secondarily, by the desire to collect on a debt for the person's care.

**Exempts certain guardianship motions filed under article 81 of the mental hygiene law from the filing fee required to be paid to the county clerk – A.9647 (Taylor) / S.2753 (Comrie)**

This legislation would exempt principals in guardianship proceedings from the \$45.00 county clerk fee that generally applies upon the filing of a motion in the civil courts. The bill would encourage meaningful representation in these matters by removing any financial concern or disincentive about the filing of needed motions or seeking appropriate judicial review and assistance.

## **F. CONSTITUTIONAL AMENDMENT**

### **Relates to the functioning of the independent redistricting commission A.10839 (Zebrowski) / S.8833 (Gianaris)**

This resolution would amend the New York State Constitution to provide additional guidance for the decennial congressional and legislative redistricting process as well as make technical corrections and necessary changes to the current redistricting procedures. First passage in the Assembly and Senate occurred on 7/23/20. The resolution would have to be approved by a second elected Legislature before it could be submitted to the state's voters for consideration.

### **III. JUDICIARY COMMITTEE HEARINGS**

#### **PUBLIC HEARING ON BUDGET AND STAFFING REDUCTIONS IN THE JUDICIARY BRANCH**

New York's court system is made up of twelve separate trial and appellate courts spread across more than three hundred locations, in sixty-two counties. This includes Supreme, Family, Surrogate, District, City, County, Criminal, Housing, Appellate and specialty treatment courts such as Veteran Courts, Domestic Violence Courts, Human Trafficking Courts and Mental Health Courts. Each year 3.5 million new cases are filed in the New York State court system. To meet the needs of the 19.5 million people in New York, the State Judiciary budget is approximately three billion dollars. The work is conducted by more than 1,200 state judges, 2,400 town and village justices and 15,500 non-judicial employees. The budget for the New York State Judiciary includes 100 million dollars in funding for civil legal services, helping to close the gap in justice for many individuals across the state. The most recent financial plan shows a proposed a ten percent reduction of the budget for the New York State court system for the present fiscal year. The Assembly Judiciary Committee held a hearing on November 5, 2020, to learn more about the impact of this proposed reduction on individuals and businesses in our state as well as on litigants, court personnel and judges. The committee heard testimony from numerous constituents on various issues including the determination by the court system not to recertify nearly all senior judges who could be authorized to continue in judicial service after age 70.

#### **PUBLIC HEARING ON THE ONLINE ADMINISTRATION OF THE BAR EXAM**

Typically, more than 10,000 law school graduates take the New York attorney admission examination, generally known as the “bar examination,” in July of each year. On average, an additional 4,000 persons take the bar examination each February. The pass rate for the examination is generally near sixty percent. Due to public health concerns related to the ongoing outbreak of COVID-19, the State Board of Law Examiners postponed the in-person bar examination that had been scheduled for July, 2020. The Board again postponed the rescheduled in-person exam that had been planned for September, 2020. Ultimately, on October 5-6, 2020, in place of the traditional in-person exam, the Board of Law Examiners, for the first time in New York, conducted and proctored a bar examination administered online. The next New York State bar examination, also planned for administration online, is scheduled for February 22-23, 2021. The Assembly Judiciary Committee held a hearing on December 2, 2020 to learn more about how the recent bar examination was administered online. The committee heard testimony from officials involved in the planning, crafting and execution of the online examination as well as a number of individuals who sat for the examination.

#### **IV. NEW YORK STATE'S JUDICIARY FUNDING**

The 2020-2021 State budget adopted the Judiciary's budget request in the amount of \$2.36 billion for State Operations, an increase in terms of the General Fund Operating Budget of \$45.9 million, or 2 percent over last year. The court system's budget absorbs statutorily mandated salary increments for represented non-judicial employees, statutorily-mandated increases for indigent legal defense, supplemental funds for the Interest on Lawyer Accounts program, costs for the fiduciary, court evaluator, guardian ad litem, court appointed attorney and court examiner programs, as well as funding for civil legal services ongoing deficiencies in the availability of civil legal assistance. With this year's Judiciary budget, the Office of Court Administration plans to maintain current staffing levels, filling a limited number of positions deemed critical to operations. It plans to resume maintaining keeping courtrooms open to the public until 5:00 p.m. each day. The Judiciary's budget includes \$25 million to support improvements to court technology, infrastructure, including modernization of the Judiciary's secure high-speed area network and the purchase of an automated case management system.

Additionally, the following Article VII legislation relating to the court system was negotiated among the Governor, Assembly and Senate and enacted as part of the 2020-2021 state budget :

- Legislation was enacted legalizing paid gestational surrogacy. This law establishes the strongest protections in the country for surrogates, intended parents and all parties to a gestational surrogacy contract.
- The Domestic Relations Law was amended to expressly provide that acts of domestic violence should be considered by the court in divorce proceedings involving the distribution of marital property.

## V. FUNDING FOR LEGAL SERVICES

In 2020, the state budget included a total of \$100 million to support the recommendations of an Office of Court Administration Task Force for expanded support for civil legal services. Further, the SFY 2020-21 enacted budget appropriated \$261.3 million for the New York State Office of Indigent Legal Services, representing an increase of over \$50.4 million from the prior year. This additional funding is necessary to support the third year of the statewide *Hurrell-Harring* Initiative, a court-ordered mandate that requires a steady increase criminal defense funding over the next six years. Among the mandated improvements are: a program to ensure that defendants have counsel at arraignment; caseload standards to help assure that assigned attorneys can devote sufficient time and attention to each case and represented individual; and programs to assure that assigned attorneys have the necessary qualifications and experience and receive effective training. When the *Hurrell-Harring* court order is fully implemented in 2023, it is anticipated that the state will have increased funding to counties and New York City through the Office of Indigent Legal Services by approximately \$250 million per year.

# 2020 SUMMARY SHEET

SUMMARY OF ACTION ON ALL BILLS  
REFERRED TO THE COMMITTEE ON

## JUDICIARY

**TOTAL NUMBER OF COMMITTEE MEETINGS HELD** 7

ASSEMBLY   SENATE   TOTAL  
BILLS   BILLS   BILLS

### **BILLS REPORTED FAVORABLE TO:**

Codes	11	0	11
Judiciary	0	0	0
Ways and Means	4	0	4
Rules	11	0	11
Floor	10	0	10
<b>TOTAL</b>	<b>36</b>	<b>0</b>	<b>36</b>

### **COMMITTEE ACTION**

Held For Consideration	42	0	42
Defeated	0	0	0
Enacting Clause Stricken	6	0	6
<b>REMAINING IN COMMITTEE</b>	<b>343</b>	<b>16</b>	<b>359</b>

### **BILLS REFERENCE CHANGED TO:**

**Codes: 2**

**Ways and Means: 2**

<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>4</b>
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