



NEW YORK STATE SENATOR

Malcolm Smith

Senate Releases Letter To Governor Paterson Discussing Legal Concerns Relating To Extraordinary Session

MALCOLM A. SMITH June 24, 2009

(Albany, NY)- Today, Senate President and Majority Leader Malcolm A. Smith and Senate Democratic Conference Leader John L. Sampson sent a letter to Governor David A. Paterson addressing legal concerns the Conference has with the extraordinary session called for by the Governor.

“The Senate is ready to pass legislation important to millions of New Yorkers, but we want to do it right and without concerns with its legitimacy,” said Senate President and Majority Leader Malcolm A. Smith. “If the Senate Republicans would return to the table to negotiate a fair and reasonable governance agreement, we could get back to passing critical legislation and continue to serve the best interests of the people of New York.”

“On Tuesday, the Governor called only the Senate for an extraordinary session, and Senate Democrats have serious constitutional and procedural concerns over the manner in which our body was convened,” said Senate Democratic Conference Leader John Sampson. “It is questionable whether the bills our members passed Tuesday could be enacted into law, even if those bills contained the same language as bill previously passed by the Assembly. We’re asking the Governor to address our concerns because we don’t want there to be legal issues with extraordinary sessions that the Governor may call in the future.”

The Senate convened an Extraordinary Session at 3:00 p.m. on June 23, 2009, pursuant to the Governor's proclamation, and attained quorum and passed several bills through the Senate.

However, because the Governor called only the Senate for an extraordinary session (and not the Assembly) there are questions as to whether the bills that the Senate passed could result in any laws being enacted — even if those bills contained the same language as bills previously passed by the Assembly.

It is clear the governor has the power under Article IV, section 3 of the constitution to call only the Senate for an Extraordinary Session, but it is not clear, however, that a Senate-only extraordinary session can result in any bills becoming law.

It is the Senate's understanding that the Constitution requires that both houses of the Legislature be assembled at the same extraordinary session in order for legislation submitted by the Governor to become law.

The basis for this understanding is the "Presentment Clause" of the New York State Constitution. Article IV, section 7 of the Constitution requires that the same bill that has passed both the Senate and Assembly is ripe for presentment to the Governor.

The two legislative sessions – one in the ordinary course of business and one in an extraordinary Session pursuant to the Governor's call remain separate and distinct. If the Senate and Assembly separately enact bills in different sessions then arguably the same bill has not passed both the Senate and Assembly.

There are at least ten states with similar state Constitutional provisions. There is no legal precedent from any of these states that allow one house called into Extraordinary Session by a governor to successfully enact legislation.

The history of the Constitutional provision that gives the Governor the power to call only the Senate into an Extraordinary Session is not designed to get laws passed, but rather to confirm nominations.

And additional concern raised yesterday is that a number of bills may not have been properly introduced for an extraordinary session.

*****LETTER ATTACHED AS PDF*****