

## CITIZEN RIGHTS

The League of Women Voters of the United States believes that democratic government depends upon the informed and active participation of its citizens at all levels of government. The League further believes that governmental bodies must protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible. (LWVUS *Impact On Issues, 2010-2012, p. 22.*)

As part of its citizen's rights concerns, the League has long worked for the citizen's right to know and for broad citizen participation in government. While initial activities focused on making materials available and meetings open to citizens, current activity has focused more on second-generation issues, including:

- Making legislative processes, including the budgeting process, more open and transparent;
- Opening up enforcement proceedings for violation of a number of good government measures, including ethics and lobbying violations against legislators, other public officers, and lobbyists, campaign finance enforcement proceedings, including proceedings brought for failure to disclose information, and proceedings for judicial misconduct;
- Making materials available electronically on-line in a searchable format and filming open meetings;
- Using all technology and social media tools to ensure that the activities of government are transparent to its citizens and that those citizens have the ability to interact with the governmental bodies which make decisions.

### Recent League Activity

For activity with respect to the budget process in New York, see the **State Budget Process** in the **State Finances** section of this document. See also **Legislative Procedures** below.

In 2008 the League successfully advocated for amendment of the Public Officers Law to create a cause of action against governing bodies for violations of the Open Meetings Law and to allow successful litigants to recover attorney's fees (A.1033A; S.1599A).

In 2008, the League unsuccessfully lobbied the Commission on Public Integrity to open its adjudicatory hearings into alleged lobbying violations.

In coalition with other good government groups, the League issued in March of 2012 specific recommendations to the leaders of New York State Government on how to harness the explosion in information technology to realize a new level of transparency for state government and, later in 2012, the League and coalition partners urged the state government to use all available forms of internet and other information technology tools to ensure that the work of the commissions

reviewing the response to Superstorm Sandy is transparent and fosters public discussion, participation and accountability.

### **Past League Activity**

League support for open meetings was first made explicit in 1972; in 1973, Leagues were empowered to apply that position at the state and local levels. In 1974, the National Convention added the requisite that government bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible. The League continues to support the NYS Sunshine Law, enacted in 1976, to enhance citizens' access to information.

In 1976, the LWVNYS worked vigorously for the enactment of open meetings and freedom of information laws in New York State. Following the adoption of these laws, the Committee on Public Access to Records (COPAR) was established to oversee them. Throughout the state, local Leagues monitored the governments' implementation of the laws.

In 1980 and 1981 the League supported legislation that would provide the option for legal fees to be awarded to successful plaintiffs in "freedom of information" suits by the agency that had been judged to have wrongly withheld requested information. Both years the measure passed the legislature but was vetoed by the governor. The legislation passed again in 1982 and this time was signed into law.

In 1983, another League-sponsored bill, one that opened zoning boards of appeal to the public, became law. This bill also changed the name of COPAR to the Committee on Open Government.

In the closing days of the 1985 legislative session, the League and other good government organizations learned that the legislature had hastily passed an amendment to the Open Meetings Law that all but destroyed its original purpose. Just as hastily, the governor signed the bill. The amendment changed the law to allow any business to be discussed in the private political caucuses and extended this provision to local governing bodies as well as the state legislature. Several court decisions over the years have decreed that the intent of the law was such that only political business could be discussed in these private meetings. Any business that was to come before the public was not to be considered behind closed doors. Efforts to reverse this serious infringement on open meetings have been defeated to date; however, the League and other good government groups continuously lobby for proposed legislation that would restore the original intent of the Open Meetings Law.

In December 1996 after being barred from entering the NYS Assembly gallery during a special session while debate and voting were taking place on a controversial bill, the League was able to force the gallery to be open to the public. Subsequently, we met with the Executive Director of the Committee on Open Government to clarify the parameters of the Public Officers Law, Article 7, which states:

*It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of the state be fully aware and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.*

We were assured that Article 7 cites no exceptions except for executive sessions. A meeting was then held with Assembly Program and Counsel staff, and the League received a draft policy on March 31, 1997. The draft left many questions unanswered. This issue continues to be problematic and has extended to the Senate. During the active lobbying on the issue of rent control, in June 1997 the Senate galleries were empty, although the State Police maintained that they were full; in addition, even though the Senate was in session, the general public was not allowed above the Capitol lobby without identification and appointments. The League strenuously objected to the Sergeant-at-Arms in the Senate, and the matter was resolved. Citizens were again allowed in the galleries. These issues continue to be pursued.

Following the terrorist attacks on the World Trade Center and the Pentagon the NYS Senate used the fear of terrorism to introduce legislation to seriously weaken the Freedom of Information Law (FOIL). The League with its good government colleagues, NYPIRG and Common Cause, were successful in educating the State Assembly and the bill was never introduced in that house. During the 2003 session the State Senate took no further action on the legislation, however the League continues to be vigilant on this issue.

In 2005, recognizing that electronic communication impacts the processes of state government, the League and other organizations advocated for expanding the Freedom of Information Law to require that “foil-able” documents be available on the internet. Legislation to strengthen and modernize this 25-year-old law needed to be made. The reforms were based on the recommendations of the Department of State’s Committee on Open Government. In May 2005, FOIL was amended to require government agencies to abide by reasonable deadlines in responding to requests for information. FOIL now requires that agencies respond to requests for records within five business days by exercising one of several options. They can grant access, or deny access in whole or in part within that time, and in any instance in which a request is denied, the person denied access has the right to appeal to the head or governing body of the agency of that person or body’s designee. If more than five business days is needed the agency must acknowledge the receipt of the request within five business days and, in most cases, provide an approximate date within twenty business days indicating when it believes, it will grant a request in whole or in part. So long as the approximate date is reasonable, the agency is complying with law. If a request is unusually voluminous and complex, and more than twenty business days will be needed, an agency in its acknowledgement must include an explanation of the delay and a “date certain” by which it guarantees that it will grant the request in whole or in part.

When those deadlines are not met – when an agency fails to respond to a request within five business days, when twenty business days pass without a response, or when the guaranteed date is missed – the law now states that those failures constitute denials of access that may be appealed.

When an appeal is made, the agency has ten business days to grant access to the records of “fully explain in writing” the reasons for further denial. If an agency fails to determine the appeal within that time, the appeal may be deemed denied, and the person denied access may seek judicial review of the denial.

Broadening the current allowance for attorney’s fees when a citizen brings a successful FOIL action against a stonewalling agency was another reform of the Freedom of Information Law that advocates pressed for. The single biggest complaint heard about New York’s FOIL is the difficulty citizens have in obtaining government records. There is a widespread belief that agencies make it unnecessarily

difficult for the public to access records. The new provision (see below) will help knock down unnecessary barriers to public access.

### **Awarding Attorney's Fees as an Incentive for Compliance**

For many years, FOIL permitted the courts to award attorney's fees to those denied access only in rare circumstances. To make an award, a court was required to find first that the applicant substantially prevailed; second, that the agency had no reasonable basis for denying access; and third, that the records were of "clearly significant interest to the general public." There have been many cases in which agencies clearly failed to comply with law, but where the records were of significance only to the person requesting them. Moreover, when records individually were not of significant interest to the public, even if the event to which they related was of substantial public interest, the Court of Appeals found that attorney's fees could not be awarded [see Beechwood Restorative Care Center v. Signor, 5 NY2d 345 (2005)]. Despite an agency's recalcitrance, the courts had no authority to award attorney's fees or impose a penalty.

In August 2006, an amendment passed broadening courts' authority to award attorney's fees when agencies engage in stonewalling or foot dragging. A court now may award attorney's fees when an applicant substantially prevails and the agency had no reasonable basis for denying access or when the agency failed to comply with the new provisions requiring timely responses to requests.

As part of its citizen's rights concerns, the League supports lobbying disclosure reform to provide information on the pressures exerted on the policy-making process while at the same time guarantees citizen access to influencing the process. (See **Legislative Procedures**.)