

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, March 28, 2013 9:45 AM
To: buchwaldd@assembly.state.ny.us; katzs@assembly.state.ny.us
Cc: paternol@assembly.state.ny.us; weisfeldd@assembly.state.ny.us; 'roithmayra@assembly.state.ny.us'; keegant@assembly.state.ny.us; keegan.taram@gmail.com; josephmahearn@gmail.com
Subject: Annotations for SUCCESSFUL, due process-procedural-objections on Assembly floor
Attachments: transcribed-excerpt-3-24-13-senate-floor-proceedings.pdf; transcript-3-26-13-senate-s-2601.pdf; annotations-for-buchwald-katz-for-successful-procedural-objections.doc

For the immediate attention of Assemblyman Buchwald & Katz. To be posted, as well, on CJA's website, at <http://www.judgewatch.org/web-pages/judicial-compensation/legislative-oversight-judicial-raises.htm>.

Thank you.

Elena Sassower

From: Elena Ruth [<mailto:elenaruth@aol.com>]
Sent: Thursday, March 28, 2013 7:33 AM
To: buchwaldd@assembly.state.ny.us; katzs@assembly.state.ny.us
Cc: paternol@assembly.state.ny.us; weisfeldd@assembly.state.ny.us; 'roithmayra@assembly.state.ny.us'; keegant@assembly.state.ny.us; keegan.taram@gmail.com; josephmahearn@gmail.com
Subject: transcripts to facilitate your SUCCESS in today's Assembly floor debate on A.3001(A) -- the Judiciary Appropriations Bill

Dear Assemblymen Buchwald & Katz:

Attached are transcript excerpts of the March 24th and March 26th Senate floor proceedings on S.2601(A) so that you can see critical procedural objections you should raise – and the failure of Senate Finance Committee Ranking Member Krueger to effectively pursue and develop them. I will, within the next hour or so, e-mail you notes analyzing these procedural objections, setting forth the pertinent legislative & Assembly rule provisions so that you can argue them, SUCCESSFULLY, on the Assembly floor, later today, for the benefit of ALL your constituents and New York taxpayers.

By the way, the videos of the Senate floor proceeding – and these attached transcript excerpts – are posted on our “Securing Legislative Oversight & Override” webpage. Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/legislative-oversight-judicial-raises.htm>

Feel free to call me with any questions you might have.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-455-4373

Annotating Notes for Assemblymen Buchwald & Katz

March 24, 2013 Senate Floor Proceeding

**THE REQUIREMENT OF A “REPORT”/”REPORTS”
ON THE DESKS OF EACH LEGISLATOR BEFORE THE VOTE**

Senator Krueger rose with “a point of order”, which related to her “understanding... that Section 54a of the Legislative Law calls for the procedure by which the Legislature addresses issues of public transparency and accountability by providing a conference committee report to be on the desk of each member of the Legislature prior to taking up appropriation and language bills.” **Legislative Law §54-a. is entitled “Scheduling of legislative consideration of budget bills.”** It requires that the Legislature “by concurrent resolution of the senate and assembly prescribe by joint rule or rules a procedure for:

1. establishing a joint budget conference committee or joint budget conference committees within ten days following the submission of the budget by the governor pursuant to article seven of the constitution, to consider and reconcile such budget resolution or budget bills as may be passed by each house; and
2. promulgating a schedule within ten days following the submission of the budget by the governor pursuant to article seven of the constitution, for considering and acting upon such budget appropriation and related bills which shall include:
 - (a) dates for those actions required to be taken by the legislature pursuant to section fifty-three of this chapter;
 - (b) dates for public hearings on submissions by the governor as required by section thirty-two-a of this chapter;
 - (c) a date for the establishment of joint budget conference committee or committees; and
 - (d) a date by which such joint budget conference committee or committees shall issue their final reports. (underlining added).

Most germane of the Permanent Joint Rules is **Joint Rule III:**

Section 1. Budget Consideration Schedule. In accordance with section 54-a of the Legislative Law, within ten days of the submission of the budget by the Governor pursuant to article VII of the Constitution, the Temporary President of the Senate and the Speaker of the Assembly shall promulgate a schedule of dates for considering and acting upon such submission. Such schedule shall include the dates for those actions required to be taken by the legislature pursuant to section 53 of the Legislative Law, dates for the convening of a joint budget conference

committee or committees as provided herein, and a date by which such committee or committees shall issue a final report or reports. (underlining added).

2. Joint Budget Conference Committee. In accordance with section 54-a of the Legislative Law, within ten days of the submission of the budget by the Governor pursuant to article VII of the Constitution, the Temporary President of the Senate and the Speaker of the Assembly shall jointly establish a Joint Budget Conference Committee and, as they deem necessary, any number of subcommittees subordinate to such Joint Budget Conference Committee, to consider and reconcile such budget resolutions or bills passed by, or as may be passed by, the Senate and Assembly. Such Joint Budget Conference Committee shall be constituted and conducted as prescribed in Joint Rule II and shall file its written report in accord with the schedule established pursuant to section 1 of this rule. (underlining added).

The referred-to **Joint Rule II** states:

Section 1. Committee on Conference. The Temporary President of the Senate and the Speaker of the Assembly may jointly convene a Joint Committee on Conference to consider and report upon substantially similar but not identical legislation that has passed each House of the Legislature. Such committee shall be constituted by the filing of a joint certificate by the Temporary President of the Senate and the Speaker of the Assembly with the Secretary of the Senate and the Clerk of the Assembly, and shall consist of the same number of members from each House. Unless otherwise provided in the certificate, there shall be five members on such committee from each House to be appointed by the Temporary President of the Senate who shall appoint the members from the Senate and the Speaker of the Assembly who shall appoint the members from the Assembly; provided, however, that of each House's delegation at least one member shall represent the minority in each House. The Temporary President of the Senate and the Speaker of the Assembly shall each appoint a co-chairperson of the committee and such co-chairpersons shall convene and recess meetings of the committee. Meetings jointly convened by the co-chairpersons shall be subject to the provisions of Article 7 of the Public Officers Law. The committee shall file a written report setting forth the joint recommendations of a majority of each House's delegation with the Secretary of the Senate and the Clerk of the Assembly or such other committees or officers as may be set forth in the certificate and such report may include specific bill language that would implement the joint committee's recommendations. No report shall be filed except upon the affirmative vote of a majority of the members of each House's delegation on the committee. (underlining added)

Senator Krueger then asked "Is there a copy of that report available to us?"

To this Senator DeFrancisco answered no, following which Senator Krueger stated:

“the law requires it to be on our desk. I have it here from 2007-8, 2008-9, 2009-10, 2012-13. I’m quite sure that there was one in between, but I don’t, couldn’t find it today. So why would we be taking up bills if we don’t have it on our desk since the law requires it?”

She did not identify the “it” to which she was referring – but, based on her citation to Legislative Law 54a, whose only reference to a “report” is in section 2(d), requiring: a date by which such joint budget conference committee or committees shall issue their final reports. (underlining added), the “it” can be presumed to be the “final reports” of the joint budget conference committee and/or its subcommittees.

Under the “Joint Legislative Budget Schedule”, announced on January 31, 2013, the date that the “Final Report of the Joint Conference Committee” was required was “On or before...March 14”. The date that “Joint Legislative budget bills [were to be] taken up by Senate and Assembly” was “On or before...March 18-21”.

Senator Valesky interjected that Senator Krueger’s “point of order” was “not well taken” because “all of the budget bills have not been introduced at this point in time”.

Senator Krueger then sought a “clarification” that they had not gotten any “report” “and, if so, when” they would get it. Senator Valesky hedged, with Senator Defrancisco thereupon stating:

“Yes. The answer to that question is yes. You will get them, we hope, we are trying our darndest to get all the rest of the budget bills printed by midnight tonight. Once the bills are printed and we’ve got the whole plan together, we will provide that same report. But, we are trying to jump start the process since there are three budget bills ready for people to discuss. Rather than having nine or ten budget bills at one time, we thought this would be the better way to get a reasonable debate on the bills and give everybody ample time.”

Senator Kreuger failed to point out that under the Joint Legislative Budget Schedule, the report was required to precede the bills being taken up by the Senate and Assembly.

Thereupon the Senate continued to “Senate budget bill 2604E – an act making appropriations”. Senator Valesky recognized Senator Krueger, who, asking the sponsor to yield, then stated;

“So this is an appropriations bill on capital. So going back to my earlier point that there should be a report, I believe, on the entire budget collection, but my colleague pointed out earlier in my point of order that we don’t have all the bills so we can’t do it on all of them. But, where is the materials that meet §54a law on this specific capital bill, and that would be including conference committee details, um, excuse me, and specifics on the dollars and cents in this budget bill?”

§54a law does not identify “materials” or “details”, but only the requirement of “a date by which such joint budget conference committee or committees shall issue their final reports”.

To this, Senator DeFrancisco was non-responsive, stating:

“This budget bill has been in print for at least three days, I think probably more than that, as are the other two bills that we are going to discuss today, which gave, gives everyone ample notice, as well as, not only members, but also the general public, to look at all, the entire list of things that this capital, that this particular capital projects budget bill, for example, is going to approve by the approval of this particular bill. The entire capital plan, excuse me, the entire plan will be released as soon as we’ve got the other budget bills in print.”

Senator Krueger then shifted to Legislative Law §54, entitled “Report on the budget”, which she read, stating:

“Just to read §54 ‘Report on the budget’:

‘Before voting upon an appropriation bill submitted by the governor and related legislation, as amended, in accordance with article seven of the constitution, each house shall place on the desks of its members a report relating to each such bill and, preceding final action on all such appropriation bills and legislation, members shall be so provided with a comprehensive, cumulative report relating to all such bills and legislation.

The reports prepared by each house shall include for the general fund a summary of proposed legislation revisions to the executive budget for the ensuing fiscal year, and shall separately identify and present all legislative additions, reestimates and other revisions that increase or decrease disbursements”

Upon Senator Valesky interrupting her by asking “Senator Krueger, do you have a question for Senator DeFrancisco?”, Senator Krueger responded:

“I do. I’m just reading from the law. Um, so, to continue the paragraph: ‘and separately identify and present all legislative reestimates and other revisions that increase or decrease available resources. Such report”

then adding the clarifying words: ‘for each appropriation bill to be on our desks’ before resuming her quotation from Legislative Law §54:

“‘shall, where practicable, display and separately identify and present all legislative additions, reestimates, and other revisions that increase or decrease state funds and all funds spending, including an estimate of the impact of the proposed revisions on local governments and the state workforce.’

So, yes, the sponsor answered, the bill has aged three days, but again my question is, under the law, we are supposed to have on our desks a report that lays out these specifications for this specific capital appropriations bill. I’m wondering where that report is.” (underlining added).

It would appear that the “report” and “reports” referred-to in Legislative Law §54 are NOT the same as the “final reports” of the Joint Budget Conference Committee under Legislative Law §54a. However, Senator Krueger said nothing about this – thereby allowing Senator DeFrancisco to respond, as follows;

“I had mentioned before we don’t have a complete report in view of the fact that we don’t have all the budget bills printed. However, I appreciate Senator Krueger’s reading that section of the law, ‘cause there were words in there that she said a little silently but it said ‘where practicable’ and in this particular situation, I’d be happy to read it more loudly. It’s not practical, in view of the fact that we don’t have the rest of the budget bills. However, that summary is extremely important when we’re doing it like we used to do business with message of necessities, where no one really knew the plan or knew what these bills stood for, you couldn’t read it such short time. We’ve had plenty of time to do that. It is not ‘practicable’. We don’t want to waste the time we have here to do three of the many budget bills. So we do it in an orderly fashion. So that’s why we don’t have it. And, it’s not ‘practicable’, presently.”

In so-stating, Senator DeFrancisco was engaging in outright fraud, in fact and law. As to the fact of Senator Krueger’s reading of Legislative Law §54, the video establishes that she did NOT say “a little silently” the words “where practicable”. As to the law, the words “where practicable” appear but once in Legislative Law §54 – and, as reflected by what Senator Krueger accurately and volubly read, it does not pertain to the clear and unequivocal statutory requirement of Legislative Law §54, paragraph 2(b):

“Before voting upon an appropriation bill submitted by the governor and related legislation, as amended, in accordance with article seven of the constitution, each house shall place on the desks of its members a report relating to each such bill and, preceding final action on all such appropriation bills and legislation, members shall be so provided with a comprehensive, cumulative report relating to all such bills and legislation.”

Rather, the “where practicable” clause relates to an aspect of the content of the “report”. Indeed, this is evidenced by the plain language of Legislative Law §54, which places the words “where practical” NOT in paragraph 2(b), but in paragraph 2(c) – and there, only in the second of its two paragraphs, as follows:

“The reports prepared by each house shall include for the general fund a summary of proposed legislative revisions to the executive budget for the ensuing fiscal year, and shall separately identify and present all legislative additions, reestimates and other revisions that increase or decrease disbursements, and separately identify and present all legislative reestimates and other revisions that increase or decrease available resources. Such report shall, where practicable, display and separately identify and present all legislative additions, reestimates, and other revisions that increase or decrease state funds and all funds spending, including an estimate of the impact of the proposed revisions on local governments and the state workforce.”

Shockingly, Senator Krueger did not respond by pointing out what was obvious from the face of Legislative Law §54 that she was reading. Her sole response was as follows:

“Through you, Mr. President, I don’t know that I’m on the bill, I’m on my point about that we should have a report on our desks. So, on the bill.

I don’t believe I was quieter on “practicable”, although I agree I have trouble saying that word also. But since we all know that we don’t have message of necessity, this bill has aged three days, and certainly in every other previous year since the law passed we were able to do this work prior to bringing the bills to the floor. I actually do think it was perfectly ‘practicable for us to have the report on our desks that we should have on our desks. Um, I’m led to believe that despite the fact that we’re in violation of §54 of the budget law, we are going to continue to take up this bill. So now I’m happy to open it up to other questions from the floor. Thank you, Mr. President.”

With that, she said nothing further. Nor did any of the other Senators, anyone of whom could have spoken up, including as to the complete audibility of Senator Krueger’s reading of Legislative Law 54 – and the clear interpretation of “where applicable”, evident from her reading – and, even clearer, from the text of what she had read, with its paragraph separation of text.

March 26, 2013 Senate Floor Proceeding

THE REQUIREMENT THAT A MEMO SUPPORT EACH BILL:

Senator Krueger asked DeFrancisco “is it not the requirement of the Senate that a memo be on our desk describing the substance of each bill.” She could have – but did not – specify the “requirement” to which she was referring.

The “requirement”, as it appears in the Assembly Rules, is Rule III, §1f:

“Introducer’s Memorandum.

There shall be appended to every bill introduced in the Assembly, an introducer's memorandum setting forth the purpose of the bill, a summary of its provisions, a statement of its fiscal impact on the state, a statement of its impact on the regulation of businesses and individuals and a statement as to whether the bill imposes or changes any fine, term of imprisonment, forfeiture of rights or other penal sanction, together with the nature of such imposition or change in a format and length to be prescribed by the Speaker. Whenever a bill is amended by its sponsor, it shall be the duty of the sponsor to file an amended memorandum setting forth the same material as required in the original memorandum. In addition, whenever a bill is reported by a committee as amended, it shall be the duty of the committee to submit an amended memorandum.” (underlining added).

By not specifying the specific Senate Rule and section which imposed the memo requirement Senator Krueger enabled Senator DeFrancisco to disingenuously purport: “I don’t know what you define as a memo” and that the “Report on the Enacted State Fiscal Executive Budget 2013-2014” satisfied such requirement in containing “61 concise pages outlining each of the budget bills in this report”.

Assembly Rule III, §f effectively defines the requirements of the memo that is to accompany “every bill introduced in the Assembly” by setting forth its contents.

What document will Chairman Farrell purport satisfies the memo requirement? Presumably, he’ll use the Assembly Ways and Means Committee’s “Summary of the Assembly Recommended Changes to the Executive Proposal”, released March 11, 2013. It contains NO pages regarding the Judiciary budget and A.3001, let alone identifying such amendment as was made, on March 20, 2011 to A.3001, such that it bears the bill designation A.3001-A.

Senator Krueger disagreed: “I’m not sure I do agree that this is a memo to the bills”, further stating “I’m not sure it does meet the standard of a memo on the bill”. She furnished no specific as to ‘the standard of a memo’ – as set forth in Senate Rules. Instead, and by purporting only that the Report ‘simply talks about what is changed or is different in the budget bills, not the full details of the bills’ – and without identifying

the particulars of page 61 and without discussing them as they pertain S.2601 – she turned to the chair on “a point of order”, asking Senator Valesky “for [his] understanding of whether this meets the definition of memos on specific bills.”

Assembly Rule III, §f specifies the “standard of a memo” by identifying what it must include and any examination of the issues of “fiscal impact on the state” – as, for example, the actual total dollar appropriations of S.2601 and the consequences of a judicial salary increase in creating, in perpetuity, a fiscal impact on the state which cannot be decreased pursuant to Article VI, §25a of the New York State Constitution.

On the “point of order”, Senator Valesky rested on a bald declaration “I believe that this bill is appropriately before the Senate”. Had he identified the applicable Senate Rules and what they specified, he could not have maintained his position. To camouflage the peremptory, insupportable nature of his ruling, he then stated what Senator Krueger assuredly knew, *to wit*, that she could appeal his ruling.

In the Assembly, appealing a ruling on a question of order is set forth in Assembly Rule 1, §1b(1): all questions of order are “subject to appeal to the House and on every appeal [the presiding officer] shall have the right, from the Chair, to assign the reason for such decision; in case of such appeal no member shall speak more than once, nor for more than 15 minutes”.

In other words, Senator Krueger would have had the right to speak for up to 15 minutes as to her interpretation of what the Senate requires by way of a memo.

The opportunity this provided Senator Krueger – and by which an appeal is accomplished – may be seen on the “appeal” taken by Senator Gianaris, on a different matter IMMEDIATELY after passage of S.2601.