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Budget Glitch Does Not Mean Raise, Judges Told

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ALBANY - A powerful legislative committee chairman took the unusual step Tuesday night of denying on the floor of the Assembly that an apparent drafting glitch in the Judiciary's 2009-10 proposed budget would allow court officials to pay long-sought raises to state judges.

The idea that the Judiciary could bypass the state Constitution and Judiciary Law to unilaterally give judges raises is "100 percent incorrect," Herman D. Farrell Jr., chair of the Assembly Ways and Means Committee, told his colleagues.

Excerpt From Bill*

"The appropriation made by chapter 51, section 2, of the laws of 2008, is hereby amended and reappropriated to read 'for expenses necessary to fund adjustments in the compensation of state-paid judges and justices of the unified court system and of housing judges of the New York city civil court, [pursuant to a subsequent chapter of law specifying such salary levels] ...'"

*Brackets should have been removed.

The budget re-appropriates \$48 million in unused funds from the 2008-09 Judiciary budget for judicial raises. At the same time, however, the budget bracketed a requirement that the raises could not be implemented without passage of a separate authorization bill. Under bill-drafting conventions, bracketed material is removed from the measure when it is approved by legislators.

Brackets were put around a phrase in the re-appropriation that says the spending on higher salaries is "pursuant to a subsequent chapter of law specifying such salary level." No such chapter of law appears elsewhere in the \$132 billion spending plan.

"The notion that the Office of Court Administration has been somehow authorized or empowered to ignore both the New York state Constitution and Article 7-B of the Judiciary Law by some words stricken from an appropriation is 100 percent incorrect," Mr. Farrell said.

He did not tell his colleagues who had the notion that OCA might be free to distribute raises unilaterally and he did not return calls seeking comment.

Mr. Farrell, D-Manhattan, said on the floor that if what he called "contrived confusion" remains over authority to spend the money re-appropriated for the judicial pay raises, legislation would be introduced to restore the deleted language.

Assemblyman William Parment, D-Jamestown, said yesterday in an interview that Mr. Farrell's statement was "intended to express the Legislature's intent that however this language was worded or failed to appear, the Judiciary was prohibited from receiving a raise."

"It was kind of a signal to the Judiciary, 'Hey, don't take this omission to think you can raise your salaries,'" Mr. Parment said.

Chief Administrative Judge Ann Pfau said yesterday that the Legislature deleted proposed language in the Judiciary's budget that would have amended Judiciary Law Article 7-B by laying out a schedule of raises for state judges. The re-appropriation to fund a raise was kept in the budget and the bracketed material - which would be redundant had the Legislature not excised the proposed salary schedule amendments to Article 7-B - was not unbracketed to restore it to force when the final bill emerged.

The Legislature's concern that OCA might unilaterally distribute money for raises runs counter to the Judiciary's understanding of how pay raises for judges are approved, Judge Pfau said.

Whenever the Judiciary puts the proposed pay raise in the budget, "we have assumed that there are two things that have to be done - that the Judiciary Law has to be amended and we have to have the spending authorization," Judge Pfau said. "Do we have the power to amend the Judiciary Law? No."

Still, Judge Pfau said the 2009-10 budget gives judges a reason for hope in that it does contain the re-appropriation for raises. That, theoretically at least, keeps open the possibility of higher pay in this fiscal year, she said.

"What we take from this is really a positive in that in this difficult fiscal year, money is authorized in the budget to fund our salary increases," Judge Pfau said.

Frank Mauro, a former secretary to the Ways and Means Committee, said the overall size of the budget and the pressures of drafting last-minute deal-making contributed to the need for "lots of cleanup" of errors in the legislation. Mr. Mauro, now with the Fiscal Policy Institute in Latham, said drafting mistakes were "overwhelmingly things that weren't intentional."

By making the unusual statement about interpreting the judicial pay raise re-appropriation, Mr. Farrell was likely signaling that the error was "maybe more important than the regular kind of error," Mr. Mauro said.

"He was saying, 'Don't get the wrong idea, because we can fix it whenever we want,'" Mr. Mauro said yesterday in an interview.

Top Priority

Chief Judge Jonathan Lippman said in interviews last week that he continues to discuss a judicial pay raise and the creation of a commission to set future increases, with the Legislature and the governor's office. The chief judge said securing pay raises remains far and away his top priority.

Albany County Family Court Judge W. Dennis Duggan, an outspoken advocate for a judicial pay raise, said many judges had taken note of the bracketing of the "pursuant to" language in the re-appropriation and that it created speculation ranging from signals that the Legislature has quietly acquiesced to a judicial pay raise to a simple drafting error.

Judge Duggan said he thought there would be little, if any, support among judges that OCA should use what could amount to a legal loophole to distribute the re-appropriated money as raises without approval by the governor and Legislature.

"There would not be any sentiment for doing anything that is surreptitious," Judge Duggan said yesterday. "We deserve our raises. It is not something that we want done through smoke and mirrors."

Judge Duggan also noted that Chief Judge Lippman is thought to have strong relationships with state legislators which could be demolished at the beginning of his tenure as chief judge by capitalizing on an oversight in [A151/S51](#).

"I don't think that, given the chief judge's relationship with the Legislature, that he would take advantage of some drafting mistake," Judge Duggan said.

Trimming Urged

Mr. Parment urged the Assembly on Tuesday night to defeat the Legislative/Judicial budget after complaining about overall increases in the Judiciary's budget over the past decade. He said no other major arm of state government has been allowed to raise its budget by 121 percent between the 1999-2000 and 2009-10 fiscal years.

The 2009-10 Judiciary budget is \$2.52 billion, up from \$1.14 billion in 1999-2000.

Mr. Parment urged the Legislature to appoint a commission to review the Judiciary's spending and economies in the courts.

"Their budget is not challenged by the governor, who passes it along to the Legislature as presented to the governor," Mr. Parment said. "I think the Legislature has a responsibility to do some critical review and at least jawbone a little with them to make them more economical."

Judge Pfau and other court administrators have defended their budgets as lean, given the increased caseloads and mandates imposed by the federal and state governments.

The Assembly approved the Legislative/Judicial budget bill 92-51. While the Senate continued to deliberate over budget bills yesterday, it was unclear when it would take up the Legislative/Judicial budget measure.

That bill is traditionally the last the Assembly and Senate consider when working on state budgets.

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