

SUMMARY/ANALYSIS

of the Governor’s Commentary, of his Division of the Budget Webpages for the Legislative & Judiciary Budgets, and of the Legislature’s “White”, “Blue”, “Yellow”, and “Green” Books

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Governor Cuomo’s Commentary¹

Governor Cuomo offered no commentary to the Legislature’s proposed budget, furnished to him by a December 1, 2015 coverletter signed by Temporary Senate President Flanagan and Assembly Speaker Heastie. Nor did he comment on its transmittal back to the Legislature, on January 13, 2016, by his Legislative/Judiciary Budget Bill #S.6401/A.9001, which popped in tens of millions of dollars in untallied reappropriations, filling 24 pages, in an out-of-sequence section at the back (pp. 25-48).

As for the Judiciary’s proposed budget, Governor Cuomo offered a “Commentary of the Governor on the Judiciary”, which opened as follows:

“In accordance with Article VII, Section 1 of the New York State Constitution, I transmit herewith the appropriations requested by the Judiciary for fiscal year 2016-17. As required by the Constitution, I present the Judiciary budget as it has been

¹ The commentary is “such recommendations as the governor may deem proper”, pursuant to Article VII, §1 of the New York State Constitution, which states the following with respect to the Legislative and Judiciary budgets:

“...Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall be transmitted to the appropriate committees of the legislature.” (underlining added).

submitted by the Chief Judge.

The Judiciary has requested appropriations of \$2.13 billion for court operations, exclusive of the cost of employee benefits. As submitted, disbursements for court operations from the General Fund are projected to grow by \$44.4 million or 2.4 percent.”

The Commentary then continued:

“For the past five years, my Administration and the Legislature have kept spending growth below 2 percent and Executive agency spending flat. Further, Executive agency spending will remain flat for the sixth straight year, during which the Judiciary spending has grown by over 7 percent.

We collectively have a fiscally responsible goal of controlling excessive spending for all of New York State government to the benefit of its taxpayers. By requesting an increase in excess of 2 percent, the Judiciary is seeking a larger percentage increase than it received last year.

Furthermore, acknowledging the need to evaluate judicial salaries, the recommendations of the New York State Commission on Legislative, Judicial, and Executive Compensation to provide for judicial salary increases on par with federal judges does not abrogate the Judiciary’s responsibility to partner with us to maintain overall spending at 2 percent. I applaud the Judiciary for absorbing the first year of recommended Commission on Judicial Compensation salary increases in 2012-13, and I expect that they will again absorb the first year of recommended judicial salary increases within an overall spending level of 2 percent in the 2016-17 budget. Indeed, for the past 3 years, Executive agencies have absorbed the cost of salary increases through productivity improvements and efficiency measures. I strongly urge the Legislature and Judiciary to work together to reduce the Judiciary’s budget commensurate with the State’s spending growth level of 2 percent.” (underlining added).

Governor Cuomo’s Division of the Budget
Webpages for the Legislature & Judiciary

The Governor’s Division of the Budget has links for both the proposed budgets of the Legislature and Judiciary, listed with “Agency Presentations”:

<https://www.budget.ny.gov/pubs/executive/eBudget1617/agencyPresentations/agencyPresentations.html>.

The link for the Legislature:

<https://www.budget.ny.gov/pubs/executive/eBudget1617/agencyPresentations/pdf/Legislature.pdf>

brings up a pdf of the 16 pages that Temporary Senate President Flanagan and Assembly Speaker Heastie transmitted to the Governor on December 1, 2015 – but without the transmitting coverletter, signed by them, whose single sentence read:

“Attached hereto is a copy of the Legislature’s Budget for the 2016-2017 fiscal year pursuant to Article VII, Section 1 of the New York State Constitution”.

Thus concealed was that such letter did not purport, let alone certify, any part of the transmitted 16 pages to be “Itemized estimates of the financial needs of the legislature”.

Of these 16 pages, the first four are a narrative summary, opening with a paragraph containing the sentence:

“The Legislature convenes annually on the first Wednesday after the first Monday in January and remains in session until it concludes its business.”

Further down on the page, under the heading “Legislative Budget Highlights”, the text reads:

“The recommended General Fund appropriation of \$217,844,801 for FY 2016-17 for the Legislature represents the *seventh consecutive year* of zero growth...

The recommended appropriations for Special Revenue Fund-Other appropriation of \$1,600,000 and for Grants and Bequests Funds of \$500,000 for FY 2016-17 represent no changes from the amounts appropriated for FY 2015-16.” (italics and underlining in the original).

A fifth page is entitled “Highlights – Joint Entities”, followed by a sixth page, a chart entitled “All Funds Requirements for the Legislature”, and then a 10-page “Schedule of Appropriations”. There are no pages of “General State Charges” or of “reappropriations”. These words do not even appear in any of the 16 pages.

The link for the Judiciary:

<https://www.budget.ny.gov/pubs/executive/eBudget1617/agencyPresentations/appropData/Judiciary.html>. It brings up a webpage whose text, provided by the Judiciary, uncritically repeats its claims – and furnishes figures materially differing from those in the Governor’s Commentary:

“The Judiciary’s General Fund Operating Budget requests \$1.9 billion, excluding fringe benefits, for Fiscal Year 2016-2017. This represents a cash increase of \$44.4 million, or 2.4%. The appropriation request is \$1.9 billion, which represents a \$43.4 million, or 2.3%, increase.

...

The Judiciary’s All Funds budget request for Fiscal Year 2016-2017, excluding fringe benefits, totals \$2.13 billion, an appropriation increase of \$48.3 million or 2.3% over the 2014-2015 All Funds budget...”

It also furnishes a link to the “Agency Web site”:

<http://www.nycourts.gov/admin/financialops/Budgets.shtml>. This leads to a webpage containing a two-part Judiciary budget: one for operating needs and one for “General State Charges”. The explanation for this two-part presentation is in Chief Administrative Judge Marks’ December 1, 2015 memorandum to the Governor and Legislature, transmitting the “General State Charges” request. It states:

“For the 2016-2017 Fiscal Year, the Judiciary is again submitting itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary. This presentation follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2016-2017 Fiscal Year.” (underlining added).

Apart from the fact that the legislative budget included no separately presented “General State Charges” – indeed no legislative “General State Charges” whatever – it would appear, from the word “will”, that the Judiciary furnished the referred-to “single budget bill” subsequently, not simultaneously. In any event, it contains more than “requests for funding of fringe benefit costs and requests for operating funds”. It also contains \$33,760,000 in “Reappropriations” (Bill Copy, pp. 1, 11-12) nowhere identified in the Judiciary’s two-part budget presentation, as well as an additional \$39,700,000 in “Capital Projects-Reappropriations” (Bill Copy, p. 13), set forth in untallied components of \$33,700,000 and \$6,000,000 – neither of which are contained in the Judiciary’s two-part budget presentation.

The Judiciary’s two-part budget contains, in each part, a “Chief Judge’s Certification”, signed by then Chief Judge Lippman, and a separate “Court of Appeals Approval”, signed by its then six sitting judges – Judges Lippman, Pigott, Rivera, Abdus-Salaam, Stein, and Fahey. The certifications and approvals each: (1) begin with the words “Pursuant to Article VII, Section 1 of the Constitution of the State of New York”; (2) each bear a seal of the Court of Appeals; and (3) each are attested to by the signature of the Court of Appeals’ Chief Clerk, followed by the date November 23, 2015.

However, whereas the Chief Judge’s two certifications certify:

“that the attached schedules are the itemized estimates of the financial needs of the Judiciary for the fiscal year beginning April 1, 2016 and that they have been approved by the Court of Appeals” (underlining added); and

“that the attached schedules are the itemized estimates of the financial needs of the Judiciary for General State Charges for the fiscal year beginning April 1, 2016 and that they have been approved by the Court of Appeals.” (underlining added),

the Court of Appeals' two approvals make no mention of "schedules" in approving the "attached itemized estimates".

It is unclear whether the "attached schedules", referred to in the Chief Judge's certification of the Judiciary's budget of operating needs, include the "schedules" in the Judiciary's "single budget bill", and they could only be included if they were "attached" – which they plainly could not be if furnished subsequently, as suggested by the wording of Chief Administrative Judge Marks' December 1, 2015 memorandum transmitting the Judiciary's budget of "General State Charges".

As for the 13-page "single budget bill", it is contained in the Judiciary's budget of operating needs, but not as part of its "2016-17 Judiciary Budget Request". The "single budget bill" furnishes no cumulative tally of its total amount – nor even a section containing the disparate figures which, when added, would give the total.

The first page begins with the title "The Judiciary", beneath which is a paragraph marked "§2", reading:

"§2. The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2016." ("Bill Copy 1")

Further down on that page is a titled "Schedule", whose itemizations are qualified by the following prefatory paragraph:

"Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts." ("Bill Copy 1").

Pages 9-10 are "General State Charges", following which, on page 11-13 are "Reappropriations". These "Reappropriations" are set forth under a paragraph marked §3, reading:

§3. The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated being the unexpended balances of a prior year's appropriation, are hereby reappropriated from the same funds and made available for the same purposes as the prior year's appropriation, unless amended herein, for the state fiscal year beginning April 1, 2016." ("Bill Copy 11").

Beneath this, under the title "The Judiciary / State Operations and Aid to Localities – Reappropriations 2016-2017", is a "Schedule", whose total is furnished at page 12: \$33,760,000 – replicating the tally of "Reappropriations" at page 1.

However, page 13 presents a further title “Capital Projects-Reappropriations 2016-2017” – and its two reappropriations, \$33,700,000 and \$6,000,000, for “the acquisition of and improvements to a training academy in Kings County for the training of court security personnel” are untallied and do not appear, either tallied or untallied on page 1 of the “single budget bill”.

The Legislature’s “Color Books”²

The Legislature’s “Color Books” purport to be analyses of the Executive Budget. As the Executive Budget for fiscal year 2016-2017 presents the Legislative and Judiciary budgets in a combined Legislative/Judiciary budget bill: #S.6401/A.9001, these analyses, therefore, should analyze the bill. Especially is this so as the bill – unlike the Legislature’s proposed budget – adds on tens of millions of dollars in re-appropriations, filling 24 pages, in an out-of-sequence section at the back of the bill. Yet, none of the “Color Books” identify this – and two don’t even have an entry for the Legislature’s budget. As for the Judiciary’s budget, they differ as to the relevant figures. None furnish legislators with any analysis of the judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation’s December 24, 2015 Report, including compliance with the commission statute.

The Senate Majority’s “White Book” is the Senate Finance Committee’s “Staff Analysis of the FY 2017 Executive Budget” – with a prefatory page listing the many names of such staff. This is preceded by a January 17, 2015 letter of Senate Finance Committee Chair Young, addressed to the “Senators”, describing the “Staff Analysis” as:

“intended to assist the members of the Finance Committee and the Senate as a whole, in their deliberations”.

If so, it has no table of contents from which any “members of the Finance Committee and the Senate as a whole” could easily find information about the Executive presentation of the Legislative and Judiciary budgets. Indeed, the White Book appears to have no section about the Legislature’s budget – nor information about it, other than a reference, at page 212, to the fact that #S.6401/A.9001 is the Legislative/Judiciary budget bill.

As for the White Book’s presentation on the Judiciary, essentially devoid of “analysis”, it is part of a section entitled “Summary of Agency Spending” for “Public Protection”. It consists of a half page of

² Legislative Law §53. Budget review process.

“Within ten days after submission of the budget by the governor pursuant to article seven of the constitution, the temporary president of the senate and the speaker of the assembly shall jointly or separately promulgate a schedule for the specific budget-related actions of each house, including but not limited to the following:

1. a preliminary response by the houses to the governor’s budget submission;...”
(underlining added).

text (at p. 91), followed by a single line in a chart of “Public Protection Proposed Disbursements – All Funds” (at p. 93). The half-page includes the following:

“The FY 2017 Executive Budget proposes All Funds spending of \$2.9 billion, an increase of \$112.2 million, or 4.1 percent.” (at p. 91)

The chart (at p. 93) particularizes this as “Proposed Disbursements – All Funds” as \$2,865,600,000 – representing a change of \$112,224,000, a percentage of 4.08%.

Included on the half-page are two paragraphs pertaining to the judicial salary increases for fiscal year 2016-2017:

“The Executive Budget does not include funding for the Judicial compensation increases adopted by The Commission on Legislative, Judicial and Executive Compensation in its December 24, 2016 (sic) final report because the Judiciary was required to submit its proposed budget to the Executive prior to this date. It is expected that the compensation increase would increase general fund cash spending in FY 2017 by \$27 million.

Although the Judiciary’s proposed budget would increase general fund cash spending by \$44.4 million, or 2.4 percent, and the compensation increase of \$27 million is not reflected in the Executive Budget, the Executive expects, or is hopeful, that the Judiciary will ultimately absorb the cost of the salary increase and that spending growth will be reduced to two percent. The areas to be reduced have not yet been specified.” (p. 91).

Unidentified is that the “adopted” increases can be overridden – and that they must be overridden, *inter alia*, because, *on their face*, they are statutorily-violative. This is information that should have been, but is not, part of the White Book’s “Senate Issues in Focus” section. Instead, these two paragraphs make it appear that the only question is the “areas [of judicial spending] to be reduced”. As for the cited cost of the increase: “\$27 million”, for which no attribution is furnished, it is half-a-million dollars higher than the without-attribution figure in the “FINDINGS” section of the Commission’s December 24, 2015 Report (at p. 6), which put the figure at “approximately \$26.5 million for the next fiscal year”. From where, then, did the additional half-million dollar request come?

The Senate Minority’s “Blue Book” is the Senate Democratic Conference’s “Staff Analysis of the 2016-17 Executive Budget” – with a prefatory page listing the many names of such staff. This is preceded by a January 25, 2015 letter of Senate Finance Committee Ranking Member Krueger, addressed to her “Colleagues”, stating that

“The data and analyses prepared by the Senate Finance Committee staff included in this document will provide insights into...the Executive Budget, which can inform the difficult decisions the Senate faces.”

The table of contents for the “Blue Book” has a section entitled “Legislature and Judiciary”, each a single page.

The single page for the Legislature furnishes no “analysis” (p. 178). It contains a chart showing the “Executive Recommendation 2016-17” as totaling \$219,444,801, the “\$ change” as \$0, and the “% Change” as 0%. These figures are then reiterated under a heading “Overview of the Executive Budget Proposal”, whose text consists of two sentences, the first of which reads:

“The recommended General Fund appropriation of \$219.4 million for SFY 2016-17 for the Legislature represents no change from the amount appropriated for each of the last six years.

Not included in these figures are the 24 pages of untallied legislative reappropriations, in the out-of-sequence section at the back of Budget Bill #S.6401/A.9001. These are nowhere mentioned. Nor is there any mention of the Legislature’s “General State Charges”, altogether missing from the legislative portion of Budget Bill #S.6401/A.9001.

As for the single page for the Judiciary (p. 179), it is also devoid of “analysis”. It contains a chart showing the total “Executive Recommendation 2016-17” as \$2,132,526,345, the “\$ change” as \$48,254,307, and the “% Change” as 2.3%. These figures are then reiterated in text reading:

“The Judiciary proposed Budget is \$2.13 billion, an increase of \$48.2 million or 2.3% from the SFY 2015-2016 Enacted Budget...

Two paragraphs of text follow, the second of which is an analysis-free, flagrantly erroneous recitation pertaining to the judicial salary increases for fiscal year 2016-2017. It reads:

“After the submission of the Judicial Budget, the Commission on Judicial Compensation, by a 4-3 vote, approved a pay increase to the Judges of 95% of the Federal Judicial pay, followed by an increase to 100% of the Federal pay next year, and continued the 100% parity in perpetuity. The recommended pay raise will cost \$26 million this year. The three dissenting votes were all from the Executive’s appointees. The 3 members of the minority wrote a dissent stating that the Judicial pay increase should be at 90% of the Federal Salary for Judges in perpetuity which would cost \$13.0 million.”

This paragraph is derived from a source other than the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation – which is the name of the commission, not “Commission on Judicial Compensation”. Apart from the fact that the 100% pay parity would take effect not “next year”, but the year after, and the recommended pay raise was estimated by the “FINDINGS” section of its Report (at p. 6) as “approximately \$26.5 million for the next fiscal year”, the Commission’s three dissenting members never wrote that “the Judicial pay increase should be at 90% of the Federal Salary for Judges...which would cost \$13.0 million.” Indeed, what the dissenters wrote could not have been MORE OPPOSITE

“...we dissent from finding that simply benchmarking state judicial salaries to federal judicial salaries discharges our duty to recommend adequate compensation based on the statutory criteria.

...simply tying State judicial salaries to federal judicial salaries fails to recognize differences in fiscal resources, history, and statutory authority that should apply to determining pay for those two groups. Such benchmarking effectively defers the Commission’s statutory duty to recommend State judicial salaries to a remote federal process, and adds an unnecessary element of uncertainty to budgeting each year.” (December 24, 2015 Report, pp. 15-17).

Here, too, there is no identification that the Commission’s pay raise vote can and must be overridden. This, notwithstanding that ten days before the date on Senator Krueger’s coverletter distributing the “Blue Book” to her “Colleagues”, CJA’s January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie was e-mailed to her, providing her with the necessary facts and evidence.

The Assembly Majority’s “Yellow Book” is “prepared by Assembly Ways and Means Committee Staff” – and is the only one of the three publicly-available “Color Books” to identify, in the January 20, 2016 coverletter of Assembly Ways and Means Committee Chairman Farrell to “Colleagues”, the statutory provision under which it is rendered – and what it is intended to be:

“*Yellow Book* is the Assembly’s preliminary response to the Executive Budget, as required by Section 53 of the legislative Law. Its publication marks the beginning of the Assembly’s review of the Governor’s budget proposal, and should serve as an informational resource for Members as we participate in public, joint legislative fiscal committee hearings on the budget – our next step in the budget process.”

This “informational resource” is no resource at all with respect to the Executive budget for the Legislature. Although the Yellow Book’s table of contents has an entry for the “Judiciary”, there is none for the Legislature – and, seemingly there is no discussion of its budget.

The section for the “Judiciary” is 1-1/5 pages (at pp. 145-146). It contains a single sentence with overall figures:

“The Judiciary’s proposed budget request recommends appropriations of \$2.9 billion, which is an increase of \$81.94 million or 2.9 percent from the State Fiscal Year (SFY) 2015-16 level.”

There are then two tables. The first, entitled “Appropriations”, shows the “Exec Request”, in millions, at “2,877.49” millions of dollars, representing a change of “81.94” millions of dollars with a percent change of “2.93”. The second table, entitled “Disbursements”, shows an “Exec Request”, in millions, at “2,865.60” millions of dollars, representing a change of “112.23” millions of dollars, for a percent change of “4.08”.

This is followed by three paragraphs, the third and longest of which reads:

“Judicial Compensation: In December 2015, the Compensation on Legislative, Judicial and Executive Compensation released its final recommendations on judicial salaries. The Commission recommended that State Supreme Court justice salaries be increased so that they are comparable to Federal District Court judges. Specifically, the Commission recommended that justices of the State Supreme Court salaries be fixed at 95 percent of the salary of a Federal District Court judges, effective April 1, 2016, and at 100 percent, effective April 1, 2018, with the salaries of all other state judges adjusted accordingly. The cost of the first year of salary increases is approximately \$27 million.” (at pp. 146).

Such paragraph is certainly of the most limited utility – not alerting Assembly “Colleagues” that these recommendations will have the “force of law” unless overridden by the Legislature – or of any ground upon which it should be.

The Assembly Minority’s “Green Book”, which Assembly Ways and Means Committee Ranking Member Oaks does not make publicly-available, has a half-page under the heading “Legislature and Judiciary – A.9001”. A single sentence pertains to the Legislature and it reads: “\$219.9 million for the Legislature to reflect the seventh straight year of zero growth.” The balance, pertaining to the Judiciary, includes the following:

“\$2.1 billion for the Judiciary, \$48.3 million more than last year. This represents a 2.3% increase in spending.”

In contrast to the other “Color Books”, it contains no mention of the judicial salary increase recommended by the Commission on Legislative, Judicial or Executive Compensation – at least not on the page pertaining to the Judiciary budget. However, it does include the following:

“General State Charges: (Non-Salary) Benefits: \$730 million for General State charges. \$34 million more than last year. This pays for fringe benefits of employees of the court system, including all statutorily-required and collectively bargained benefits.”

No other “Color Book” identified this component of the Judiciary’s budget.