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BY E-MAIL

June 10, 2019

TO: FOIL/Records Access Officers:
Executive Chamber Records Access Officer Valerie Lubanko
Secretary of the Senate Alejandra Paulino
Assembly Records Access Officer Robin Marilla
Office of Court Administration Records Access Officer Shawn Kerby

FROM: Elena Sassower, Director/Center for Judicial Accountability, Inc. (CJA)

RE: FOIL/Records Request:
2019 Commission on Legislative, Judicial and Executive Compensation –
(Chapter 60, Part E, of the Laws of 2015)

Chapter 60, Part E, of the Laws of 2015 established – on June 1, 2019 – a Commission on Legislative, Judicial and Executive Compensation (§2.1).

This is to request¹ all publicly-available records reflecting that the Commission has been fully appointed (§2.1) and is operational – and, specifically:

- (1) records of Governor Andrew Cuomo’s appointment of three commissioners – especially letters of appointment and public announcements or press releases with respect thereto;
- (2) records of Temporary Senate President Andrea Stewart-Cousins’ appointment of one commissioner – especially a letter of appointment and public announcement or press release with respect thereto;
- (3) records reflecting Assembly Speaker Carl Heastie’s appointment of one commissioner – especially a letter of appointment and public announcement or press release with respect thereto;

¹ Pursuant to Public Officers Law Article VI [Freedom of Information Law (F.O.I.L.)], Senate Rule XIV [“Freedom of Information”], Assembly Rule VIII [“Public Access to Records”], and §124 of the Chief Administrator’s Rules.

- (4) records establishing Chief Judge Janet DiFiore's appointment of two commissioners – especially letters of appointment and public announcements or press releases with respect thereto;
- (5) records establishing the interpretation intended by §3.1, *to wit*, whether the Commission's chair is to be designated by the Chief Judge from among her two appointees or whether such designation is to be made by the seven appointed commissioners or by the Commission's four appointing authorities;
- (6) records of the Commission's funding, staffing, office address, phone number, e-mail, and website for discharging its statutory duties.

For your convenience, a copy of Chapter 60, Part E, of the Laws of 2015 is enclosed.

Pursuant to Public Officers Law §89.3, your response is required "within five business days" of receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

Enclosure

cc: The Public & Press, on its Behalf

PART E

1
2 Section 1. Chapter 567 of the laws of 2010 relating to establishing a
3 special commission on compensation, and providing for their powers and
4 duties; and to provide periodic salary increases to state officers is
5 REPEALED.

6 § 2. 1. On the first of June of every fourth year, commencing June 1,
7 2015, there shall be established a commission on legislative, judicial
8 and executive compensation to examine, evaluate and make recommendations
9 with respect to adequate levels of compensation and non-salary benefits
10 for members of the legislature, judges and justices of the state-paid
11 courts of the unified court system, statewide elected officials, and
12 those state officers referred to in section 169 of the executive law.

13 2. (a) In accordance with the provisions of this section, the commis-
14 sion shall examine: (1) the prevailing adequacy of pay levels and other
15 non-salary benefits received by members of the legislature, statewide
16 elected officials, and those state officers referred to in section 169
17 of the executive law; and

18 (2) the prevailing adequacy of pay levels and non-salary benefits
19 received by the judges and justices of the state-paid courts of the
20 unified court system and housing judges of the civil court of the city
21 of New York and determine whether any of such pay levels warrant adjust-
22 ment; and

23 (b) The commission shall determine whether: (1) for any of the four
24 years commencing on the first of April of such years, following the year
25 in which the commission is established, the annual salaries for the
26 judges and justices of the state-paid courts of the unified court system
27 and housing judges of the civil court of the city of New York warrant an
28 increase; and

29 (2) on the first of January after the November general election at
30 which members of the state legislature are elected following the year in
31 which the commission is established, and on the first of January follow-
32 ing the next such election, the like annual salaries and allowances of
33 members of the legislature, and salaries of statewide elected officials
34 and state officers referred to in section 169 of the executive law
35 warrant an increase.

36 3. In discharging its responsibilities under subdivision two of this
37 section, the commission shall take into account all appropriate factors
38 including, but not limited to: the overall economic climate; rates of
39 inflation; changes in public-sector spending; the levels of compensation
40 and non-salary benefits received by executive branch officials and
41 legislators of other states and of the federal government; the levels of
42 compensation and non-salary benefits received by professionals in
43 government, academia and private and nonprofit enterprise; and the
44 state's ability to fund increases in compensation and non-salary bene-
45 fits.

46 § 3. 1. The commission shall consist of seven members to be appointed
47 as follows: three shall be appointed by the governor; one shall be
48 appointed by the temporary president of the senate; one shall be
49 appointed by the speaker of the assembly; and two shall be appointed by
50 the chief judge of the state, one of whom shall serve as chair of the
51 commission. With regard to any matters regarding legislative or execu-
52 tive compensation, the chair shall preside but not vote. Vacancies in
53 the commission shall be filled in the same manner as original appoint-
54 ments. To the extent practicable, members of the commission shall have



1 experience in one or more of the following: determination of executive
2 compensation, human resource administration or financial management.

3 2. The commission shall only meet within the state, may hold public
4 hearings, at least one of which shall be open for the public to provide
5 comments and shall have all the powers of a legislative committee pursu-
6 ant to the legislative law. It shall be governed by articles 6, 6-A and
7 7 of the public officers law.

8 3. The members of the commission shall receive no compensation for
9 their services but shall be allowed their actual and necessary expenses
10 incurred in the performance of their duties hereunder.

11 4. No member of the commission shall be disqualified from holding any
12 other public office or employment, nor shall he or she forfeit any such
13 office or employment by reason of his or her appointment pursuant to
14 this section, notwithstanding the provisions of any general, special or
15 local law, regulation, ordinance or city charter.

16 5. To the maximum extent feasible, the commission shall be entitled to
17 request and receive and shall utilize and be provided with such facili-
18 ties, resources and data of any court, department, division, board,
19 bureau, commission, agency or public authority of the state or any poli-
20 tical subdivision thereof as it may reasonably request to carry out
21 properly its powers and duties pursuant to this section.

22 6. The commission may request, and shall receive, reasonable assist-
23 ance from state agency personnel as necessary for the performance of its
24 function.

25 7. The commission shall make a report to the governor, the legisla-
26 ture and the chief judge of the state of its findings, conclusions,
27 determinations and recommendations, if any, not later than the thirty-
28 first of December of the year in which the commission is established for
29 judicial compensation and the fifteenth of November the following year
30 for legislative and executive compensation. Any findings, conclusions,
31 determinations and recommendations in the report must be adopted by a
32 majority vote of the commission and findings, conclusions, determi-
33 nations and recommendations with respect to executive and legislative
34 compensation shall also be supported by at least one member appointed by
35 each appointing authority. Each recommendation made to implement a
36 determination pursuant to section two of this act shall have the force
37 of law, and shall supersede, where appropriate, inconsistent provisions
38 of article 7-B of the judiciary law, section 169 of the executive law,
39 and sections 5 and 5-a of the legislative law, unless modified or abro-
40 gated by statute prior to April first of the year as to which such
41 determination applies to judicial compensation and January first of the
42 year as to which such determination applies to legislative and executive
43 compensation.

44 8. Upon the making of its report as provided in subdivision seven of
45 this section, each commission established pursuant to this section shall
46 be deemed dissolved.

47 § 4. Date of entitlement to salary increase. Notwithstanding the
48 provisions of this act or of any other law, each increase in salary or
49 compensation of any officer or employee provided by this act shall be
50 added to the salary or compensation of such officer or employee at the
51 beginning of that payroll period the first day of which is nearest to
52 the effective date of such increase as provided in this act, or at the
53 beginning of the earlier of two payroll periods the first days of which
54 are nearest but equally near to the effective date of such increase as
55 provided in this act; provided, however, the payment of such salary
56 increase pursuant to this section on a date prior thereto instead of on

1 such effective date, shall not operate to confer any additional salary
2 rights or benefits on such officer or employee. The annual salaries as
3 prescribed pursuant to this act whenever adjusted pursuant to the
4 provisions of this act, shall be rounded up to the nearest multiple of
5 one hundred dollars.

6 § 5. This act shall take effect immediately and shall be deemed to
7 have been in full force and effect on and after April 1, 2015.

8 PART F

9 Section 1. This act shall be known and may be cited as the "Infras-
10 tructure investment act".

11 § 2. For the purposes of this act:

12 (a) "authorized state entity" shall mean the New York state thruway
13 authority, the department of transportation, the office of parks, recre-
14 ation and historic preservation, the department of environmental conser-
15 vation and the New York state bridge authority.

16 (b) "best value" shall mean the basis for awarding contracts for
17 services to the offerer that optimize quality, cost and efficiency,
18 price and performance criteria, which may include, but is not limited
19 to:

- 20 1. The quality of the contractor's performance on previous projects;
- 21 2. The timeliness of the contractor's performance on previous
22 projects;
- 23 3. The level of customer satisfaction with the contractor's perform-
24 ance on previous projects;
- 25 4. The contractor's record of performing previous projects on budget
26 and ability to minimize cost overruns;
- 27 5. The contractor's ability to limit change orders;
- 28 6. The contractor's ability to prepare appropriate project plans;
- 29 7. The contractor's technical capacities;
- 30 8. The individual qualifications of the contractor's key personnel;
- 31 9. The contractor's ability to assess and manage risk and minimize
32 risk impact; and
- 33 10. The contractor's past record of compliance with article 15-A of
34 the executive law.

35 Such basis shall reflect, wherever possible, objective and quantifi-
36 able analysis.

37 (c) "capital project" shall have the same meaning as such term is
38 defined by subdivision 2-a of section 2 of the state finance law.

39 (d) "cost plus" shall mean compensating a contractor for the cost to
40 complete a contract by reimbursing actual costs for labor, equipment and
41 materials plus an additional amount for overhead and profit.

42 (e) "design-build contract" shall mean a contract for the design and
43 construction of a capital project with a single entity, which may be a
44 team comprised of separate entities.

45 (f) "procurement record" means documentation of the decisions made and
46 the approach taken in the procurement process.

47 § 3. Notwithstanding the provisions of section 38 of the highway law,
48 section 136-a of the state finance law, section 359 of the public
49 authorities law, section 7210 of the education law, and the provisions
50 of any other law to the contrary, and in conformity with the require-
51 ments of this act, an authorized state entity may utilize the alterna-
52 tive delivery method referred to as design-build contracts, in consulta-
53 tion with relevant local labor organizations and construction industry,
54 for capital projects related to the state's physical infrastructure,