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BY E-MAIL

September 23, 2019

TO: New York Legislative Bill Drafting Commissioners
Randall G. Bluth, Esq. & James Long, Esq.

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

RE: The Governor's Budget Legislation/FY 2019-2020, the Legislative Bill Drafting Commission – & FOIL/Records Requests

This follows my phone conversation on Wednesday, September 18th, with Nicole, an attorney at the Legislative Bill Drafting Commission who declined to give me her last name and declined to furnish me with the names of the other attorneys at the Commission, either three or four in number, with whom she shared the conversation by switching to speakerphone, upon recognizing the serious and substantial nature of what I was saying – aided as it was by the substantiating proof posted on the Center for Judicial Accountability's website, www.judgewatch.org, that I guided her to at the outset of the conversation.¹

It would appear that the Legislative Bill Drafting Commission has become the conduit for unconstitutionality and fraud by the Governor, in collusion with Senate and Assembly leadership, with respect to the budget. The facts, as I explained to Nicole, with the help of CJA's aforesaid webpage, are as follows:

The Governor's executive budget for fiscal year 2019-20, as reflected by the Division of the Budget's webpage <https://www.budget.ny.gov/pubs/archive/fy20/exec/fy20bills.html> (Exhibit A), was comprised of three categories of "Executive Budget Legislation":

- (1) "Appropriations Bills";
- (2) "Article VII Bills" and
- (3) "Freestanding Article VII Bills".

¹ The webpage for the Legislative Bill Drafting Commission that I had created to facilitate the conversation is accessible from the menu page for the "2019 Legislative Session" by the prominent center link on CJA's homepage entitled: "Comparing NY's Legislature BEFORE & AFTER its Fraudulent Pay Raise". It is now more conveniently accessible from the webpage I have created for this letter, listed on that menu page. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/leg-commissions/9-23-19-ltr-to%20leg-bill-drafting-commission.htm>.

Common to the “Appropriations Bills” – of which there were five – is that the Governor publicly released them in already-introduced bill form. All five were “uni” bills, with Senate and Assembly bill numbers:

- State Operations (S.1500/A.2000)
- Legislature and Judiciary (S.1501/A.2001)
- State Dept Service (S.1502/A.2002)
- Aid to Localities (S.1503/A.2003)
- Capital Projects (S.1504/A.2004).

Each was dated January 15, 2019 and contained the identical preface:

“IN SENATE – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read once and referred to the Committee on Ways and Means”.

By contrast, the Governor’s five so-called “Article VII Bills” –

- Education, Labor and Family Assistance (LBD12572-01-9)
- Health and Mental Hygiene (LBD12571-01-9)
- Public Protection and General Government (LBD12570-01-9)
- Transportation, Ec. Development and Envir. Conservation (LBD12573-01-9)
- Revenue (LBD12574-01-9)

and the Governor’s five so-called “Freestanding Article VII Bills” –

- Good Government Ethics Reform (LBD12575-01-9)
- No Excuse Absentee Ballot Constitutional Amendment Bill (LBD89087-01-9)
- Equal Rights Amendment Concurrent Resolution (LBD89086-01-9)
- Same Day Voter Registration Concurrent Resolution (LBD89088-01-9)
- Oppose Federal Mandate on License Revocation (LBD90444-01-9)

were not publicly released as already-introduced bills. Rather, they were publicly released as proposed bills/resolutions to be introduced by Senate and Assembly members – each by a Legislative Bill Drafting Commission form, tailored for that purpose. None of these forms purported that the proposed bills/resolutions were “submitted by the Governor pursuant to article seven of the Constitution” – and, clearly, had the Governor believed them to be “pursuant to article seven of the Constitution”, he would have directly introduced them to the Legislature in the same fashion as his

five “Appropriations Bills” – and without the further accompaniment of ten “Memoranda in Support” to justify them.

Presumably the Legislative Bill Drafting Commission also took the view that these ten so-called “Article VII Bills”, with their “Memoranda in Support”, were not, in fact, “pursuant to article seven of the Constitution” because its tailored forms required a pair of Senate and Assembly members to be introducers of each, to so-signify by their signatures, and to circle the printed names of other Senate and Assembly members wishing to be sponsors or multi-sponsors with them. Illustrative is the form for the freestanding “Good Government Ethics Reform Bill”, bearing the Legislative Bill Drafting (LBD) number 12575-01-9 at the top of its first page, repeated at the bottom of every subsequent page (Exhibit B).

Nevertheless, the Legislature – presumably at the direction of the Temporary Senate President and Assembly Speaker, or persons of authority acting on their behalf – disregarded the Legislative Bill Drafting Commission forms for six of the Governor’s proposed bills² and printed the bills as if they were what they did not purport to be, “pursuant to article seven of the Constitution”, using formatting identical to the Governor’s five “Appropriations Bills”, excepting that they were dated three days later: January 18, 2019. Thus, all six were presented as “uni” bills, with Senate and Assembly numbers, S.1505/A.2005 – S.1510/A.2010, continuing the sequence of the “Appropriations Bills” and bearing their same prefatory language:

“IN SENATE – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read once and referred to the Committee on Ways and Means”.

As illustrative, the “Good Government Ethics Bill” now became S.1510/A2010 – with a first page still retaining the LBD number 12575-01-9, though now moved to the bottom of the page (Exhibit C).

² The Governor’s remaining four, consisting of a proposed bill and three proposed resolutions, were introduced by Senate and Assembly members, consistent with the Legislative Bill Drafting Commission’s forms, and became:

- Senate Bill S.871; S.1049 (Jan. 9/10, 2019), Assembly Bill A.778 (Jan. 10, 2019);
- Senate Resolution S.1048 (Jan. 10, 2019), Assembly Resolution A.777 (Jan. 10, 2019);
- Senate Resolution S.3249 (Feb. 5, 2019), Assembly Resolution A.271 (Jan. 9, 2019);
- Senate Resolution B.930 (March 28, 2019), Assembly Resolution C.240 (March 29, 2019).

I pointed out to Nicole that Assembly Rule II, §2 begins:

“Every bill to be introduced in the House shall be in a draft form prescribed by the Legislative Bill Drafting Commission and accompanied by the introducer's memorandum.”,

and then continues with further procedural steps governing introduction:

“Such bill draft shall be presented by the introducer to the Index Clerk and delivered by the Index Clerk to the Office of Assembly Revision for the purposes set forth in subdivision a of section eight of this Rule” –

these purposes being to:

“examine and correct all bills, for the purpose of avoiding repetitions, insuring accuracy in the text and references, and consistency with the language of the existing statutes. Any recommendation of the Office of Assembly Revision which requires further amendment of the bill shall be handled by the member introducing it or by the Majority or Minority Leader as a regular amendment of the bill.”

I reviewed with her that both Senate and Assembly Rules identify that the Governor's authority to introduce bills is limited to Article VII of the New York State Constitution – and that absent that the Governor needs a Senate and Assembly sponsor.³

³ Senate Rule VI, §§1, 6, 7; Assembly Rule III, §§2(d)(e)(g) – and, more importantly, *Silver v. Pataki/Pataki v. Assembly & Senate*, 4 NY3d 75 (2004), at 83 (plurality-majority opinion, by Judge Robert Smith):

“Article VII now govern the budget process. Several of these provisions vest certain legislative powers in the Governor, creating a limited exception to the rule stated in article III, §1 of the Constitution: ‘The legislative power of this state shall be vested in the senate and assembly.’ Thus, the classic ‘separation of powers’ between the executive and legislative branches is modified to some degree by our Constitution...” (underlining added);

at 117-118 (dissenting opinion, by Chief Judge Judith Kaye):

“In 1927, after the dangers of legislative budgeting had been identified and debated, the Governor was for the first time given the power to propose legislation directly-but only in appropriation bills. To be sure, the Governor could recommend other legislation in his executive budget, but the power to actually introduce bills obliging action into both houses of the Legislature – a power he has in no other context than the budget – was limited to appropriation bills. Only in 1938 was the predecessor to section 3 amended to give the Governor the additional authority to introduce other ‘proposed legislation’ recommended in his executive budget. This amendment was adopted primarily to make the Governor responsible for submitting tax legislation, rather than merely recommending it. ‘Believing

Nicole's response to what I explained and showed her was to tell me that I should take it up with the Governor – as if the Legislative Bill Drafting Commission had no responsibility to investigate and clarify how six proposed bills that the Governor and his Division of the Budget had not deemed pursuant to Article VII and which the Legislative Bill Drafting Commission had not deemed pursuant to Article VII – and which, therefore, could not be constitutionally introduced without Senate and Assembly sponsors – were nevertheless so-introduced, based on the fraud that each bill had been “submitted by the Governor pursuant to article seven of the Constitution”, when none of them were.

I asked Nicole to pass on my request to speak with each of you about the odyssey of bills S.1505/A.2005 – S.1510/A.2010 – or, alternatively, that you have counsel at the Senate or Assembly or in the Governor's office call me with an explanation as to what occurred with respect to each of these bills.⁴ I left my phone number for that purpose, but have received no return calls.

Therefore, by copy of this letter to the Records Access Officers of the Senate, Assembly, Governor – and of the Legislative Bill Drafting Commission, Rosemarie Perez, whose e-mail I obtained from Nicole – I request the following with respect to the foregoing – and with respect to the Legislative Bill Drafting Commission and its budget:

- (1) all records pertaining to the definition of “Appropriations Bill”; “Article VII Bill”; and “Free-Standing Article VII Bill”;
- (2) all records pertaining to the determination(s) made:
 - (i) by the Division of the Budget, on behalf of the Governor, that each of the six bills that became S.1505/A.2005 – S.1510/A.2010 could not be directly submitted by the Governor to the Legislature “pursuant to article seven of the Constitution”;
 - (ii) by the Legislative Bill Drafting Commission that each of the six bills that became S.1505/A.2005 – S.1510/A.2010 could not be directly

that the revenue side of the budget is of equal importance with the expenditure side, the committee feels that any bills to carry into effect legislation affecting the revenues of the State which the Governor may propose should have the same dignity and importance as his appropriation bills, and all should be submitted directly by the Governor and treated as budget bills’ (Report of Comm. on State Finances and Revenues of New York State Constitutional Convention, State of New York Constitutional Convention 1938 Doc No. 3, at 3 [July 8, 1938]). (underlining added).

⁴ Pursuant to Assembly Rule III, §2(g): “Bills submitted by the Governor, other than those submitted pursuant to Article VII of the Constitution, shall carry the designation ‘Introduced at the request of the Governor.’” None of the ten Legislative Bill Drafting Commission forms requiring Senate and Assembly introducers for the Governor's bills contained that required designation.

submitted by the Governor to the Legislature “pursuant to article seven of the Constitution”;

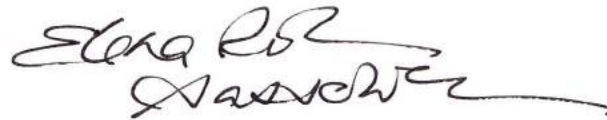
- (iii) by the Senate and Assembly that each of the six bills that became S.1505/A.2005 – S.1510/A.2010 could be directly submitted by the Governor to the Legislature “pursuant to article seven of the Constitution”;
- (3) records establishing the Legislative Bill Drafting Commission’s role with respect to each “amended” budget bill, including the “amended” “Appropriations Bills”, as well as the original “Appropriations Bills”⁵;
- (4) the joint certificates of the Temporary Senate President and Assembly Speaker, appointing you as the two commissioners of the Legislative Bill Drafting Commission – and any record reflecting an oath of office to which you were required to swear;
- (5) records establishing that the \$13,941,116 in appropriations for the Legislative Bill Drafting Commission sought by the Legislature’s December 1, 2018 proposed budget for this 2019-2020 fiscal year (Exhibit D) were based on itemized estimates of the Commission’s financial needs, certified or signed by you as its commissioners;
- (6) records identifying the cumulative dollar total in reappropriations for the Legislative Bill Drafting Commission sought for fiscal year 2019-2020 by pages 45-47 of the Governor’s combined Legislative/Judiciary Budget Bill #S.1501/A.2001 (Exhibit E) – and substantiating the untallied subtotals, including certification thereof;
- (7) records identifying the cumulative dollar total in reappropriations for the Legislative Bill Drafting Commission sought for fiscal year 2019-2020 by pages 44-46 of the “three-men-in-a-room” “amended” combined Legislative/Judiciary Budget Bill #S.1501a/A.2001a – and reflecting the basis for the changes in the untallied subtotals (Exhibit F), including certification thereof;
- (8) records reflecting who is responsible for the changes in the untallied subtotals of Legislative/Judiciary Budget Bill #S.1501a/A.2001a pertaining to the Legislative Bill Drafting Commission’s reappropriations at pages 44-46 (Exhibit F)– and why they are not highlighted consistent with the first page “EXPLANATION – Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.”;

⁵ All “amended” budget bills contain successive LBD numbers, keyed to LBD numbers on the original bills. This includes the “amended” “Appropriations Bills” – whose sequencing reflects LBD numbers not on the originals of those bills (Gov’t Operations: LBD12550; Legislative/Judiciary: LBD12551; Aid to Localities: LBD12553; Capital Projects: LBD 12554). The never-“amended” Debt Service “Appropriations Bill” is seemingly LBD 12552.

- (9) records establishing that you certified that the monies sought to be reappropriated for the Legislative Bill Drafting Commission were consistent with the definition of funds suitable for reappropriation, such as in the Citizen's Guide on the Division of Budget Website, <https://www.budget.ny.gov/citizen/financial/glossary-all.html#r>, to wit, "in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years";
- (10) the Legislative Bill Drafting Commission's bi-annual "expenditure reports", beginning with the most recent and spanning back to either October 15, 2009, the date the Senate began posting its "expenditure reports", containing none for the Commission, or February 28, 2013, the date the Assembly began posting its "expenditure reports", containing none for the Commission.

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.



cc: FOIL/Records Access Officers

Executive Chamber Records Access Officer Valerie Lubanko
Secretary of the Senate Alejandra Paulino
Assembly Records Access Officer Robin Marilla
Legislative Bill Drafting Commission Records Access Officer Rosemarie Perez

Enclosures (6)

- Ex. A: print-out Div. of Budget webpage for "Executive Budget Legislation" – FY2020
<https://www.budget.ny.gov/pubs/archive/fy20/exec/fy20bills.html>
- Ex. B: Good Gov't Ethics Bill: LBD 12575-01-9 (Jan. 15, 2019) – pp. 1-2
- Ex. C: Good Gov't Ethics Bill: S.1510/A.2010 (Jan. 18, 2019) – pp. 1-2
- Ex. D: Appropriations for LBDC: Legislative Budget (Dec. 1, 2018) – p. 13
- Ex. E: Reappropriations for LBDC: Legislative/Judiciary: S.1501/A.2001 – pp. 45-47
- Ex. F: Reappropriations for LBDC: Legislative/Judiciary: S.1501a/A.2001a – pp. 44-46