

Center for Judicial Accountability, Inc. (CJA)

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Subject: Part 2: Info to Assist You in Your History-Making Presentations on the Senate & Assembly Floor. But Will They Be Today or Tomorrow?

Dear Senator Latimer & Assembly Members Buchwald and Katz,

It would appear that the Senate & Assembly are not coming back into session to vote on the budget this afternoon – as was originally reported – but, rather tomorrow afternoon. Is this correct?

Meantime, here's my draft of "Question #2":

QUESTION #2: Is the Judiciary Budget – and Appropriations Bill S2601/A3001 – Sufficiently Itemized to Permit Intelligent Review and Oversight by the Legislature?

The answer is no. And the most dramatic evidence is the unidentified, unitemized funding of the second phase of the judicial salary increase recommended by the Commission on Judicial Compensation's August 29, 2011 Report. S2601/A3001 includes this funding, but does not identify such fact anywhere or provide any line item as to the dollar amount of the second phase of the judicial salary increase being funding. It, thereby, conceals the Legislature's power to strike the increase, pursuant to Chapter 567 of the Laws of 2010 (§1h) – the statute that created the Commission and defined the prerequisites for such salary recommendation as it might make.

Pursuant to Chapter 567 of the Laws of 2010 (§1a), the Commission was directed to "examine, evaluate and make recommendations with respect to...compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system". Compensation is more than salary. It includes such things as "pension contributions, Social Security, health, dental vision and life insurance"—the items the Judiciary's budget refers to as "fringe benefits" and classifies as "General State Charges". However, the Judiciary "General State Charges" budget does not separate out the "fringe benefits" of judges and justices from the "fringe benefits" of its non-judicial personnel. They are combined together rather than separately itemized. Similarly, S2601/A3001 provides no separate figures (at pp. 21-22).

Likewise, with respect to the salaries of judges and justices. The Judiciary's "Operating" budget combines them with the salaries of non-judicial personnel, rather than separately itemizing them. So, too S2601/A3001 (at pp. 10-19).

That this is improper may be seen from comparison with the Legislature's requested budget – contained in the same bill S2601/A3001, which separately itemizes the salaries of legislators from staff (at pp. 2-3).

Such comparison additionally reveals that whereas the Legislature identifies the number of Senators and Assembly members (at pp. 2-3), no such itemization is given by the Judiciary as to the number of judges, either cumulatively or by type of court (at pp. 10-19).

Thus, to sum up, the respects in which the Judiciary's budget and S2601/A3001 are insufficient include:

- their failure to identify and/or itemize the dollar cost of the judicial salary increase;
- their failure to identify and/or itemize the dollar cost of judicial salaries, which are combined with salaries of nonjudicial personnel;
- their failure to identify and/or itemize the dollar cost of 'judicial compensation and non-salary benefits', excluding salary – these being 'fringe benefits' – combining them with the 'fringe benefits' of nonjudicial personnel
- their failure to identify and/or itemize the number of judges and non-judges on the Judiciary payroll

Two years ago, at the February 9, 2011 hearing on "public protection", Senate Finance Committee Chairman DeFrancisco objected that it was impossible from the Judiciary's budget to figure out and assess the actual cost of the Judicial Institute at Pace Law School. The same is true today – and the Judicial Institute is not even identified in S2601/A3001, let alone with a line item. Likewise, as to any number of offices, programs, commissions, and other entities within the Judiciary.