



CITIZENS BUDGET COMMISSION

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Statement of Jo Brill before the
Senate Democratic Task Force on Legislative and Budgetary Reform
Wednesday, December 8, 2004

Good afternoon. My name is Jo Brill, and I am Director of State Studies at the Citizens Budget Commission. The Commission is a private, nonprofit civic organization dedicated to promoting better financial management and service delivery by New York City and State government.

Thank you for allowing me to present testimony today on the types of reform needed in Albany, and particularly those reforms that will help fix New York State's fiscal practices.

Since the development of the CBC's Palisades Principles a year ago, many new ideas have been proposed to deal with Albany's storied dysfunction. The proposals range from simple rules changes and executive actions to constitutional amendments that must be passed by two successive legislatures as well as the voters of New York. The Citizens Budget Commission believes that fixing New York State's fiscal practices requires reforms across this spectrum, and that the choice should be not on selecting certain kinds of reforms and rejecting others, but on deciding what to do when.

I. The Legislature should act on the Brennan Center Proposals at the commencement of the 2005-06 session.

The Brennan Center's report, *Blueprint for Reform*, addresses two of the problems identified in *The Palisades Principles*. First, the recommendations seek to temper the State Legislature's "strong leader" system,¹ since this system is one of the unresponsive State governmental institutions that hamper improvements in fiscal policies. Second, the recommendations would increase the transparency of the budget process,² and make the legislators more accountable for the budget they enact. In addition, the recommendations strengthen the legislative committee process,³ the tenth Palisades Principle.

The Brennan Center's recommendations directly affect budget bills. Fiscal staffs will be more independent of leadership, and their expertise will be fully engaged in preparing their respective committee reports. Mandatory conference committees will increase transparency and accountability

¹ Examples: No messages of necessity, bills put to vote upon demand, restrictions eased on motions to discharge, unlimited debate and equal funding for all members.

² Examples: No proxy voting, must be present to vote; public hearings on bills upon petition; agency oversight hearings upon petition.

³ Examples: Bi-weekly committee meetings with mandatory attendance; committee reports required for all bills, and all bills must be considered in committee; independent staff for each committee; mandatory joint conference committees.

by providing a forum for informed negotiation in areas of disagreement. A bar on messages of necessity assures legislators and the public a modicum of time to analyze the budget.

The recommendations in the *Blueprint for Reform* are notable because they need not be legislated. They can be implemented with changes to the respective rules of Assembly and the Senate.

The Brennan Center received a great deal of supportive press in July at the time they released their report, which was endorsed by the CBC and others. In early September, the CBC worked together with the Brennan Center to mail each candidate for legislative office a package containing *The Palisades Principles* and *Blueprint for Reform*.

On September 28, Assemblyman Scott Stringer (D-Manhattan) released a draft resolution outlining specific changes to Assembly rules that embody nearly all the Brennan Center recommendations. So far, “[t]wenty-nine Democratic Assemblymembers and 47 members of the Republican minority in the Assembly have signed onto the resolutions” sponsored by Assemblymember Stringer.⁴

State Senate Majority Leader Joseph Bruno created a Senate Majority Task Force on Government Reform on September 30, naming all of his Republican Senate colleagues to it. Bruno said he was reacting to “an overwhelming call from every member of the Senate majority conference.”⁵ The Task Force released a preliminary report on November 18, which, the Commission was pleased to see, included a strong case for the potential of joint conference committees. The possibility of reforming other rules is mentioned but few specifics are offered. Some important potential reforms – a notable example is restricting the use of messages of necessity – are not mentioned at all.

Rules reform should be first on the Legislature’s list. The time for this is now.

II. The Legislature should then renew its attention to fiscal reforms.

Once reformed, the new rules will enable the Legislature to make progress on other, more substantive reforms. The Citizens Budget Commission believes that the first two items on the list should be 1) a fresh look at budget process reform and 2) reforming the way the State incurs debt, especially through its public authorities. These reforms will take time, since they likely involve amending the constitution. It is important to get started.

1. The Legislature should go back to the drawing board on budget reform. The Governor was right to veto the statute passed last June; the Legislature should not override the veto.

In May a Joint Conference Committee on Budget Reform released a proposed constitutional amendment⁶ and a set of statutory changes,⁷ which passed in May and June respectively. The

⁴ “Brennan Center Renews Call for Uncommitted Assembly Democrats to Support Albany Reform,” Brennan Center for Justice Press Release, December 1, 2004, <http://www.brennancenter.org/presscenter/releases_2004/pressrelease_2004_1201.html>.

⁵ “Bruno Creates Government Reform Task Force,” Senate Majority Press release, September 30, 2004, <<http://www.senate.state.ny.us/pressreleases.nsf/a9c64cb05dda7e7e85256aff006d42c0/617b2493c0126dc285256f1f006ac6d4?OpenDocument>>.

⁶ S.7317/A.11231.

Citizens Budget Commission opposes the budget reform package and supported the Governor's veto⁸ of the statute last month.

Some Albany veterans believe that reform is so difficult and so rare that unless this effort is encouraged and supported, there will be no reform at all. But this package would make what is already a broken system worse and unnecessarily delay needed improvements. The Joint Conference Committee should reconvene and begin anew their work on budget process reform.

Potential changes in the balance of powers

Although the Legislature maintains that the reforms they passed last summer are not intended to change the legislative-executive balance of power in the budget process, they do in fact change it. Advocates of reform disagree about the extent and import of the change. Most agree that recent court decisions have eroded to an unacceptable degree the Legislature's power to change the Executive Budget, and that some adjustment is necessary⁹. Such an adjustment could be made directly by clarifying what is meant in the Constitution by "item of appropriation," whether and how statutory changes and appropriations can be mingled in the same bill, and how the Legislature can change such items subject to the Governor's veto. The proposed amendment instead declares that the contingency budget constitutes an act of the Legislature and "final action" upon all the appropriation bills submitted by the Governor. The consequence may be that the Legislature need not ever seriously consider the Executive Budget, and that they can wait for the contingency period to begin and then pass their own budget, thus profoundly changing a process that has been in place since the days of Alfred E. Smith.

Reasons to oppose the reform package

There are problems with the reforms as proposed. One troubling aspect is the timing of effective dates. The positive statutory changes should become effective upon being signed into law, rather than delayed until passage of the constitutional amendment, that is, until November 2005 at the earliest.

Also troubling are the desirable reforms omitted from the Legislature's package. These include:

- There is no proposal that the adopted budget be balanced in any meaningful way. New York's constitution should be amended to require that the budget be balanced in accord with Generally Accepted Accounting Principles.¹⁰
- The proposal to start the fiscal year on May 1 is a potentially problematic strategy for giving the Legislature more time to deliberate. Unless other significant changes are made, moving the fiscal year will not eliminate lateness. In addition, a change to May 1 would create cash flow problems, which could force additional borrowing costs on State taxpayers. The

⁷ S.7615/A.11702.

⁸ Veto memo 266.

⁹ Two cases still under litigation (*Silver v. Pataki* and *Pataki v. Assembly*) were heard by the Court of Appeals on November 16; decisions are expected early in 2005. For an explanation of what is at stake, see "The New York State Budget Process and the Constitution: Defining and Protecting the 'Delicate Balance' of Power," Committee on State Affairs, Association of the Bar of the State of New York, <<http://www.abcny.org/pdf/report/Budget%20Report%209-11.pdf>>.

¹⁰ Palisades Principle #9.

Governor's proposal to require budget adoption by May 1 but start the fiscal year on July 1, also supported by the State Comptroller, would avoid this problem.

- Prior to the contingency period, when one would hope that serious negotiations are underway, there is no binding revenue forecast.
- Other missing reforms achievable by law include: requiring performance assessment of State expenditures;¹¹ preparing a version of the budget in clear language understandable by the lay citizenry;¹² utilizing consensus revenue estimates;¹³ and strengthening the legislative committee process.¹⁴
- There is no change that will constrain the State's enormous appetite for debt. The constitution should be amended to limit State debt based on realistic measures of affordability.

In addition to these serious omissions, the legislative package has other negative or unintended consequences:

- *Contingency Budget.* Currently, when a budget is not adopted by the start of the fiscal year, the Governor asks the Legislature to pass "emergency" legislation that appropriates funds temporarily at specified levels in order to keep government agencies functioning and pay debt service. The proposed amendment instead deems enacted a "contingency budget" that would authorize debt service payments and keep many government agencies operating at essential levels. This provision will virtually assure that the budget will not be adopted until after the start of the fiscal year, since it removes the requirement that the Legislature act on the Executive Budget. It may ultimately make the Executive Budget nearly irrelevant.
- *Rainy Day Fund.* The State's rainy day fund, known as the Tax Stabilization Reserve Fund, is now limited in size by the Constitution to 2 percent of the previous year's General Fund spending. This has proved inadequate to help the State weather economic downturns. The Committee's amendment would increase this to 3 percent. While this is a step forward, it is still inadequate. The limit should be increased to 5 percent or more.¹⁵
- *New Reserve Fund.* The constitutional amendment creates a reserve fund to deal with a cash flow problem created by the shift in the start of the fiscal year from April 1 to May 1. However, the proposed fund is inadequate for the task. This problem can be solved through a larger reserve fund or, alternatively, and preferably, the change in the fiscal year could be modified. The new fiscal year should start on July 1, but adoption of a budget should be required by May 1. The latter change would provide the same deadline for adoption as the Committee's proposals, but would not create the cash flow difficulties inherent in a May 1 start of the fiscal year.

Again, these complex reforms should be taken up again by the Senate and the Assembly with the active participation of the Governor to design a balanced process that will produce sound budgets in a reasonable time frame.

¹¹ Palisades Principle #6.

¹² Palisades Principle #7. The Governor could act unilaterally to actualize this reform.

¹³ Palisades Principle #8.

¹⁴ Palisades Principle #10. Alternatively, the Senate and Assembly could strengthen the legislative committee process by reforming their individual and joint rules.

¹⁵ Palisades Principle #5.

2. The Governor and the Legislature should work together on comprehensive reform of the State's public authorities, especially with respect to debt.

The enthusiasm for reform has extended to public authorities, identified at the CBC's 2003 conference as the number one target for reform in New York State. Authorities are perceived as a problem, fiscal and otherwise, because (a) they are not directly accountable politically, (b) their finances are often not transparent, (c) their procurement practices sometimes invite corruption, and (d) they have become a vehicle for "back door" borrowing that circumvents provisions of the State Constitution requiring voter approval for State debt.

In February 2004 State Comptroller Alan Hevesi proposed legislation to improve the accountability and operations of public authorities. A report released by the Office of the State Comptroller (OSC)¹⁶ contained these proposals:

- Classify and define New York State's public authorities.
- Strengthen the corporate governance of the public authorities.
- Improve contract procurement practices.
- Expand the definition of what constitutes lobbying and require more disclosure in this area.
- Create a Commission on Public Authority Reform to make recommendations on operational changes and possible authority consolidations.

In April, OSC followed up with an estimate of overall public authority debt (over \$110 million, of which nearly \$35 million is State-supported) and the announcement of a coalition supportive of the reforms as proposed. The CBC joined this coalition.

Also in February, the Governor named Ira Millstein (a CBC Trustee) as Chair of the newly established Public Authority Governance Advisory Committee. This committee published governance principles for public authorities based on best practices in the private sector and also reflecting the requirements of the 2002 Sarbanes-Oxley legislation. The work of the committee is ongoing; currently it is working with various authorities to address impediments to adoption of the principles.

Assemblyman Brodsky, who chairs the Assembly's Committee on Corporations, Authorities and Commissions, has helped focus public attention on the need for authority reform. Brodsky included a call for an amendment dealing with public authorities¹⁷ in his recently released package of constitutional reforms. This amendment would eliminate the power of the state to establish authorities (although localities would still be able to do so) and dissolve all public authorities within a year of its adoption. In his memorandum of support for the bill, Brodsky notes the CBC's call for greater financial accountability for public authorities. He says, however, that "even with constitutional and statutory changes, public authorities find ways around law" so that the only solution is to get rid of them entirely.

¹⁶ State of New York, Office of the State Comptroller, *Public Authority Reform: Reining in New York's Secret Government*, February 2004, <<http://www.osc.state.ny.us/press/releases/feb04/publicauthorityreform.pdf>>.

¹⁷ A.11848.

This sweeping proposal may well go too far. Public authorities have been an important vehicle for financing and building most of New York's major capital assets – roads, bridges, housing and higher education.

There is authority reform activity in the Senate also. Senator Leibell, who chairs the Senate's Committee on Corporations, Authorities and Commissions, is today conducting a public hearing in New York City on "Reforming New York's Public Authorities: Providing Improved Transparency, Accountability, Efficiency and Oversight to Meet the Challenges of the 21st Century." It is not clear whether the Committee expects to consider the problem of public authority debt; it should certainly do so.

The Citizens Budget Commission expects to be able to make more specific recommendations for reforming public authorities within the next six months.

Meanwhile, some legislators have pointed out that "dysfunction" is not just the Legislature's problem. There are important advances in fiscal practices that can be made by the Governor alone.

3. The Governor should act unilaterally to halt "off-budget" accounting and to increase transparency.

As the Comptroller recommends in his *2004-05 Budget Analysis*,¹⁸ the Governor should act immediately to:

- Include complete three-year financial projections and updated cash flows for the current fiscal year in each quarterly update of the State's Financial Plan.
- Include off-budget spending on State programs (administered through public authorities, the Health Care Reform Act, etc.) in next year's Executive Budget.

The Governor should also present a so-called "current services budget" to facilitate comparison of proposed appropriations with the costs of continuing state programs and expenditures at the current level. He should also prepare a version of the budget in clear language understandable by the lay citizenry.

These reforms can and should begin with the submission of the 2005-06 Executive Budget.

¹⁸ State of New York, Office of the State Comptroller, *2004-05 Budget Analysis: Review of the Enacted Budget*, September 2004, <<http://www.osc.state.ny.us/reports/budget/enactedbudget04.pdf>>.