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## Governor's Budget Bill

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## GOVERNOR'S BUDGET BILL

*N.Y. CONST. art. VII, § 3:*

*At the time of submitting the budget to the legislature the government shall submit a bill or bills containing all the proposed reappropriations included in the budget and the proposed legislation, if any, recommended therein.*

*The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or submit supplement bills.*

### SUPREME COURT, APPELLATE DIVISION

#### THIRD DEPARTMENT

Winner v. Cuomo<sup>705</sup>  
(decided February 13, 1992)

The plaintiffs, consisting of three members of the New York State Assembly, brought an action seeking declaration that the defendant, Governor of the State of New York, violated article VII, section 3<sup>706</sup> of the New York State Constitution and section 24 of the State Finance Law<sup>707</sup> by filing his budget bills thirty

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705. 176 A.D.2d 60, 580 N.Y.S.2d 103 (3d Dep't), *appeal discontinued and withdrawn*, 79 N.Y.2d 1045, 596 N.E.2d 410, 584 N.Y.S.2d 1012 (1992).

706. N.Y. CONST. art. VII, § 3. Section 3 provides:

At the time of submitting the budget to the Legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.

The governor may at any time within thirty days thereafter . . . amend or supplement the budget and submit amendments to any bills submitted by him or submit supplemental bills.

*Id.*

707. N.Y. STATE FIN. LAW § 24 (McKinney 1992). Section 24 provides:

days after he submitted his Executive Budget spending plan.<sup>708</sup> The Governor asserted that the constitution permitted him to submit his budget bills thirty days after the budget.<sup>709</sup> The court rejected the Governor's contention and held that he had "a legal duty to submit his budget bills at the time he submits his Executive Budget and that the Legislature is legally entitled to receive such budget bills at that time for its review."<sup>710</sup>

The New York State Constitution sets an annual February 1st deadline for the governor to submit his Executive Budget to the legislature.<sup>711</sup> On January 31, 1991, the Governor submitted his budget along with five budget bills containing appropriations and reappropriations.<sup>712</sup> Thirty days later he submitted an additional 119 bills implementing legislation that he had proposed in his budget.<sup>713</sup> In March 1991, the governor submitted 30-day amendments which specifically referred to the budget bills previously submitted.<sup>714</sup> The Governor argued that he had an additional thirty days after the February 1 deadline to submit these bills.<sup>715</sup> Although the fiscal year deadline for passing budget bills was April 1, the legislature did not act on the 1991-1992 budget until June 1991.<sup>716</sup>

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The budget submitted annually by the governor shall be accompanied by a bill or bills for all proposed appropriations and reappropriations and for the proposed measures of taxation or other legislation, if any recommended therein. Such bills shall be submitted by the governor and shall be known as budget bills.

*Id.*

708. *Winner*, 176 A.D.2d at 62, 580 N.Y.S.2d at 104.

709. *Id.*

710. *Id.* at 66, 580 N.Y.S.2d at 106.

711. *Id.* at 64-65, 580 N.Y.S.2d at 106; *see also* N.Y. CONST. art. VII, § 3.

712. *Winner*, 176 A.D.2d at 62, 580 N.Y.S.2d at 104.

713. *Id.* The court noted that since 1984, Governor Cuomo has "consistently . . . submitted additional bills . . . implementing tax measures and other legislation recommended and proposed in his Executive Budget within 30 days of submitting the Executive Budget." *Id.*

714. *Id.*

715. *Id.*

716. *Id.*

Initially, the third department found that the passing of the budget bills did not render the plaintiffs' action moot since they sought a declaratory judgment which could be enforced prospectively; thus, the "rights of the parties [would] be affected by the decision on this appeal."<sup>717</sup> The court then concluded that the plaintiffs had standing to bring this suit.<sup>718</sup> According to the court, the plaintiff suffered injury by having the Governor's late filings reduce their time to review the budget bills.<sup>719</sup> This reduction in time "impinges upon the Legislature's opportunity to timely review his proposals" and to raises questions relating to the budget.<sup>720</sup>

In reaching the merits of the case, the court, citing to *Saxton v. Carey*,<sup>721</sup> pointed out that it had jurisdiction with respect to the budget in order to determine if the Governor was in compliance with the constitutional requirements.<sup>722</sup> In *Saxton*, the New York Court of Appeals stated that the courts will always be able to "resolve disputes concerning the scope of that authority which is granted by the Constitution to the other two branches of government."<sup>723</sup> The court in *Winner* noted that the language of the constitution and the statute were "clear and unambiguous" in re-

717. *Id.* at 62-63, 580 N.Y.S.2d at 104. The court further stated that even if the state legislature's action was rendered moot upon submission of the budget bills, the case fell within the exception to the mootness doctrine because the case was of an "ongoing public interest" and there was a strong "likelihood of repetition." *Id.* at 63, 580 N.Y.S.2d at 105 (citing *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 714-15, 409 N.E.2d 876, 431 N.Y.S.2d 400, 402 (1980); *In re Village of Hudson Falls v. New York State Dep't of Envtl. Conservation*, 158 A.D.2d 24, 28, 557 N.Y.S.2d 702, 704 (3d Dep't), *aff'd*, 77 N.Y.2d 983, 575 N.E.2d 394, 571 N.Y.S.2d 908 (1990)).

718. *Winner*, 176 A.D.2d at 63, 580 N.Y.S.2d at 105.

719. *Id.* at 63-64, 580 N.Y.S.2d at 105.

720. *Id.* at 63, 580 N.Y.S.2d at 105; see N.Y. CONST. art. VII, § 3; N.Y. STATE FIN. LAW § 24 (McKinney 1992).

721. 44 N.Y.2d 545, 378 N.E.2d 95, 406 N.Y.S.2d 732 (1978).

722. *Winner*, 176 A.D.2d at 64, 580 N.Y.S.2d at 105.

723. *Saxton*, 44 N.Y.2d at 551, 378 N.E.2d at 97, 406 N.Y.S.2d at 735; see also *People v. Ohrenstein*, 153 A.D.2d 342, 549 N.Y.S.2d 962 (1st Dep't 1989), *aff'd*, 77 N.Y.2d 38, 565 N.E.2d 493, 563 N.Y.S.2d 744 (1990); *Levitt v. Rockefeller*, 69 Misc. 2d 337, 329 N.Y.S.2d 976 (Sup. Ct. Albany County 1972).

quiring the Governor to file the implementing legislation at the same time he files his budget.<sup>724</sup> The court further noted that “any bills to carry into effect legislation affecting the revenues of the State . . . should be submitted directly by [defendant] and treated as budget bills.”<sup>725</sup>

The court found that the 119 bills, each entitled “A BUDGET BILL,” did not amend or supplement previously submitted legislation” but, in fact, presented entirely new budget proposals to the legislation. The third department, therefore, concluded that such bills should have been submitted by February 1, 1991, along with the Executive Budget pursuant to article VII, section 3 of the New York State Constitution and section 24 of the State Finance Law.<sup>726</sup>

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724. *Winner*, 176 A.D.2d at 64-65, 580 N.Y.S.2d at 106; see N.Y. CONST. art. VII, § 3; N.Y. STATE FIN. LAW § 24 (McKinney 1992).

725. *Winner*, 176 A.D.2d at 65, 580 N.Y.S.2d at 106 (quoting Report of the Commission on State Finance & Revenues of the N.Y.S. Constitutional Convention, July 8, 1938, at 3).

726. *Id.* at 65, 580 N.Y.S.2d at 106.