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Editorial: Time for pay raises in Albany
Staff Writer

Although the outcry - some call it outrage - against giving pay raises to New York state legislators is usually loud and widespread, we say it's about time to raise their pay: You get what you pay for. Legislators make \$79,500 a year for what is called a part-time job. It is not.

If you run an organization that wants to hold an annual dinner, you probably expect your state senator or Assembly member to show up, chew on chicken and say a few words. You're not the only one. Sometimes, these "part-timers" come home for a weekend and may be obligated to attend half a dozen such dinners. Sometimes, even more. How's that for a weekend off? Assembly members have to run for office every two years, so, in reality, they work for a year and have to assiduously reapply immediately to keep their position.

Taxpayers, voters and the governor expect them to have absolutely no conflicts of interest between their "part-time job" and their real one. In fact, most don't have any other job, except for some being members of companies or law firms, often in name only, because there isn't time for both.

Working at this job for \$79,500 is difficult, even in the North Country. In metropolitan areas, it's a joke. Whom do you expect to seek such a job, when the political requirements and the expectations are so extreme?

If we want truly smart, sensitive, insightful people to represent us in the State Legislature, we have to pay them appropriately.

The amount of money they are currently paid would not attract the best people in our region - and certainly not in more affluent sections of our state.

One of the arguments against pay raises is that the legislature has failed to enact laws to stem the embarrassing cases of corruption that have plagued our state in recent years.

This is true, but why would anyone decide the way to correct that deficiency is to underpay the people assigned to do the job?

North Country senators and Assembly members have not argued for pay raises. Assemblyman Billy Jones (D-Chateaugay), in fact, has come out vigorously against them, reasoning he took the job knowing the pay rate.

He is taking a stand he knows his constituents want to hear. Our other legislators have mostly been quiet on the subject, well aware that, to many of the residents of their district, \$79,500 sounds like a lot of money.

The most dangerous consequence of denying a pay raise is the likelihood that, sooner or later, we will have representatives who simply aren't of the highest caliber.

Our most capable citizens can make so much more in their occupations that they may not even consider a run for political office, where every move they make is closely examined and they have little job security, besides giving up a whole lot of money.

Don't punish the electorate because, collectively, the legislature has not met all expectations. Instead, demand that office-holders pass laws we all want and need.

We must have top-flight legislators, and to get them we must make the office attractive.

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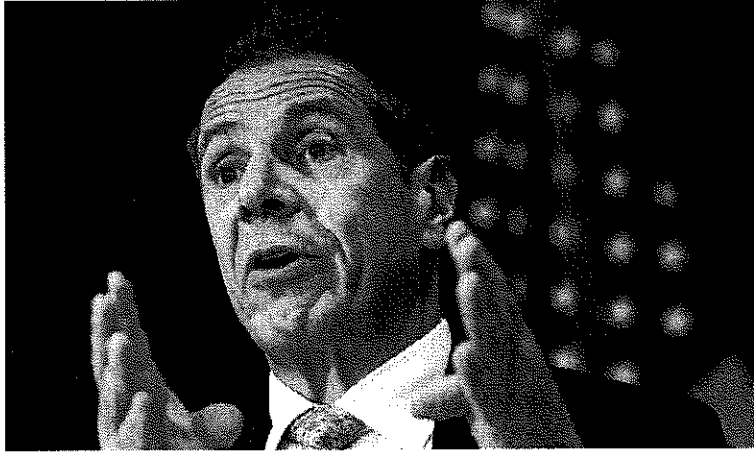
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NEWS / REGION / STATE

Constitutionality of Albany pay raise process questioned

A panel was created to recommend pay raises for legislators and state officials, which would avoid a vote by the State Legislature.



Gov. Andrew M. Cuomo speaks during a news conference to discuss Amazon's decision to bring a new corporate location to Long Island City, Queens, on Nov. 13. Photo Credit: Getty Images / Drew Angerer

By Michael Gormley

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A commission created to consider pay raises by Dec. 10 for some state officials under a process that avoids a politically dicey vote by the State Legislature may be unconstitutional, some legal experts say.

At issue is a constitutional provision that says the legislature must set compensation for legislators and state officials. Another question is whether the state constitution allows Gov. Andrew M. Cuomo and the legislature to give the power of lawmaking to a panel they created to raise the salaries of elected officials and top Cuomo administration commissioners.

"There are serious constitutional questions," said Albany Law School Professor Vincent Bonventre, who studies state constitutional issues. "All you have to do is look at the New York state constitution, which makes it pretty clear the compensation for legislators and other elected officials and executive officials is to be set by law, not by an agency whose rules and regulations may have the force of law. But it is to be set by law.

"The constitution makes it absolutely clear that all laws must go through the process of a bill, which is passed by both houses of the legislature and goes to the governor," Bonventre said. "I don't know how they came up with this."

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But Cuomo’s counsel, Alphonso David, said, “Although we appreciate the conjecture and debate, the executive fully vets constitutional, statutory, regulatory and legal issues for all pieces of legislation. This process was no different for this piece of legislation.”

The commission was created after public opposition to several past attempts to raise salaries since 1999.

State legislators are paid \$79,500 for the part-time jobs plus leadership stipends of \$9,000 to \$41,000 for many committees and conference posts, plus \$174 per day for food and lodging while working in Albany. They have the third-highest legislative salaries in the nation. Most salaries for statewide elected officials and top administration commissioners are among the highest in the nation, according to the National Conference of State Legislatures.

that the creation of the pay raise commission also didn’t require a separate vote. The measure begins by stating the commission’s job is to “examine, evaluate and make recommendations with respect to adequate levels of compensation.” The commission’s first meeting was a week after Election Day.

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But the legal experts say the commission may run afoul of the constitution by stating “each recommendation ... shall have the force of law.” The measure further states the recommendations may “supersede” other provisions of state law that conflict with its action.

“This provision is an artfully crafted subterfuge,” said Peter Galie, professor emeritus of political science at Canisius College and an expert in the state constitution. “The constitution

seems to say one thing ... but is undercut by this statute, which appears to provide formal compliance with the provision, while subverting it."

The constitution says compensation must be "fixed by law." In defining a law, the constitution states: "No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage ... nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature.

Newsday asked legislative leaders and Cuomo to explain the legal basis for the law they passed to create the commission, but they did not respond to the question. Comptroller Thomas DiNapoli, who is the appointed head of the commission, also declined comment and referred questions to the attorney general's office.

Attorney general spokeswoman Amy Spitalnick referred questions to the governor and legislature, "which were the decision-makers here."

Cuomo on Thursday in a public radio interview said the raises are deserved and "to get the quality you want, you have to raise the salaries."

"We have no concerns," Michael Whyland, spokesman for the Assembly's Democratic majority, said in a statement.

"New York state lawmakers take an oath to uphold the state constitution, not to circumvent it so they can get a pay raise," said James Coll of Seaford, founder of the non-partisan ChangeNYS.org. good-government group.

Even public dissent is difficult under the compressed timetable of the law during the holidays, said Coll.

The compensation commission has scheduled public hearings for 11 a.m. on Nov. 28 in the center tower board room at the State University Plaza, Albany, and at noon on Nov. 30 in the SUNY Global Center in Manhattan. The deadline for action is Dec. 10.

A similar pay raise commission in 2016, also activated days after an election, showed "the ingenuity of the legislature in discovering ways to nullify the spirit and intention, if not the letter, of constitutional provisions governing legislative behavior," according to the book Galie co-edited, "New York's Broken Constitution."

"Whether or not the courts find this an unconstitutional delegation of legislative powers to a non-legislative body, the statute effectively insulates legislators from political accountability," according to the book, co-edited by Gerald Benjamin, political science professor at the State University of New York at New Paltz, a state constitutional expert.

Richard Brodsky, who teaches at New York University's Robert F. Wagner Graduate School of Public Service and is a former Assembly member from Westchester County, said he also had concerns about the constitutionality of the measure, too.

"It's a very close call," said Brodsky, who is also a lawyer. "I can't say that it is facially defective, but it's a close call." He said when he raised his concern, government officials argued that the governor can assign certain powers to an agency or commission.

But Brodsky said Albany's often toxic political environment makes a traditional approval by the Legislature "almost impossible."

He noted that former Gov. George Pataki approved the last pay raise in 1999 and governors since have used the issue as leverage to bend the legislature to enact measures that the Senate and or Assembly opposed.

In 2016, Cuomo attached a pay raise to several ethics, policy and funding measures the legislature had blocked, sinking that effort.

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Times Union
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Editorial: No reforms, no pay hikes

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THE ISSUE:

A state pay commission is considering increases for state lawmakers.

THE STAKES:

Until the Legislature enacts meaningful reforms, they shouldn't see a dime.

Through a clever twist in this year's state budget, New York's legislators stand to get their first pay raise in two decades without having to vote on it. It should only happen if there's an ironclad commitment to reforms.

Until this year, legislators had to approve their own salary increase, and it would need the governor's signature to become law. But language in this year's \$168 billion budget created the New York State Compensation Committee to consider pay raises for lawmakers, statewide elected officials (except the governor) and the leaders of state agencies. The commission, established in April, didn't meet until last week, and it now has only until Dec. 10 to make its decision. It won't need Gov. Andrew Cuomo's signature to take effect; in fact, only if the Legislature convenes a special session and rejects it — a highly unlikely prospect — the commission's plan will take effect on Jan. 1.

Under the law, the pay commission — four men who are the past and present state and New York City comptrollers — can build conditions into its decision. Already baked into the process is one pretty substantial condition: that the legislature adopt a state budget in a "timely" way. But the law fails to define what "timely" means, which could throw that and any other conditions to the courts — a reason Chief Judge Janet DiFiore recused herself from being the fifth member of the commission.

But there ought to be more to the deal. There's nothing new about this: In 1998, to get then-Gov. George Pataki's signature on a 38 percent raise, legislators had to approve his controversial charter schools plan. Now a deal could yield long overdue ethics reforms, especially in a year when two former legislative leaders are heading to prison after being convicted of corruption charges and two top Cuomo administration officials await sentencing, one for bid rigging and the other for accepting bribes.

The pay commission must set the bar high by building in rigid and measurable requirements that have to be met before any increased pay for lawmakers kicks in. A firm timetable as well as a system to evaluate compliance is also necessary.

The first question: What should the pay increase be? Members of the Senate and the Assembly receive a base salary of \$79,500, unchanged since 1999, but most get bonuses, known as "lulus," ranging from \$9,000 to \$41,500. Most also claim per diem payments of \$174 when they have to be in Albany.

In exchange for any pay raise, commissioners ought to set some tough terms, due and payable on the first day of the 2019 legislative session: If lawmakers receive a raise, the lulus should go, and there must be a phased-in ban on outside employment, giving lawmakers a two-year term to decide whether to give up outside jobs, which often have been the root of legislative corruption in the past, or to decline re-election. There also should be a clear timetable for adopting meaningful campaign finance reforms, especially lowering the contribution limits and ending the so-called LLC loophole, which allows individuals to skirt those limits.

If lawmakers vow to take all those steps in January, they will earn a pay raise. If not, they can just wait.