

# RAISE PROCESS QUESTIONED

Experts: Panel created to vet salary increases unconstitutional

BY MICHAEL GORMLEY

michael.gormley@newsday.com

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.

## Opposition to commission

"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."

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,



Cuomo says proposed raises for state legislators and commissioners are needed to retain "quality" officials.

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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.

The current pay-raise measure was tucked into the voluminous state budget passed in April, which means 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.

But the legal experts say the commission may run afoul of the constitution by stating "each rec-

ommendation . . . 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 be-

come 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 to 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.

Other legislative leaders didn't respond to requests for comment.

"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 nonpartisan good-govern-

ment group ChangeNYS.org.

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.

## Similar past efforts

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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