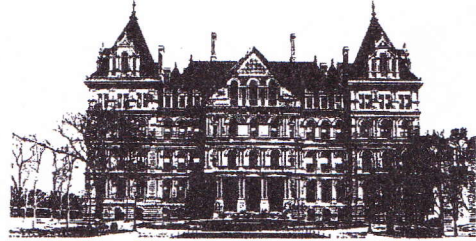


(Republican) Senate Majority's "White Book"
Fiscal Year 2015-2016

Commission on Executive and Legislative Compensation



Pay Commission Summary

The FY 2016 Executive Budget proposes amending the law so that every four years, beginning June 1, 2015, a commission will be established to examine, evaluate and make recommendations regarding adequate levels of compensation and non-salary benefits for the following:

- Members of the Legislature
- Executive
- Lieutenant Governor
- Attorney General
- Comptroller
- §169 Executive Law State Officers (See Table Below)

The commission would be required to make a report of its determinations and recommendations to the Executive and the Legislature. Any report would require unanimous approval by the three commission members, appointed by the Executive, Temporary President of the Senate, and Speaker of the Assembly. Thus, if one member couldn't come to agreement with the other two, the commission could be deadlocked, and presumably no report or recommendation would be issued. Upon agreement on a final report, the commission would then draft legislation necessary to implement its recommendations, sending such draft legislation for consideration by the Legislature and the Executive. However, to be clear, the commission would have no authority to change compensation. The commission would be deemed dissolved upon making its report to the legislature and executive.

With respect to the Legislature, if the commission determined a pay adjustment was warranted, such recommended adjustment would be required to be in the form of a new bifurcated pay structure, where pay is dependent on whether a member agrees not to receive income from outside sources or stays within a cap on outside income.

Constitutional Considerations

Legislature

Article 3 §6 of the New York Constitution provides, in part, that "each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law. ... Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected..."

Based on the constitutional requirement that members of the Legislature receive a "like annual salary", the proposed bifurcated pay structure renders that statute unconstitutional, absent a constitutional amendment.

Similarly, the proposal raises the question as to whether its provisions would effectively change the qualifications for the offices of state senator and member of assembly. Article III, §7 of the Constitution sets forth the qualifications for office- one must be a resident of the state for the preceding five years, a resident of the district for 12 months (except in the case of a reapportionment year) and be a citizen of the

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United States. Further, a member is prohibited from holding simultaneously a civil appointment if such office was newly created, or the office has had its salary or benefits increased during the term of the legislator. There is no corresponding prohibition on the acceptance of any private position.

The constitution prohibits changing member compensation during a term and any change must be fixed by law in order for any change to take effect for the subsequent two year term cycle. Thus, if the recommendations of the compensation committee were not passed and signed into law prior to the end of the 2015-16 term, they could not take effect for the 2017-18 term years. Since a report may not be issued by the commission until the end of November 2015, if such a commission issues a final report, that would leave approximately 13 months for the legislature and executive to pass and sign such a bill.

Executive, Lieutenant Governor, Attorney General, and Comptroller

Section 3 of Article IV of the state constitution, provides that the Governor "*shall receive for his or her services an annual salary to be fixed by joint resolution of the senate and assembly*". An identical provision exists for the Lieutenant Governor in Section 6 of Article IV.

Pursuant to such provisions, the legislature adopted joint resolution B4306, on December 2, 1998, to fix the annual salary of the Governor to be \$179,000, and the annual salary of the Lieutenant Governor to be \$151,500.

In accordance with Article V of the state constitution, the salaries of the Attorney General (as head of the Department of Law – Section 40 of the executive law) and the State Comptroller (as head of the Department of Audit and Control - section 60 of the executive law) were also both amended by Chapter 630 of the Laws of 1998, to be \$151,500.

Chapter 630 also amended section 169 of the executive law, to provide for increased salaries for the heads of the other state agencies listed therein.

Comparison with Judicial Compensation Commission

Chapter 567 of the laws of 2010 statutorily provided for the establishment of a Judicial Compensation Commission every four years beginning April 1, 2011. Similar to the Executive's proposal, chapter 567 provided for a similar non-exhaustive list of factors to be considered by the commission. While there are similarities between Chapter 567 and the Executive's proposal, key differences are included in the chart on the next page.

Judicial Commission	Proposed Commission
Recommended pay adjustments would be self executing, having the force of law, in effect superseding salary provisions of the Judiciary Law.	The Executive's proposal does not provide this power, thus in order for any recommendations to take effect, they would need to be passed into law by the Legislature and the Executive.
Consisted of 7 members: 3 appointed by the Executive, one by the Temporary President of the Senate, one by the Speaker of the Assembly, and two by the Chief Judge of the State.	The Executive's proposal provides for a 3 person commission, with one member appointed by the Executive, Temporary President, and Speaker, respectively.
Did not require unanimous agreement of all members as a condition to making a final report and recommendation.	The Executive's proposal requires unanimous agreement as a condition for making a final report.
Did not specify provisions that would have to be included as part of the commission's final recommendation.	The Executive's proposal requires, with respect to the Legislature, any pay increase recommendation be in the form of a bifurcated pay structure based in part on outside income level, enhanced source of income disclosures, and a possible cap on outside income.
Without further legislative action, a new compensation committee will be established every four years	Without further legislative action, a new compensation committee will be established every four years
All appropriate factors taken into account include but are not limited to economic climate, inflation rates, public-sector spending changes, compensation levels of judicial, legislative and executive branch officials of other states and the federal government, compensation and non-salary benefit levels of professionals in government, academia, and private and nonprofit enterprise, and the state's ability to fund compensation and non-salary benefit increases.	All appropriate factors taken into account include but are not limited to economic climate, inflation rates, public-sector spending changes, compensation levels of legislative and executive branch officials of other states and the federal government, compensation and non-salary benefit levels of professionals in government, academia, and private and nonprofit enterprise, and the state's ability to fund compensation and non-salary benefit increases.

Other Jurisdictions

The federal government, and the governments of the other 49 states, each have their own method of addressing necessary adjustments in the salaries of elected officials and executive department heads.

The Federal Government

Section 6 of Article I of the United States Constitution provides Congress the power to determine its own pay. It states, "*Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States*".

Prior to 1969, Congress determined its own pay by enacting specific legislation, and from 1789

through 1968, Congress raised its pay 22 times using this method.

In 1989, Congress enacted the Ethics Reform Act of 1989 (P.L. 101-194), which established the current automatic annual adjustment formula for salaries and allowances. This system uses an indexing formula, which is based on changes in private sector wages as measured by the Employment Cost Index (ECI).

In accordance with this Act, adjustments in salaries are automatically established unless denied statutorily. Additionally, pursuant to the provisions of this Act, the percentage increase may not exceed the percentage base pay increase for General Schedule (GS) employees.

Under this method, Members of Congress last received a pay adjustment in January 2009, and

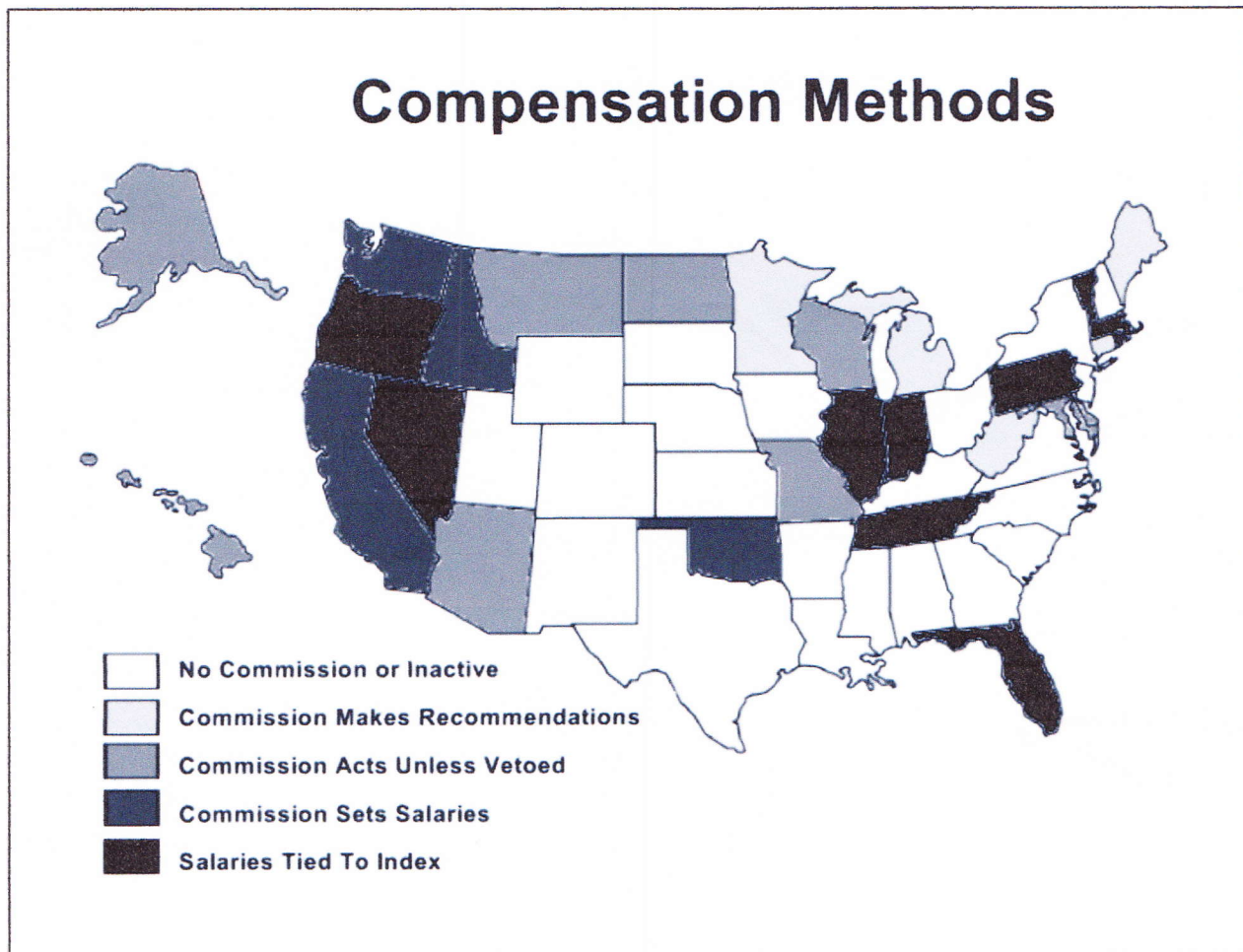
at such time, their salary was increased 2.8 percent, from \$169,300 to \$174,000.

Other States

The 49 other states, each have their own procedures to address pay increases for state

legislators, state wide elected officials, and state agency and department heads.

The map below, produced by 2014 data from the National Conference of State Legislatures, illustrates the different procedures of each state.



Experience in the other states, generally is to address salary and allowance increases for state legislators, state wide elected officials, and state agency and department heads, through a Commission or an automatic index procedure, that is linked to a specific economic index, where the legislative body can enact legislation to reject the increase.

In addition to the federal government, ten states have enacted such an automatic index based system, making it the most prevalent of all the

types of these procedures. No state has, however, ever adopted a two-tiered procedure as offered in this Article VII proposal.

Commissioner Level Positions that Would Also Be Examined by the Proposed Executive and Legislative Compensation Commission

Annual Salary \$136,000

- Commissioner of Corrections and Community Supervision
- Commissioner of Education
- Commissioner of Health
- Commissioner of Mental Health
- Commissioner of Developmental Disabilities
- Commissioner of Children and Family Services
- Commissioner of Temporary and Disability Assistance
- Chancellor of the State University of New York
- Commissioner of Transportation
- Commissioner of Environmental Conservation
- Superintendent of State Police
- Commissioner of General Services
- Commissioner of the Division of Homeland Security and Emergency Services
- Executive Director of the State Gaming Commission

Annual Salary \$127,000

- Commissioner of Labor
- Chairman of Public Service Commission
- Commissioner of Taxation and Finance
- Superintendent of Financial Services
- Commissioner of Criminal Justice Services
- Commissioner of Parks, Recreation and Historic Preservation

Annual Salary - \$120,800

- Commissioner of Agriculture and Markets
- Commissioner of Alcoholism and Substance Abuse Services
- Adjutant General
- Commissioner and President of State Civil Service Commission
- Commissioner of Economic Development
- Chair of the Energy Research and Development Authority
- President of Higher Education Services Corporation
- Commissioner of Motor Vehicles
- Member-Chair of Board of Parole
- Chair of Public Employment Relations Board
- Secretary of State
- Commissioner of Alcoholism and Substance Abuse Services

- Executive Director of the Housing Finance Agency
- Commissioner of Housing and Community Renewal
- Executive Director of State Insurance Fund
- Commissioner-Chair of State Liquor Authority
- Chair of the Workers' Compensation Board

Annual Salary - \$109,800

- Director of Office for the Aging,
- Commissioner of Human Rights
- Commissioners of the Department of Public Service
- Chairman of State Commission on Quality of Care for the Mentally Disabled
- Chairman of Commission on Alcoholism and Substance Abuse Prevention and Education
- Executive Director of the Council on the Arts
- Executive Director of the Board of Social Welfare

Annual Salary - \$101,600

- Chairman of State Athletic Commission
- Director of the Office of Victim Services
- Chairman of Human Rights Appeal Board
- Chairman of the Industrial Board of Appeals
- Chairman of the State Commission of Correction
- Members of the Board of Parole
- Member-Chairman of Unemployment Insurance Appeal Board
- Director of Veterans' Affairs
- Vice-Chairman of the Workers' Compensation Board

Annual Salary - \$90,800

- Executive Director of Adirondack Park Agency
- Members of State Commission of Correction
- Members of Unemployment Insurance Appeal Board
- Members of the Workers' Compensation Board