

Testimony to the New York State Commission on Legislative, Judicial, and Executive
Compensation

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The focus of my comments will be on compensation for state legislative service, the subject on which I am most conversant. In some cases, however, my responses may be translatable to judicial and executive compensation.

I think it is useful to begin by placing legislative compensation in historical context. As early as 1645, the Massachusetts General Court argued that financial incentives were required to get people to serve. In justifying legislative pay, the Court noted that it was “sensible” of the many demands made on lawmakers “w^{ch} daily increaseth, & w^{ch} necessarily occasioneth much expence of their time, to y^e [pre]judice of [their] families & estates.” It reasoned that legislators needed to be compensated so “none be unequally burthened, or discouraged fro^m doing s^rvice to y^e country” (*Records of the Governor and Company*, vol. II 1853, 101). But determining the appropriate level of compensation proved controversial. In an early 1660s row with voters over pay, the Virginia assembly prefaced a salary bill with a statement, “WHEREAS, the excessive expenses of the Burgesses causing diverse misunderstandings between them and the people.” This was followed the next year by a *mea culpa*, “WHEREAS the immoderate expences of the burgesses causing diverse heart burnings between them and the people.” When the public uproar failed to subside members voted to cut their compensation because it was “complained of as greivous and burthensome to the people” (*Statutes at Large, Virginia*, vol. II 1823, 23, 106, 398-99). Skepticism also accompanied the provision of legislative pay. Around 1710 a New York governor jeered, “by Vertue of an Act giving a daily allowance to each Assembly man, it is

now become a trade, and brings them in more than most of them can get by their employmts” (*Calendar of State Papers* 1924, 259).

Thus, well before the country was established, the central issues surrounding legislative compensation had surfaced. First, it was (largely) agreed that lawmakers were to be compensated for their time in order to encourage service. Second, it was clear that higher levels of legislative pay generated public backlash. Third, there were concerns about legislative service becoming a profession as well as doubts about legislators’ motives in seeking higher compensation. All of this suggests the current questions facing the commission are of longer standing than most realize.

I was asked to specifically address three questions. My responses are given below.

Question 1: What factors should be considered in making our determination, and what weight should be accorded to those factors?

Legislators need to be compensated for the time taken away by service from other employment opportunities. This is particularly the case in a high demand legislature, such as New York’s, where members are expected to devote much, if not all, of their time to their legislative duties. At a minimum level, compensation needs to be sufficient to allow members to support themselves and their families. An adequate level of pay is necessary to attract people to legislative service. Inadequate pay can have profound consequences for democracy. In Georgia, for example, state lawmakers earn less than \$18,000 annually and 80 percent of legislative seats go uncontested, meaning one of the two major parties fails to field a candidate. In general, the incidence of uncontested seats declines as legislative pay increases (Squire 2000). Voters in states with lower paid legislators are often provided no electoral choices.

Higher levels of member pay have two other important consequences (Squire 2007). As legislative salaries increase, lawmakers have greater incentive to continue service in the legislature, providing the institution with more experienced members. The importance of experience is often underappreciated by voters. It is to be valued first because state governments are large and complicated organizations and it takes time to master public policy, and second because legislatures are unusual institutions operated by byzantine parliamentary procedures that

also require time to master. Higher pay has an additional, less appreciated, impact on legislators: it also allows them to focus their energies on their legislative responsibilities rather than having to juggle them with the demands of other occupations. Thus the institutional implications of higher salaries are straightforward: they allow lawmakers to devote more time and energy to legislating without the distraction of a competing occupation and thus can lead to longer serving and therefore more informed and effective members.

Higher salaries are also likely to attract better qualified legislators in terms of academic credentials, occupational status, and the like. New Hampshire pays its lawmakers \$100 a year and only 49 percent of them have graduated from college. In the highest paid state legislature, California, 88 percent of members have college degrees (Fifield 2015).

What qualifies as an adequate legislative salary is nebulous. Unlike judicial and administrative positions that have private sector parallels to use for comparison, there are no comparisons that fit legislative service well. As members of a representative body the expectation is that lawmakers will be drawn from a range of disparate backgrounds and occupations. There are, however, some defensible comparisons that can be drawn. The salary paid to New York legislators can be compared to salaries paid to U.S. Congress members, to members of the other forty-nine state legislatures, to city council members in the largest cities, and to members in subnational legislatures in other advanced industrial countries with federal systems. Over time comparisons can also be made for legislative service in New York.

Members of Congress are paid \$174,000 annually, an amount that has remained unchanged since 2009. Only the speaker, majority leader, and minority leader in the U.S. House and the president pro tem, majority leader, and minority leader in the U.S. Senate receive higher salaries (Brudnick 2016). New York lawmakers are currently paid \$79,000 annually with most members receiving additional compensation through “lulus.” They also receive a per diem, something which members of Congress do not receive. The congressional legislative calendar generally requires members to spend more time in Washington, D.C. than the New York legislative calendar requires members to be in Albany, providing one justification for the discrepancy in salaries. Service in both institutions, however, is considered full-time.

A comparison among state legislatures—leaving out any per diem or additional stipends—shows New York legislators earning the third highest salary, behind California (\$100,113 and scheduled to rise to \$104,117 on December 1) and Pennsylvania (\$85,339). These three states are usually grouped together as the most professional state legislatures, meaning they not only pay well but are also full-time institutions with large staffs (NCSL 2014; Squire 2012). Again, there are differences in legislative calendars for these three states that might be used to justify salary differences. The regular session in New York typically covers six months each year, while California’s legislature meets for eight to nine months a year and Pennsylvania’s legislature meets for ten to eleven months a year.

Although the members of the California, New York, and Pennsylvania legislatures are the best paid state lawmakers in the country, their salaries pale in comparison to those paid to city council members in their state’s largest cities. In 2016, Philadelphia city council members were paid \$132,789, New York City council members \$148,500, and Los Angeles city council members \$189,041. City councils in most large cities are effectively full-time bodies, but the differences in time demands with full-time state legislatures are minimal.

American state legislators are paid less well than their subnational counterparts in other advanced industrial countries with federal systems (Squire 2008). Members of the Ontario Legislative Assembly have had their salary capped at C\$116,500 since 2009. Even with a strong U.S. dollar this still converts into \$10,000 more than the salary paid to New York state lawmakers. Members of Australia’s New South Wales Parliament earn \$35,300 more than New York state legislators, while members of Germany’s North Rhine-Westphalia’s *Landtag* earn \$66,300 more. Members in all of these institutions face similar time demands.

The final comparison is with the salary paid to New York legislators over time. Since the state started paying lawmakers an annual salary in the mid-1870s, New York has always been either the best paid state legislature or in the top two or three (Squire 2012). The current salary was set in 1999. If that salary had simply kept up with inflation members would have made \$114,298 in 2016.

While members of the New York State Legislature are better paid than most American state legislators, other comparisons are clearly less favorable. They are paid less than their counterparts in California and Pennsylvania. They are paid far less than council members in large cities and less than members of comparable subnational legislatures in other advanced industrial countries. And, of course, they make less than half of what members of Congress make. Perhaps most troubling is that over the last decade and half New York lawmakers have, effectively, suffered a substantial pay cut.

Question 2: What research on public sector compensation should be reviewed and incorporated in our deliberation?

In the political science literature legislative salary is occasionally used as an independent or explanatory variable, but it is usually incorporated along with time demands and staff support into an index called legislative professionalization. The correlation between legislative salary and the most commonly used professionalization index is very high, so findings using the two measures are interchangeable. Generally, professionalization (or salary) influences legislator behavior and legislative output in important ways. As we would expect, membership turnover declines as professionalism and salary levels increase (Berry, Berkman, and Schneiderman, 2000; Moncrief, Niemi, and Powell, 2004). Lawmakers in more professional legislatures have more contact with their constituents, are more attentive to their concerns, and are more representative of their views than are their counterparts in less professional legislatures (Harden 2013; Lax and Phillips 2009; 2012; Maestas 2003; Miller 2013; Squire 1993; Wright 2007). Member voting behavior is affected, with lawmakers in more professionalized legislatures asserting greater independence from their parties (Jenkins 2010). Legislative efficiency—the percentage of bills passed and the number of bills enacted per legislative day—goes up with professionalization level (Squire, 1998). Lawmakers invest their leaders with less power as professionalization increases (Richman, 2010). And, as reformers had hoped, more professionalized legislatures are better able to counter gubernatorial influence in the budget process, to better resist a governor's policy agenda and to assert their own agenda, and to better calculate the prospects for veto overrides (Baker and Hedge 2013; Kousser and Phillips 2012; Lewis, Schneider and Jacoby 2015). Bureaucrats are more effectively constrained and have less

influence on legislative outcomes in more professionalized legislatures (Huber, Shipan and Pfahler 2001; McGrath 2013; Nicholson-Crotty and Miller 2012).

Perhaps the most visible impact of professionalization is on the sorts of policy decisions legislatures make. The inclination to reform government practices and to adopt more complex regulatory policies increases with professionalization (or salaries) (Cogburn 2003; Ka and Teske 2002; Kellough and Selden 2003; Miller, Wang, Feng, and Mor 2012; Schmeida and McNeil 2013; Slemrod 2005). Higher levels of professionalization are associated with the adoption of more innovative approaches to new technologies, stronger environmental and renewable energy programs, and more progressive state immigration policies (Abel, Salazar and Robert 2015; Marquez and Schraufnagel 2013; Thomson and Arroyo 2011; Tolbert, Mossberger and McNeal 2008; Woods 2008; Yi, and Feiock 2014). Increased professionalization produces greater investments in higher education and better funded state pension systems (Cogburn and Kearney 2010; Hearn, McLendon and Lacy 2013; McLendon, Hearn and Mokher 2009; McLendon, Tandberg and Hillman 2014; Tandberg 2013). More generally, professionalized legislatures are better able to mediate policy disputes, reducing the motivation for interest groups to turn to citizen initiatives in the states that allow them (Boehmke 2005). And they are better able to learn from the policy successes of other states, to respond to national policy debates, and to devise innovative policies of their own (Kousser 2005, 197-198; McCann, Shipan and Volden 2015). Thus, the increased analytical capacity produced by professionalization (and higher salaries) translates into a different set of policy choices.

Question 3: What other issues should be included in our deliberations?

One of the main justifications for higher salaries offered by Democratic and Republican state legislators alike is that higher salaries are needed to allow a broader array of people to serve. The main fear is that poorly paid legislatures will become the province of the wealthy and the retired (Squire and Moncrief 2015, 70-71). As one of the best paid state legislatures New York does not currently face that particular problem. But there is another aspect of this concern that is relevant. Higher salaries permit a wider range of people to contemplate legislative service (Squire 1992). This is particularly the case with people in their prime earning years. As society

grapples with questions about diversity, representative bodies need to provide compensation at a level that allows most people to serve while still being able to provide for their families.

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