

ASSEMBLY FLOOR PROCEEDINGS:
APRIL 1, 2015, approximately 2:30 a.m.

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Video, at 1:02 hours

Heastie: The clerk will read:

Clerk: Assembly 6721-A. Rules Report #22. Budget bill. An act to amend Chapter 41 of the Laws of 1985.

Heastie: On a motion by Mr. Farrell, the Senate bill is before the house. The Senate bill is advanced. The Governor's message is at the desk. The clerk will read.

Clerk: I hereby certify to an immediate vote. Andrew M. Cuomo, Governor.

Heastie: Mr. Goodell

Goodell: Thank you, Mr. Speaker. Would Mr. Farrell yield?

Farrell: Yes, I will.

Heastie: Mr. Farrell yields.

Goodell: Thank you, Mr. Farrell. I have some questions about the legislative compensation committee that is established under this bill. I note that all the members serve without compensation, but are reimbursed for their actual travel expenses. Is there any appropriation that's in the budget that relates specifically to this commission?

Farrell: No.

Goodell: And so if we decide not to implement it or if for some reason we were to amend this and take it out, there would be no savings, no additional cost, whether we have it in or out.

Farrell: That is right. We're not taking any money from the People.

Goodell: I note that the commission consists of seven members. Three are appointed by the governor, one each by the Senate majority and one by the Assembly majority and a couple by the chief judge. So, as I understand it, there are no appointments from either the Senate minority or the Assembly minority. Am I correct on that?

Farrell: That's correct.

Goodell: Of the members that are appointed, as I understand it, there is no restriction on holding any other public office or employment. So, if I read that correctly, that means that the members of this commission could actually benefit from any salary recommendation they make. Isn't there a potential conflict of interest that we should be sensitive to?

Farrell: Well I would assume that if the person were being chosen that all of the people who are going to pick these people out would be smart enough to think exactly as you do and not allow that to happen.

Goodell: I would certainly hope so and I look forward to that. Now as I understand it, the commission issues two reports. The first is due in December of this year and that would affect judges and the second is issued on November 15th of 2016.

Farrell: That is correct.

Goodell: Now, the curious thing about this bill, I find it curious, it says that the recommendations of the commission will become effective and will have the force of law unless we as a legislature meet and overturn their recommendations.

Farrell: Yes.

Goodell: And if we don't meet, this bill says that the statutory provisions that govern the judiciary compensation, or executive compensation, or our compensation are superseded by their recommendation. So my question is how is it that a non-elected panel of individuals has the power to supersede statutes that have been enacted by the legislature, by both houses, and signed by the governor.

Farrell: Because this is also going to have all of that happen and that is going to replace it. In other words we are now voting on this, the governor will now sign it, it will become the law and each time, what you have mentioned, the law that is there would no longer take control, this would now control.

Goodell: Now we talked a little bit about the timing and so, as relates to the legislature, this report is due November 15th 2016 which would be just after the re-election. And so the only way we could act is to be called back into special session. Correct?

Farrell: That is correct.

Goodell: My concern, as you might guess, really relates to the Constitution. I know that's a surprise for some of my colleagues, but there's a section that deals specifically with our compensation. It is Article III, Section 6 and it says: Each member of the legislature shall receive for his or her services a like annual salary to be fixed by law. And then it continues, and the last sentence says: Members shall continue to receive such salary and additional allowance as heretofore fixed and provided in this section until changed by law pursuant to the constitution.

It seems to me, when we read that in conjunction with the very first section of Article III, which says: The legislative power of this state shall be vested in the senate and assembly, unless I am mistaken, we're the only ones that have the power to enact the law, not an unelected commission with no representatives from the minority. Would you agree that the Constitution is clear that only the Legislature can enact laws and not a committee?

Farrell: Well, again, if we say so, it becomes so. It is called the law. You said you like the law. You mentioned the law.

Goodell: I do.

Farrell: So we are going to change that line and add that this program is the one that is acceptable and it's us voting on it and if you don't want that to happen, you vote no now, but it still does occur and if anytime we want to and don't like what they say, they say we are going to give them \$10 a week, and we say we don't want that, we can come in as the legislature on the call of the speaker and majority leader of the senate and we can reverse it. We can say no, we don't want it. We do have the ability to do what the law says.

Goodell: You would agree with me, though, however, I'm sure, that we, as a legislature, while we can certainly enact laws, we cannot, by law, change the constitution, only the People.

Farrell: But this is not the constitution, this is law. We are taking the law and if you look around and read down, when you read those sections, they were changed in 1974. It was a completely different program in those days. And we now have this program, we are now changing it.

Goodell: Yes, it was amended by the People last in November of, actually in November 2001 was the last amendment, but –

Farrell: No, but on the portion relating to how we get paid every two weeks. Back in 1974, you got paid in 9 payments a year and a lump at the end of the session, you could get \$10-15,000.

Goodell: I understand that how often we got paid was changed by law, but the method of determining our salaries is set forth in the Constitution, not by law.

Farrell: Yes. But it says we have the authority to say what we are saying because we changed it then to create how we're doing it now. I think we can do this, to do, allow it to happen.

Goodell: Thank you, Mr. Farrell.

Farrell: Alright.

Goodell: On the bill.

Heastie: On the bill.

Goodell: My friends and colleagues, while I would certainly appreciate someone else making the decision on what our salaries is, especially if they meet after our next election, so we don't have to explain it or defend it and most assuredly so they don't raise it so high as to get competent opponents to run against us. For all those reasons, I like this concept, but I am constrained to remind all of us that only the legislature has the power to enact law and only the legislature has the power to change the law and this section in the Constitution and all of you can pull out your pocket part and check it, it's Article III, Section 6, says our compensation cannot be changed except by law and further provides that members shall continue to receive such salary as provided in the constitution until changed by law.

So we cannot have another group of people, no matter how attractive it might sound, actually change the Legislative Law or the Judiciary Law or the Executive Law. They can't change the law. Only we can change the law. And, with rare exceptions, the bill needs to be on our desk for three days and we have to vote on it, and our vote has to be counted, and we have to stand in front of our constituents and explain why we deserve that handsome increase.

And so for the reasons I think the Constitution is extraordinarily clear on this, we cannot delegate to an unelected body that doesn't represent all of us, the authority, after the election, on their own, to rewrite several sections of the law, to give us a salary increase that we don't have to vote on. And so, while I like the concept in some level, I don't think it's constitutional and I don't think we can approve it. And if it does go into effect, which might happen in this budget, I would not recommend that any of you spend that money until we make sure that we can keep it. Thank you, Mr. Speaker.

Heastie: Mr. Johns.

Johns: Yes, Mr. Speaker, would the chairman just yield for a follow-up

Heastie: Mr. Farrell, will you yield?

Farrell: Yes, I will.

Heastie: Mr. Farrell yields.

Johns: You know, Denny, I just wanted to follow up on what Assemblyman Goodell was saying. You know, I'll be honest with you, this looks like a back-door way of giving us a raise. And whether it's constitutional or not, the optics don't look very

good. And you know, as much as I would like to see everyone get a big raise, I think that everyone knew, the media, of course, they are all gone tonight, but the reality is everyone knew that the democrats wanted to give themselves a big raise after the last election but there was a lot of clouds over this body at that time and it really wasn't possible. But they've done something like this down in Congress, and it wasn't a big hit. They decided that they were going to give themselves cost of living raises every year. And those cost of living would go in automatically unless they voted against it. And, as Assemblyman Goodell says, this recommendation is going to come after the election and I think that most people that think that whether they believe we deserve a raise or not, would like to see what our actual vote is before the election. And maybe, the second best choice would be, go with the tried and true method that you've always done down here and wait until everyone is safely re-elected and then you can come back and give yourself a \$40,000 a year raise. But I can tell you that back where I come from, it is not going to play real well. And whether people are deserved of the raise or not, and I know if you are from New York City it plays a little different than upstate New York, but I think the way you are going about it, is just bad optics and I would just advise people to vote against it.

Farrell: Alright.

Johns: I mean, if you get the money, I want you can get a bigger yacht so I can come down and cruise with you around the Island, but –

Farrell: We could save on the taxes.

Johns: We can save a little bit on the taxes and it would help out, but I just think this is the wrong way to go about doing it.