

2015 QUADRENNIAL ADVISORY COMMISSION:
Research on the history of the Quadrennial Advisory Commission, provisions of the New York City Charter, the 27th Amendment to the U.S. Constitution, and Congressional pay
Submitted by the New York City Law Department
in Response to Questions from Frederick A. O. Schwarz, Jr.

A. History of the Quadrennial Advisory Commission

Section 3-601 of the Administrative Code of the City of New York (“Administrative Code”), authorizing the Quadrennial Advisory Commission (“QAC”), was added by Local Law number 77 for the year 1986 (“Local Law 77”). Exhibit A. (A list of exhibits is provided at the end of this memorandum.)

Prior to the QAC, Mayor Koch appointed temporary commissions in March 1979 and May 1983. The Commission to Study Salary Levels of New York City Elected Officials issued a June 1979 report proposing salary increases, the elimination of unvouchered expense payments, financial disclosure requirements, a study of the advisability of making Council membership a full time position, and a procedure to review the compensation of elected officials on a regular and periodic basis. Exhibit B at 3-4. The July 1983 report recommended certain salary increases and again recommended “that a mechanism be established to ensure the consistent and periodic review of elected officials’ salaries.” Exhibit C at 3-4.

The legislative history for enactment of Local Law 77 indicates that the QAC was created to:

1. Address policy issues relating to pay for elected officials, such as salary compression. See section one of the bill, “Declaration of legislative findings and intent.” Exhibit A.
2. Bring regularity and expertise to the process of addressing those issues. Mayor Koch supported the bill “because it’s modeled on the Federal approach for Congress. There has to be some mechanism that would review the salaries of public officials in a regular way.” Bruce Lambert, *City Officials Seek Advice on Their Pay*, N.Y. TIMES, November 27, 1985. (At that time, a quadrennial commission was one of several ways to increase federal Congressional pay.) At the bill signing hearing, Mayor Koch also said, “It is necessary and in the public interest to periodically review the salary levels of elected officials. The best method for such a review is through the appointment of a panel of disinterested public citizens with expertise in the matters of compensation and management. That is the way changes have been recommended in the past and this law would make the mechanism for review automatic.” Public Hearing on Local Laws, December 22, 1986, 10:00 A.M, City Hall.

B. History of New York City Charter §26(b)

Subdivision (b) of section 26 of the New York City Charter (“Charter”), in addition to setting the salary of a council member, provides, “any council member, while serving as

a committee chairperson or other officer of the council, may also be paid, in addition to such salary, an allowance fixed by resolution, after a hearing, for the particular and additional services pertaining to the additional duties of such position.”

This language was added during the 1989 Charter revision process as a reform to the system then in place, in which there was a lump sum appropriation subject to the discretion of the majority leader. Exhibit D at 1; see also *New York Council Leaders Give \$60,500 in ‘Lulus’ to Chairmen*, N.Y. TIMES, February 12, 1977. The language was designed to bring openness, transparency, and accountability to that process by requiring the full City Council “to establish by public adoption of a resolution any system of stipends to Council leaders and committee chairs over and above their city salaries.” Exhibit E at 9; see Exhibit F at 10, Exhibit G at 4. It was also intended to address “the considerable concern about excessive concentration of power within the City Council” with the leader. Exhibit H at 16-17.

Although we have not been able to locate data on City Council “allowances” in 1989, the annual salary of a Council Member was at that time \$55,000. Charter §25 (1989). (Note, however, that press coverage indicated that in 1991, 29 of the then 35 Council Members received annual payments in lieu of expenses, or “lulus,” of between \$2,500 and \$22,500. Martin Gottlieb and Dean Baquet, *A Creative Council Reaps an Array of Benefits*, N.Y. TIMES, May 22, 1991, at A1.) By comparison, the annual salaries of other City elected officials were as follows:

- Mayor: \$130,000. Charter §4 (1989).
- Comptroller: \$105,000. Charter §91 (1989).
- Council President/Public Advocate: \$105,000. Charter §25(a) (1989).
- Borough President: \$95,000. Charter §81(c) (1989).

The Council was required to meet at least twice a month, except in July and August, and then as provided in the Council’s rules. Charter §42 (1989). Council Members were not required to be full time. See Charter §1100 (1989).

C. History of New York City Charter §26(c)

Subdivision (c) of section 26 of the Charter provides:

If prior to the enactment of a local law increasing the compensation of council members, the council establishes a commission to study and make recommendations for changes in the compensation levels of council members, or if it otherwise causes an analysis of such compensation levels to be made to assist it in its consideration of a local law, such study or analysis may include an analysis of the benefits, detriments, costs and impacts of placing restrictions on earned income derived by council members from sources other than their council salary.

This provision was added as part of the 1989 Charter revision process. See also Frederick A.O. Schwarz, Jr. & Eric Lane, *The Policy and Politics of Charter Making: the Story of New York City's 1989 Charter*, 42 N.Y.L. Sch. L. Rev. 723, 804-805 and n. 145. It was added in response to an exchange between the 1987 QAC and the City Corporation Counsel, in which the Commission asked the Corporation Counsel to opine on a recommendation from the New York Public Interest Research Group (NYPIRG) that the Commission link any possible salary increase for elected officials to the enactment of legislation regarding the creation of an Ethics Commission and other changes. The Corporation Counsel noted that the Commission's authority, as provided by section 3-601 of the Administrative Code, was limited to reviewing "the compensation levels of elected officials" by considering certain factors, such as "the duties and responsibilities of each position," and did not then include the issues raised by PIRG.

D. History of New York City Charter §27

Section 27 of the Charter provides,

No local law or resolution increasing or decreasing the salaries, or other allowances, in accordance with section twenty-six shall be adopted during the period between the general election day and the thirty-first day of December, both such days inclusive, in any year in which all of the council members are elected.

This provision was added as part of the 1989 Charter revision process. It was intended to prohibit lame duck Council Members from increasing salaries, and to ensure that any Council Member voting to increase salaries could be held accountable at the next election. Exhibit I at 78-80.

E. History of the 27th Amendment to the U.S. Constitution

The 27th Amendment to the U.S. Constitution provides, "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." Despite being submitted by Congress to the states for ratification in 1789, this amendment was not ratified until 1992. Richard B. Bernstein's law review article on the subject provides helpful background, some of which is summarized below:

The record is scarce regarding debate over the 27th Amendment. James Madison did not think it was necessary. During the Bill of Rights debates, he said, "I do not believe this is a power which, in the ordinary course of government, is likely to be abused, perhaps of all the powers granted, it is least likely to be abused; but there is a seeming impropriety in leaving any set of men without controul [sic] to put their hand into the public coffers...there is a seeming indecorum in such power, which leads me to propose a change." Such sentiments were echoed by others such as Federalist Theodore Sedgwick, who commented that there was little danger in the abuse of setting wages anyway because "gentlemen were generally more inclined to make them moderate than excessive."

During the ratification period of the proposed twelve amendments, only six states adopted the 27th Amendment and five states rejected it, thus making ratification of the clause impossible at the time due to the three-fourths ratification rule. While there is no clear answer to why it wasn't ratified at the end of the day, as time passed and concerns over structural changes to the federal government became more pressing, the concerns of legislative abuse of wage-raising became less salient. The amendment lay dormant until Gregory D. Watson, a sophomore majoring in economics, was looking for a paper topic for a government course and discovered the unratified amendment. Watson campaigned for almost ten years to encourage state legislators to work for its ratification. Riding the wave of growing public anger with the mechanisms by which Congress raised its salaries, Watson's efforts helped lead to the wave of state ratifications from the mid-1980s to eventual ratification in 1992.

Richard B. Bernstein, *The Sleeper Wakes: The History and Legacy of the Twenty-Seventh Amendment*, 61 Fordham L. Rev. 497 (1992).

F. Background on Congressional Pay

Article I, Section 6 of the U.S. Constitution provides, "The 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."

Congress has adjusted its pay in a variety of ways. These methods have included:

1. *Specific legislation*: Used most recently in 1991.
2. *A quadrennial salary commission*: In 1967, the Commission on Executive, Legislative, and Judicial Salaries was authorized to review the pay of Members of Congress, certain legislative branch positions, justices and judges, and other offices and positions in the executive branch; and report the results of such review and any recommendations to the President, who was then authorized to implement changes under certain circumstances. Pub. L. No. 90-206 (1967). This commission was phased out and replaced by the Citizens' Commission on Public Service and Compensation, which convened but did not meet. See Pub. L. 101-194 (1989).
3. *Annual adjustments tied to increases in the General Schedule ("GS") for federal employees*: From 1975 to 1990, the President recommended pay increases, which were subject to congressional acceptance, disapproval, or modification. See Pub. L. 94-82 (1975). The Ethics Reform Act of 1989 amended the method by which the annual adjustment is determined, and relies on a formula based on changes in private sector wages and salaries as measured by the Employment Cost Index, but not higher than the annual base pay adjustment for GS employees. The annual adjustment automatically goes into effect unless Congress enacts a law to prohibit or revise the adjustment. 2 U.S.C. §4501. Courts have held that the automatic pay increases under the Ethics Reform Act are consistent with the 27th Amendment. See Boehner v. Anderson, 30 F.3d 156, 161-162 (DC Cir. 1994) ("the COLA

provision...is constitutional because it did not cause any adjustment to congressional compensation until after the election of 1990 and the seating of the new Congress"); Schaeffer v. Clinton, 54 F.Supp.2d 1014, 1024 (D. Colo. 1999) ("Adjustments to congressional salaries under the Ethics Reform Act are not discretionary acts of Congress. The adjustments are calculations...following a specific formula provided by Congress in the Act.").

IDA A. BRUDNICK, CONG. RESEARCH SERV., 97-1011, SALARIES OF MEMBERS OF CONGRESS: RECENT ACTIONS AND HISTORICAL TABLES (SEPTEMBER 17, 2015).

By comparison, the President's salary is fixed in statute, unless amended by Congress. See 3 U.S.C. §102. The Vice President's salary is subject to increases pursuant to the Ethics Reform Act. 3 U.S.C. §104. The salaries of Secretaries, the Attorney General, and other high-ranking officials in the Executive Branch are also subject to increases pursuant to the Ethics Reform Act. 5 U.S.C. §5312, 5 U.S.C. §5318.

List of Exhibits

A - Local Law 77

B - Report of the Commission to Study Salary Levels of New York City Elected Officials (June 1979)

C - Report of the Commission to Study Salary Levels of New York City Elected Officials (July 1973)

D - Changes Proposed by the [New York City Charter Revision Commission] Chair to the Adopted Preliminary Proposals As the Result of Public Testimony and Comment (June 15, 1989)

E - New York City Charter Revision Commission Summary of Revised Proposals (June 1989)

F - New York City Charter Revision Commission Summary of Final Proposals (August 1989)

G - The Voter's Handbook on Charter Change

H - Final Report of the New York City Charter Revision Commission (January 1989 - November 1989)

I - Minutes of Public Meeting of the Charter Revision Commission Held at Brooklyn Law School (June 22, 1989)