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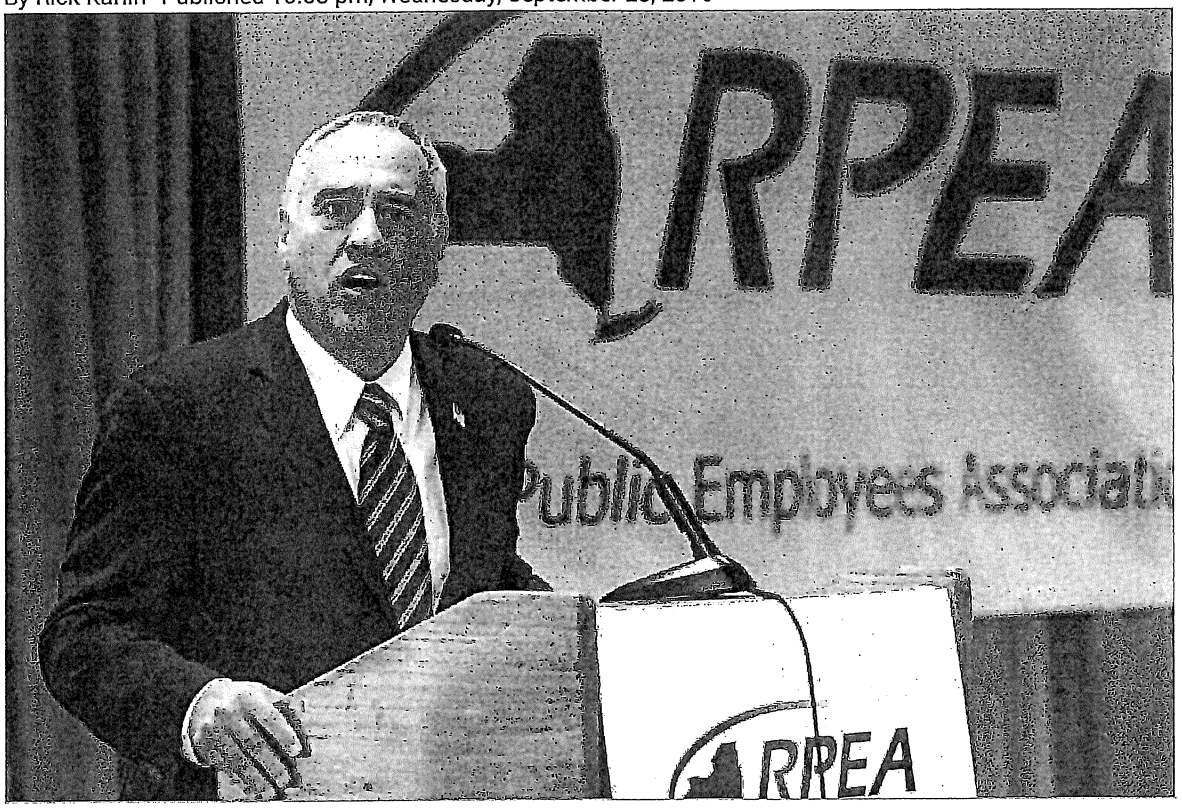
Public sector retirees ring alarm bell against constitutional convention

Fears by public employees that constitutional changes could hit their pension protections

By Rick Karlin Published 10:53 pm, Wednesday, September 28, 2016



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Comptroller Thomas DiNapoli speaks to a gathering of members of the Retired Public Employees Association on Wednesday, Sept. 28, 2016, at the Marriott Wolf Road in Colonie, N.Y. (Skip Dickstein/Times Union)

Colonie

The electorate's desire for ethics reform and the public sector's fear of losing pension benefits are on a potential collision course that could play out in November 2017, when New Yorkers will vote on whether there should be a state constitutional convention.

Earlier this year, Gov. **Andrew Cuomo** said a convention might be the best venue for achieving comprehensive ethics reform such as the closure of loopholes in the campaign finance system.

"The people are going to have to do it," Cuomo said earlier this year, as his most recent ethics proposals were receiving a cold shoulder from lawmakers. The governor said such intransigence might only be overcome by making an end run around the Legislature.

Groups such as public sector unions oppose a constitutional convention, fearing it could open the door to other changes, and perhaps weaken the existing constitutional protections granted to public employee pensions, which by law are not to be "diminished or impaired."

"A convention would place everything on the table and delegates would have the power to swipe away any of the policies, programs and protections we might take for granted," warned a June newsletter from the state's largest teachers union, **New York State United Teachers.**

Public sector retirees are hearing the same alarm bell, with the leader of a major association urging them to not only vote no in November 2017, but to urge their friends and families to do so as well.

"How do we convince them that this is not a good idea?" asked **Ed Farrell**, executive director of the **Retired Public Employees Association**, who spoke to a membership meeting Wednesday at the Albany Marriott.

"You will also see people saying conversely that we should do this," Farrell added.

New Yorkers every 20 years get to vote on whether they want a constitutional convention, at which elected delegates can assemble a slate of potential changes to the state constitution. Those proposals, however, would have to be approved by a statewide vote or a series of votes.

The path to a constitutional convention is long, and the odds historically are against it.

There have been just three in the past 100 years. And even if state voters approved the idea next November, the actual convention wouldn't convene until April 2019.

A convention might not take up the issue of pension benefits, though it could consider changes on a wide range of state issues ranging from environmental protection in the Adirondacks to the way state courts operate.

Moreover, current pensioners would likely be grandfathered in under any changes. And any changes would almost certainly end up in court, said Farrell.

But the possibility that a group of elected convention delegates could potentially alter public pension protections by changing the state constitution prompted moans and angry muttering from Wednesday's audience of state and municipal pensioners.

Those who enter the public sector often do so in part for the security of a guaranteed pension, so any talk of a change doesn't sit well.

Farrell conceded the mood among the public is against much of the status quo. "People think we need to fix things," he said.

Add that to the widespread revulsion created by the spectacle of convicted lawmakers like **Sheldon Silver** and **Dean Skelos** keeping their constitutionally protected pensions, and there could be a fair number of yes voters in November 2017.

He pointed to a recent **Siena Research Institute** poll from late June showing that 68 percent of New Yorkers favor the idea of a constitutional convention. But 66 percent were unaware of the issue.

That, combined with 2017's status as an off-year in the election cycle (though the New York City mayoralty is up then), has the makings of a potential push by opponents and supporters of a convention to try and spur turnout.

State voters can approve referendums to amend the constitution in any year. In 2014, they approved an expansion of casino gambling. And lawmakers this year started the process for a referendum that would allow a constitutional amendment to strip pensions from felonious lawmakers like Skelos, Silver and a raft of others.

Past constitutional conventions have rarely led to large-scale changes. In the 1967 convention, all of the proposed changes were consolidated into on a single up-or-down vote presented to voters. The big controversy in the 1967 conclave was whether to repeal the prohibition on public funding of religious schools. Voters said no to the change and the rest of the package.

At the time, the convention was opposed by some strange bedfellows, including trial lawyers and environmentalists as well as women's rights groups, noted Farrell.

The latter feared a constitutional convention would be used to diminish reproductive rights.

Also, opponents can remind voters that lawmakers could also seek to be convention

delegates where they could "double dip" by collecting extra pay and pension credits while the event was going on. Nor are their time limits for how long constitutional conventions need to be.

It's unclear where a majority of elected officials stand on the call for a convention. Comptroller **Tom DiNapoli**, who spoke to the retirees on Wednesday, said he was opposed to a convention.

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