

Why the governor controls the budget process

By Rachel Silberstein

ALBANY — On April 1, Gov. Andrew M. Cuomo had much to brag about. The state's \$175 billion spending plan was delivered on time and contained most of the items in his 2019 Justice Agenda.

Cuomo, who has increasingly sought to insert policy items into the budget, called it "the broadest, most sweeping state plan that we have done."

But a new crop of Democratic lawmakers say they are frustrated by Albany's opaque budget process, which is dominated by the governor and sidelines the rank-and-file.

Attempts by Assembly and Senate leadership to push back on Cuomo's habit of shoving policy priorities without fiscal implications into appropriations bills were unsuccessful.

Legislators reluctantly approved budget bills that included vague guidelines on campaign finance reform, granted the governor a raise, and farmed out their legislative duties to panels of experts.

Two constitutional amendments, crafted by Democratic Assemblyman Brian Barnwell, seek to reset the balance of power between the Legislative and executive branches during the budget negotiations.

"It's about making the branches of government co-equal," Barnwell said. "I've only been here three years, but there is something wrong when the process is that you have to read thousands of pages in a day and then vote on those proposals."

Barnwell's amendments would enable the Legislature to add to an appropriations bill — currently it may only remove or reduce items or vote down the entire package — and compels the governor to either approve or veto the bill in its entirety, or make recommendations to change the bill. It eliminates the governor's power to veto individual items.

A constitutional amendment must twice pass the Legislature and then be approved by the public the following Election Day.

Previous attempts by the Legislature to restore its budgetary leverage through constitutional change were shot down by New Yorkers at the ballot box, Cuomo's office noted.

"We're proud of the nine balanced and fiscally responsible budgets that were passed under this administration and the last time anyone tried to change the current system it went down in flames when New Yorkers rejected it by an embarrassingly large margin," Cuomo spokesman Richard Azzopardi said.

Constitutional experts who reviewed the bill say the intention is good, but like previous attempts, the legislation may go too far in curbing the executive's veto power.

Gerald Benjamin, a professor of constitutional law at SUNY New Paltz, said that Barnwell's bill does not add language requiring the Legislature to pass a balanced budget.

"The idea here is not to throw out the baby with the bathwater, but to acknowledge that the power of the Legislature has been diminished and find a way to restore it," Benjamin said.

Another bill, introduced last year by Assemblyman Edward Braunstein, addresses the inclusion of policy without a fiscal component in the budget, and does not undo the fundamentals of the executive budget.

Most lawmakers and experts say there is value in executive budgeting, which is how most states operate. The governor's power has gradually expanded over the years through a series of constitutional amendments and court battles.

The state Division of the Budget was created in 1927, following two constitutional changes that laid the foundation for an executive government.

It followed a period when state capitols around the nation were expanding with the creation of new "bureaus" and "commissions" that took over responsibility for public services previously provided by local governments, according to a 50-year history published by the state Division of Budget in 1981.

The budget process had becoming chaotic and unwieldy, with governor forced to veto numerous budget bills produced by the Legislature that gave little consideration to the state's growing fiscal needs.

"Department heads besiege the Legislature, each one making his demand for a certain amount. Those who 'stand in' get what they ask, and others are cut down," Gov. Charles S. Whitman said in 1916 while describing the process to the New York World, according to the state's budget history.

Reforms spearheaded by Gov. Alfred E. Smith, who introduced the state's first executive budget in 1928, granted the governor control over fiscal matters — strictly spending and taxing — and stripped the Legislature of its power to initiate the budget.

The Legislature's only real leverage has been to stall appropriations bills.

That strategy has had drawbacks as late budgets were perceived as a symptom of Albany's gridlock and dysfunction. For two decades, between 1985 and 2004, not a single budget passed on time and state operations were maintained through temporary "extenders." The most egregious delay came in 2004, when the budget passed on Aug. 13.

That same year, the state Court of Appeals decided a pair of cases often referred to as "Silver v. Pataki," which further eroded the Legislature's authority.

"What Silver v. Pataki did, is it gave the executive a similar power over garden-

variety public policy matters. That is not a gradual evolution," said former Assemblyman Brodsky. "It is a rupture with fundamental American values."

In 2010, Democratic Gov. David Paterson issued an ultimatum to the Legislature, putting an end to the delay tactics; he threatened to insert his entire budget proposal in a single extender, forcing lawmakers to approve unpopular budget cuts or shut down the government.

Cuomo, a third-term Democrat, has benefited from the power move, frequently touting his own record of on-time budgets.

The governor's image as a strong executive and his popularity in recent elections could make a major overhaul to the current system a tough sell to the electorate, but Barnwell says it's a matter of phrasing.

"If you phrase it one way, everyone is going to vote it down," he said. "When we put this bill out Democrats, Republicans and Independents said they are all for it."