

Why New York is relying on commissions to make policy

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The George Washington Bridge. | Andriy Blokhin/Shutterstock

Public financing, legislative pay and congestion tolls are heated issues. Is convening commissions to hammer out their details the right approach?

With the passage of a new state budget, New York may be moving toward a congestion pricing system and a campaign public financing model. But despite agreeing to those hefty proposals, Gov. Andrew Cuomo and legislative leaders are leaving it up to unelected members of new commissions to hammer out the details.

A [six-person commission](#) dubbed the Traffic Mobility Review Board will make recommendations to the Metropolitan Transportation Authority about how the state's new congestion tolling system should work, with details like the price of tolls and exemptions included in their considerations. Meanwhile, [another commission will draw up the rules](#) for how the \$100 million set aside in the budget for campaign matching funds will be awarded. That commission will make its report in December,

and unless the state Legislature agrees to modify or reject it within 20 days, the commission's choices will have the force of law.

The use of panels and commissions isn't new – one was created last year to decide lawmakers' pay raises. But some have argued that punting on these decisions isn't the right approach to making policy. [A few have even argued](#) that it's unconstitutional. So we turned to the experts to weigh in on whether this moment in time represents an unprecedented embrace of commissions, and if and when their use is appropriate.

For this week's "Ask the Experts" feature, we reached out to Gerald Benjamin, director of the Benjamin Center at SUNY New Paltz; Democratic political consultant Bruce Gyory; Alex Camarda, senior policy advisor at Reinvent Albany; Ben Max, executive editor of the Gotham Gazette; and Susan Lerner, executive director of Common Cause New York.

Is the use of commissions a turning point in delegating responsibility on contentious issues?

Alex Camarda: The governor's use of commissions in the budget this year isn't new – it is a tool he frequently uses. Past commissions include the Moreland Commission to Investigate Public Corruption, the Moreland Commission on Utility Storm Preparation and Response, The Sage Commission to Modernize Government, among others.

Ben Max: The ghost of the Moreland Commission on public corruption that the governor empaneled, interfered with, and disbanded prematurely does not seem to dissuade him from the use of commissions, panels, task forces and other entities to help decide contentious issues. The Legislature has been willing to go along, seemingly OK with ceding significant responsibility and power. The governor was happy with the results of the compensation commission, and as long as he gets more results he likes, we could easily see more of these.

Gerald Benjamin: Old-fashioned study commissions, comprised of people with status, prestige and expertise, are generally used to define policy alternatives, make recommendations and give these weight. Politically, they can either be used to build support or kick the can down the road (seeming to act without acting). And of course those who appoint them are not obligated to accept the outcome.

Bruce Gyory: I don't see it as a turning point. Instead, I see these commissions as filling a need when the governor and the Legislature come to the conclusion something needs to get done, but that a commission is the best approach. The real model for these commissions is the base closure model in Washington. When Washington determines that military bases need to be cut, they use a commission because it is just too painful to ask members of Congress to sit there and be the ones picking the bases to close. Another example was during the Reagan era, when the Social Security Commission became the basis for the compromise brokered by Senators Robert Dole and Daniel Patrick Moynihan. Here in New York, financial control boards are a variation of the commission idea. The Emergency Financial Control Board, which saved the day in the fiscal crisis in New York City back in the 1970s, and more recent control boards that have helped other localities in subsequent decades, have performed ably. Ultimately, the governing authority will continue to rest with the executive and legislative branches, but there are times when

a commission becomes a useful tool in the governance shed to avoid gridlock on contentious issues.

Susan Lerner: For any issue other than compensation, it's a ploy to remove power from the Legislature, by delegating the authority of our duly elected representatives to a mystery commission. This should not be the new norm. We need to be investing more in the legislative process outside of the budget.

Procedurally, are commissions the right approach?

Bruce Gyory: I don't see these commissions as always a right or a wrong approach – the real answer is it depends. The national commission that extended the solvency of Social Security for decades clearly worked and performed a necessary service. The Simpson-Bowles Commission to close federal deficits did not work, as a bipartisan consensus could not be bridged melding tax hikes and spending cuts to shrink the long term federal deficit. That does not mean that the Simpson-Bowles commission's work was a waste of time, it just meant the political and governing system was not ready to confront that problem. Here in New York state, if the congestion pricing commission creates a workable system that succeeds in both getting necessary funding for the MTA and the commuter railroads, while lessening gridlock in Manhattan's central business district and improving air quality, a great public service will have been performed – one that could be a national model for other regional mass transit needs. If, however, this commission creates a Rube Goldberg system to implement congestion pricing that does not work, you can bet there will be fewer of these commissions in the future.

Alex Camarda: Whether it is the right or wrong approach really depends on the particular issue. Some issues are very complicated and are perhaps better suited for in-depth study by experts over time like energy deregulation. However, it is important to strike the right balance so the Legislature is not delegating its responsibilities away to do oversight and dig in on issues. For example, the Legislature was certainly capable of examining public financing through oversight hearings because they know campaigning well, having run for office. And they can still do that to inform and shape the work of the commission which will tackle the issue of public financing.

Gerald Benjamin: The more recent salary and public finance commissions are designed to make decisions on matters of policy where there may be agreement on a principle or goal but not on details, where details might destroy the supporting coalition for the agreement, or where there is an effort to avoid responsibility for a desired but potentially unpopular outcome. These are akin to what was called base closing commissions, first used at the federal level to get locally controversial decisions on closing military bases passed. Congress agreed to package all recommended closings in one bill and act on them up or down, to block log rolling on individual cases.

Susan Lerner: We call them lawmakers for a reason – they make laws. The normal legislative process should take precedence over commissions/panels. Most other states – like Texas and California – have active committees, where legislation is shaped and developed out in the open, with input from many different stakeholders, including members of the public at official hearings and committee meetings. We need a real process with hearings and public input, that ultimately delivers well crafted bills.

Ben Max: Commissions, panels and such can be very helpful, in large part by bringing together experts with various backgrounds and affiliations, and should be in the toolbox. They can help inform legislative and executive decision-making processes in important ways, and that's largely, if not exclusively, what they should do. Why wasn't there a commission on congestion pricing and/or campaign finance reform established earlier this year, with recommendations due by March 1, thus allowing elected leaders and their staffs to finalize decisions on these policies in the state budget?

Politically, are commissions the right approach?

Alex Camarda: Again, it really depends on the issue. In the case of the Compensation Commission, lawmakers should not vote on pay raises for themselves (or the next seated legislature) because it is a conflict of interest. Yet others see a direct vote as being the best form of accountability. Similarly, we believe an independent redistricting commission should be used to draw district boundaries for lawmakers rather than lines being drawn by lawmakers because of the conflict that arises from having a huge stake in the outcome.

Gerald Benjamin: I think that these more recent commissions, not even requiring legislative action on specifics but acting subject to legislative veto, are unconstitutional delegations of legislative authority. They are out of accord with the institutional design of our separation of powers system. Their coming into more general use avoids responsibility and diminishes accountability. This is bad governance and, over the longer term, bad politics, as well.

Susan Lerner: There are times when a commission may be appropriate, like the legislative pay commission. We don't want lawmakers fixing their own salaries, so it was necessary to avoid a conflict of interest. But we should not be punting the work of the Legislature to unelected people.

Ben Max: The commission avenue allows elected leaders to avoid tough decisions and at least some political blowback. It reduces risk, but to what extent is unclear – these commissions can get messy; members of the media will still explain to the public who is really responsible for the outcomes; critics and opponents will still figure out who to blame for policies they don't like. But the use of commissions does allow elected officials some distance from decisions and some ability to claim credit when they choose. I hesitate to say they are the right approach politically, but, overall, they may be advantageous to the electeds involved. Still, the fact that the new congestion pricing tolls won't go into effect until just after the next state legislative elections is government at its near-worst, the type of thing that, in combination with the use of these commissions at all, can foster greater political cynicism.

Bruce Gyory: My own view is that these commissions can be useful when they tackle major issues where there is a consensus that something big must be done, but there is either little consensus on what is to be done or where the solution lies in both sides of the political aisle needing to eat their spinach so to speak, namely enacting some hard things they don't really want to do to make a grand bargain. I sense the danger lies if we overuse these commissions and kick too many things to them. We don't want future governors and legislatures to throw in the towel, just cause tough issues are staring them in the face. I would advise saving these commissions for making sure necessary things get done, where you have a consensus on the need to act, but the action itself requires a buffer to forge a governing compromise that holds

together and brings needed change. So far they have not been overused. But only time will tell.