

6196--A

I N   S E N A T E

(PREFILED)

January 8, 2014

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Introduced by Sens. HOYLMAN, KRUEGER, PERKINS, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the legislative law, in relation to prohibiting members of the legislature from receiving certain income and establishing the commission on legislative compensation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The legislative law is amended by adding two new sections  
2     5-b and 5-c to read as follows:  
3     S 5-B. PROHIBITION ON OUTSIDE EARNED INCOME FOR MEMBERS. 1. STARTING  
4     IN CALENDAR YEAR TWO THOUSAND FIFTEEN, A MEMBER OF THE LEGISLATURE MAY  
5     NOT HAVE OUTSIDE EARNED INCOME ATTRIBUTABLE TO SUCH YEAR WHICH EXCEEDS  
6     FIFTEEN PERCENT OF THE GROSS ANNUAL SALARY OF MEMBERS OF THE LEGISLA-  
7     TURE, PURSUANT TO SECTION FIVE OF THIS ARTICLE.  
8     2. A. FOR THE PURPOSES OF THIS SECTION, THE TERM "OUTSIDE EARNED  
9     INCOME" INCLUDES, BUT IS NOT LIMITED TO, WAGES, SALARIES, FEES, AND  
10    OTHER FORMS OF COMPENSATION FOR SERVICES ACTUALLY RENDERED.  
11    B. FOR THE PURPOSES OF THIS SECTION, THE TERM "OUTSIDE EARNED INCOME"  
12    DOES NOT INCLUDE:  
13    (1) SALARY, BENEFITS, AND ALLOWANCES PAID BY NEW YORK STATE;  
14    (2) INCOME ATTRIBUTABLE TO SERVICE WITH THE MILITARY RESERVES OR  
15    NATIONAL GUARD;  
16    (3) INCOME FROM PENSIONS AND OTHER CONTINUING BENEFITS ATTRIBUTABLE TO  
17    PREVIOUS EMPLOYMENT OR SERVICES;  
18    (4) INCOME FROM INVESTMENT ACTIVITIES, WHERE THE MEMBER'S SERVICES ARE  
19    NOT A MATERIAL FACTOR IN THE PRODUCTION OF INCOME;  
20    (5) INCOME FROM A TRADE OR BUSINESS IN WHICH THE MEMBER OR THEIR FAMI-  
21    LY HOLDS A CONTROLLING INTEREST, WHERE THE MEMBER'S SERVICES ARE NOT A  
22    MATERIAL FACTOR IN THE PRODUCTION OF INCOME;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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(6) COPYRIGHT ROYALTIES, FEES, AND THEIR FUNCTIONAL EQUIVALENT, FROM THE USE OR SALE OF COPYRIGHT, PATENT AND SIMILAR FORMS OF INTELLECTUAL PROPERTY RIGHTS, WHEN RECEIVED FROM ESTABLISHED USERS OR PURCHASERS OF THOSE RIGHTS; AND

(7) COMPENSATION FOR SERVICES ACTUALLY RENDERED PRIOR TO JANUARY FIRST, TWO THOUSAND FIFTEEN, OR PRIOR TO BEING SWORN IN AS A MEMBER OF THE LEGISLATURE.

3. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, MEMBERS OF THE LEGISLATURE ARE PROHIBITED FROM:

A. RECEIVING COMPENSATION FOR AFFILIATING WITH OR BEING EMPLOYED BY A FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, OR OTHER ENTITY THAT PROVIDES PROFESSIONAL SERVICES INVOLVING A FIDUCIARY RELATIONSHIP, EXCEPT FOR THE PRACTICE OF MEDICINE;

B. PERMITTING THEIR NAME TO BE USED BY SUCH A FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, OR OTHER ENTITY;

C. RECEIVING COMPENSATION FOR PRACTICING A PROFESSION THAT INVOLVES A FIDUCIARY RELATIONSHIP EXCEPT FOR THE PRACTICE OF MEDICINE;

D. RECEIVING COMPENSATION AS AN OFFICER OR MEMBER OF THE BOARD OF AN ASSOCIATION, CORPORATION, OR OTHER ENTITY;

E. RECEIVING COMPENSATION FOR TEACHING, WITHOUT PRIOR NOTIFICATION TO AND APPROVAL FROM THE LEGISLATIVE ETHICS COMMISSION;

F. RECEIVING ADVANCE PAYMENTS ON COPYRIGHT ROYALTIES, FEES, AND THEIR FUNCTIONAL EQUIVALENTS.

4. A MEMBER OF THE LEGISLATURE WHO KNOWINGLY AND WILLFULLY VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED FORTY THOUSAND DOLLARS. ASSESSMENT OF A CIVIL PENALTY SHALL BE MADE BY THE LEGISLATIVE ETHICS COMMISSION. THE LEGISLATIVE ETHICS COMMISSION, ACTING PURSUANT TO SUBDIVISION ELEVEN OF SECTION EIGHTY OF THE LEGISLATIVE LAW, MAY, IN LIEU OF OR IN ADDITION TO A CIVIL PENALTY, REFER A VIOLATION TO THE APPROPRIATE PROSECUTOR AND UPON SUCH CONVICTION, BUT ONLY AFTER SUCH REFERRAL, SUCH VIOLATION SHALL BE PUNISHABLE AS A CLASS A MISDEMEANOR.

S 5-C. COMMISSION ON LEGISLATIVE COMPENSATION. 1. ON THE FIRST OF APRIL OF EVERY FOURTH YEAR, COMMENCING APRIL FIRST, TWO THOUSAND FIFTEEN, THERE SHALL BE ESTABLISHED FOR SUCH YEAR A COMMISSION ON LEGISLATIVE COMPENSATION TO EXAMINE, EVALUATE AND MAKE RECOMMENDATIONS WITH RESPECT TO ADEQUATE LEVELS OF COMPENSATION AND NON-SALARY BENEFITS FOR MEMBERS OF THE STATE LEGISLATURE. IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, THE COMMISSION SHALL:

A. EXAMINE THE PREVAILING ADEQUACY OF PAY LEVELS AND NON-SALARY BENEFITS RECEIVED BY MEMBERS OF THE STATE LEGISLATURE AND DETERMINE WHETHER ANY OF SUCH PAY LEVELS WARRANT ADJUSTMENT; AND

B. DETERMINE WHETHER, FOR ANY OF THE FOUR YEARS COMMENCING ON THE FIRST OF APRIL OF SUCH YEARS, FOLLOWING THE YEAR IN WHICH THE COMMISSION IS ESTABLISHED, THE ANNUAL SALARIES FOR THE MEMBERS OF THE STATE LEGISLATURE WARRANT ADJUSTMENT.

IN DISCHARGING ITS RESPONSIBILITIES UNDER PARAGRAPHS A AND B OF THIS SUBDIVISION, THE COMMISSION SHALL TAKE INTO ACCOUNT ALL APPROPRIATE FACTORS INCLUDING, BUT NOT LIMITED TO: THE OVERALL ECONOMIC CLIMATE; RATES OF INFLATION; CHANGES IN PUBLIC-SECTOR SPENDING; THE LEVELS OF COMPENSATION AND NON-SALARY BENEFITS RECEIVED BY JUDGES, EXECUTIVE BRANCH OFFICIALS AND LEGISLATORS OF OTHER STATES AND OF THE FEDERAL GOVERNMENT; THE LEVELS OF COMPENSATION AND NON-SALARY BENEFITS RECEIVED BY PROFESSIONALS IN GOVERNMENT, ACADEMIA AND PRIVATE AND NONPROFIT ENTERPRISE; AND THE STATE'S ABILITY TO FUND INCREASES IN COMPENSATION AND NON-SALARY BENEFITS.

1 2. THE COMMISSION SHALL CONSIST OF NINE MEMBERS TO BE APPOINTED AS  
2 FOLLOWS: THREE SHALL BE APPOINTED BY THE GOVERNOR; ONE SHALL BE  
3 APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; ONE SHALL BE  
4 APPOINTED BY THE SPEAKER OF THE ASSEMBLY; ONE SHALL BE APPOINTED BY THE  
5 SENATE MINORITY LEADER; ONE SHALL BE APPOINTED BY THE ASSEMBLY MINORITY  
6 LEADER; AND TWO SHALL BE APPOINTED BY THE STATE COMPTROLLER. THE MEMBERS  
7 APPOINTED SHALL NOT BE EMPLOYEES OF THE STATE OR ANY POLITICAL SUBDIVI-  
8 SION THEREOF. THE GOVERNOR SHALL DESIGNATE THE CHAIR OF THE COMMISSION  
9 FROM AMONG THE MEMBERS SO APPOINTED. VACANCIES IN THE COMMISSION SHALL  
10 BE FILLED IN THE SAME MANNER AS ORIGINAL APPOINTMENTS. TO THE EXTENT  
11 PRACTICABLE, MEMBERS OF THE COMMISSION SHALL HAVE EXPERIENCE IN ONE OR  
12 MORE OF THE FOLLOWING: DETERMINATION OF EXECUTIVE COMPENSATION, HUMAN  
13 RESOURCE ADMINISTRATION AND FINANCIAL MANAGEMENT.

14 3. THE COMMISSION MAY MEET WITHIN AND WITHOUT THE STATE, MAY HOLD  
15 PUBLIC HEARINGS AND SHALL HAVE ALL THE POWERS OF A LEGISLATIVE COMMITTEE  
16 PURSUANT TO THIS CHAPTER.

17 4. THE MEMBERS OF THE COMMISSION SHALL RECEIVE NO COMPENSATION FOR  
18 THEIR SERVICES BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES  
19 INCURRED IN THE PERFORMANCE OF THEIR DUTIES HEREUNDER.

20 5. TO THE MAXIMUM EXTENT FEASIBLE, THE COMMISSION SHALL BE ENTITLED TO  
21 REQUEST AND RECEIVE AND SHALL UTILIZE AND BE PROVIDED WITH SUCH FACILI-  
22 TIES, RESOURCES AND DATA OF ANY COURT, DEPARTMENT, DIVISION, BOARD,  
23 BUREAU, COMMISSION, AGENCY OR PUBLIC AUTHORITY OF THE STATE OR ANY POLI-  
24 TICAL SUBDIVISION THEREOF AS IT MAY REASONABLY REQUEST TO PROPERLY CARRY  
25 OUT ITS POWERS AND DUTIES PURSUANT TO THIS SECTION.

26 6. THE COMMISSION MAY REQUEST, AND SHALL RECEIVE, REASONABLE ASSIST-  
27 ANCE FROM STATE AGENCY PERSONNEL AS NECESSARY FOR THE PERFORMANCE OF ITS  
28 FUNCTIONS.

29 7. THE COMMISSION SHALL MAKE A REPORT TO THE GOVERNOR, THE STATE COMP-  
30 TROLLER AND THE LEGISLATURE OF ITS FINDINGS, CONCLUSIONS, DETERMINATIONS  
31 AND RECOMMENDATIONS, IF ANY, NOT LATER THAN ONE HUNDRED FIFTY DAYS AFTER  
32 ITS ESTABLISHMENT. EACH RECOMMENDATION MADE TO IMPLEMENT A DETERMINATION  
33 PURSUANT TO PARAGRAPH B OF SUBDIVISION ONE OF THIS SECTION SHALL HAVE  
34 THE FORCE OF LAW, AND SHALL SUPERSEDE INCONSISTENT PROVISIONS OF SECTION  
35 FIVE OF THIS ARTICLE, UNLESS MODIFIED OR ABROGATED BY STATUTE PRIOR TO  
36 APRIL FIRST OF THE YEAR AS TO WHICH SUCH DETERMINATION APPLIES.

37 8. UPON THE MAKING OF ITS REPORT AS PROVIDED IN SUBDIVISION SEVEN OF  
38 THIS SECTION, EACH COMMISSION ESTABLISHED PURSUANT TO THIS SECTION SHALL  
39 BE DEEMED DISSOLVED.

40 9. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR OF ANY OTHER LAW,  
41 EACH INCREASE IN SALARY OR COMPENSATION OF ANY MEMBER OF THE LEGISLATURE  
42 PROVIDED BY THIS SECTION SHALL BE ADDED TO THE SALARY OR COMPENSATION OF  
43 SUCH MEMBER AT THE BEGINNING OF THAT PAYROLL PERIOD THE FIRST DAY OF  
44 WHICH IS NEAREST TO THE EFFECTIVE DATE OF SUCH INCREASE AS PROVIDED IN  
45 THIS SECTION, OR AT THE BEGINNING OF THE EARLIER OF TWO PAYROLL PERIODS  
46 THE FIRST DAYS OF WHICH ARE NEAREST BUT EQUALLY NEAR TO THE EFFECTIVE  
47 DATE OF SUCH INCREASE AS PROVIDED IN THIS SECTION; PROVIDED, HOWEVER,  
48 THE PAYMENT OF SUCH SALARY INCREASE PURSUANT TO THIS SECTION ON A DATE  
49 PRIOR THERETO INSTEAD OF ON SUCH EFFECTIVE DATE, SHALL NOT OPERATE TO  
50 CONFER ANY ADDITIONAL SALARY RIGHTS OR BENEFITS ON SUCH MEMBER.

51 10. THE ANNUAL SALARIES AS PRESCRIBED PURSUANT TO THIS SECTION FOR THE  
52 MEMBERS OF THE STATE LEGISLATURE WHENEVER ADJUSTED PURSUANT TO THE  
53 PROVISIONS OF THIS SECTION, SHALL BE ROUNDED UP TO THE NEAREST MULTIPLE  
54 OF ONE HUNDRED DOLLARS.

55 S 2. Subdivision 7 of section 80 of the legislative law is amended by  
56 adding a new paragraph f-1 to read as follows:

1 F-1. PROMULGATE GUIDELINES FOR MEMBERS OF THE LEGISLATURE TO REQUEST  
2 PERMISSION FROM THE COMMISSION TO ACCEPT COMPENSATION FOR TEACHING, AND  
3 PROMULGATE GUIDELINES FOR THE COMMISSION TO EVALUATE AND ISSUE A DETER-  
4 MINATION FOR SUCH REQUESTS.

5 S 3. Paragraph (a) of subdivision 9 of section 80 of the legislative  
6 law, as amended by section 9 of part A of chapter 399 of the laws of  
7 2011, is amended to read as follows:

8 (a) An individual subject to the jurisdiction of the commission with  
9 respect to the imposition of penalties who knowingly and intentionally  
10 violates the provisions of subdivisions two through five-a, seven,  
11 eight, twelve, fourteen or fifteen of section seventy-three of the  
12 public officers law OR SECTION FIVE-B OF THE LEGISLATIVE LAW or a  
13 reporting individual who knowingly and wilfully fails to file an annual  
14 statement of financial disclosure or who knowingly and wilfully with  
15 intent to deceive makes a false statement or gives information which  
16 such individual knows to be false on such statement of financial disclo-  
17 sure filed pursuant to section seventy-three-a of the public officers  
18 law shall be subject to a civil penalty in an amount not to exceed forty  
19 thousand dollars and the value of any gift, compensation or benefit  
20 received as a result of such violation. Any such individual who knowingly  
21 and intentionally violates the provisions of paragraph a, b, c, d, e,  
22 g, or i of subdivision three of section seventy-four of the public offi-  
23 cers law shall be subject to a civil penalty in an amount not to exceed  
24 ten thousand dollars and the value of any gift, compensation or benefit  
25 received as a result of such violation. Assessment of a civil penalty  
26 hereunder shall be made by the commission with respect to persons  
27 subject to its jurisdiction. In assessing the amount of the civil penal-  
28 ties to be imposed, the commission shall consider the seriousness of the  
29 violation, the amount of gain to the individual and whether the individ-  
30 ual previously had any civil or criminal penalties imposed pursuant to  
31 this section, and any other factors the commission deems appropriate.  
32 For a violation of this section, other than for conduct which consti-  
33 tutes a violation of subdivision twelve, fourteen or fifteen of section  
34 seventy-three or section seventy-four of the public officers law, the  
35 legislative ethics commission may, in lieu of or in addition to a civil  
36 penalty, refer a violation to the appropriate prosecutor and upon such  
37 conviction, but only after such referral, such violation shall be  
38 punishable as a class A misdemeanor. Where the commission finds suffi-  
39 cient cause, it shall refer such matter to the appropriate prosecutor. A  
40 civil penalty for false filing may not be imposed hereunder in the event  
41 a category of "value" or "amount" reported hereunder is incorrect unless  
42 such reported information is falsely understated. Notwithstanding any  
43 other provision of law to the contrary, no other penalty, civil or crim-  
44 inal may be imposed for a failure to file, or for a false filing, of  
45 such statement, or a violation of subdivision six of section seventy-  
46 three of the public officers law, except that the appointing authority  
47 may impose disciplinary action as otherwise provided by law. The legis-  
48 lative ethics commission shall be deemed to be an agency within the  
49 meaning of article three of the state administrative procedure act and  
50 shall adopt rules governing the conduct of adjudicatory proceedings and  
51 appeals taken pursuant to a proceeding commenced under article seventy-  
52 eight of the civil practice law and rules relating to the assessment of  
53 the civil penalties herein authorized. Such rules, which shall not be  
54 subject to the promulgation and hearing requirements of the state admin-  
55 istrative procedure act, shall provide for due process procedural mech-  
56 anisms substantially similar to those set forth in such article three

1 but such mechanisms need not be identical in terms or scope. Assessment  
2 of a civil penalty shall be final unless modified, suspended or vacated  
3 within thirty days of imposition, with respect to the assessment of such  
4 penalty, or unless such denial of request is reversed within such time  
5 period, and upon becoming final shall be subject to review at the  
6 instance of the affected reporting individuals in a proceeding commenced  
7 against the legislative ethics commission, pursuant to article seventy-  
8 eight of the civil practice law and rules.

9 S 4. This act shall take effect January 1, 2015.