

STATE OF NEW YORK

10730

IN ASSEMBLY

December 19, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Heastie) --
read once and referred to the Committee on Ways and Means

AN ACT to amend the legislative law, in relation to compensation of
members

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The opening paragraph of subdivision 1 of section 5 of the
2 legislative law, as amended by chapter 635 of the laws of 1998, is
3 amended to read as follows:

4 Effective January first, [~~nineteen hundred ninety nine~~] two thousand
5 twenty-three, each member of the legislature shall receive a salary of
6 [~~seventy-nine thousand five hundred~~] one hundred forty-two thousand
7 dollars per annum. Such salary of a member of the legislature shall be
8 payable in twenty-six bi-weekly installments provided, however, that if
9 legislative passage of the budget as defined in subdivision three of
10 this section has not occurred prior to the first day of any fiscal year,
11 the net amount of any such bi-weekly salary installment payments to be
12 paid on or after such day shall be withheld and not paid until such
13 legislative passage of the budget has occurred whereupon bi-weekly sala-
14 ry installment payments shall resume and an amount equal to the accrued,
15 withheld and unpaid installments shall be promptly paid to each member.

16 § 2. The legislative law is amended by adding a new section 5-b to
17 read as follows:

18 § 5-b. Limit on outside earned income by members. 1. Effective January
19 first, two thousand twenty-five a member of the legislature receiving a
20 salary for legislative work from the state of New York shall be permit-
21 ted to earn outside income each year for performing fee for service
22 activities and compensated outside activities approved under the perma-
23 nent joint rules of the Senate and Assembly in an amount totaling no
24 greater than the earning limitations for retired persons in positions of
25 public service allowed for the same year under subdivision two of
26 section two hundred twelve of the retirement and social security law.
27 Compliance with the limit on outside earned income described in this
28 section shall be a condition precedent to receiving a salary for legis-

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

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1 lative activities from the state of New York, and voting as a member of
2 the legislature of the state of New York.

3 2. a. For purposes of this section, the term "outside earned income"
4 shall mean wages, salaries, fees and other forms of compensation for
5 services actually rendered.

6 b. For the purposes of this section, the term "outside earned income"
7 shall not include:

8 (1) salary, benefits and allowances paid by the state;

9 (2) income and allowances attributable to service in the reserves of
10 the armed forces of the United States, national guard or other active
11 military service;

12 (3) copyright royalties, fees, and their functional equivalent, from
13 the use of copyrights, patents and similar forms of intellectual proper-
14 ty rights, when received from established users or purchasers of such
15 rights;

16 (4) income from retirement plans of the state of New York or the city
17 of New York, private pension plans or deferred compensation plans (e.g.,
18 401, 403(b), 457, etc.) established in accordance with the internal
19 revenue code;

20 (5) income from investments and capital gains, where the member's
21 services are not a material factor in the production of income;

22 (6) income from a trade or business in which a member of their family
23 holds a controlling interest, where the member's services are not a
24 material factor in the production of income; and

25 (7) compensation from services actually rendered prior to January
26 first, two thousand twenty-five, or prior to being sworn in as a member
27 of the legislature.

28 3. A member of the legislature who knowingly and intentionally
29 violates the provisions of this section shall be subject to a civil
30 penalty in an amount not to exceed forty thousand dollars and the value
31 of any gift, compensation or benefit received in connection with such
32 violation. Assessment of a civil penalty shall be made by the legisla-
33 tive ethics commission.

34 § 3. Paragraph (a) of subdivision 9 of section 80 of the legislative
35 law, as amended by section 4 of part QQ of chapter 56 of the laws of
36 2022, is amended to read as follows:

37 (a) An individual subject to the jurisdiction of the commission with
38 respect to the imposition of penalties who knowingly and intentionally
39 violates the provisions of subdivisions two through five-a, seven,
40 eight, twelve, fourteen or fifteen of section seventy-three of the
41 public officers law or section five-b of this chapter or a reporting
42 individual who knowingly and wilfully fails to file an annual statement
43 of financial disclosure or who knowingly and wilfully with intent to
44 deceive makes a false statement or gives information which such individ-
45 ual knows to be false on such statement of financial disclosure filed
46 pursuant to section seventy-three-a of the public officers law shall be
47 subject to a civil penalty in an amount not to exceed forty thousand
48 dollars and the value of any gift, compensation or benefit received as a
49 result of such violation. Any such individual who knowingly and inten-
50 tionally violates the provisions of paragraph a, b, c, d, e, g, or i of
51 subdivision three of section seventy-four of the public officers law
52 shall be subject to a civil penalty in an amount not to exceed ten thou-
53 sand dollars and the value of any gift, compensation or benefit received
54 as a result of such violation. Assessment of a civil penalty hereunder
55 shall be made by the commission with respect to persons subject to its
56 jurisdiction. In assessing the amount of the civil penalties to be

1 imposed, the commission shall consider the seriousness of the violation,
2 the amount of gain to the individual and whether the individual previ-
3 ously had any civil or criminal penalties imposed pursuant to this
4 section, and any other factors the commission deems appropriate. For a
5 violation of this section, other than for conduct which constitutes a
6 violation of subdivision twelve, fourteen or fifteen of section seven-
7 ty-three or section seventy-four of the public officers law, the legis-
8 lative ethics commission may, in lieu of or in addition to a civil
9 penalty, refer a violation to the appropriate prosecutor and upon such
10 conviction, but only after such referral, such violation shall be
11 punishable as a class A misdemeanor. Where the commission finds suffi-
12 cient cause, it shall refer such matter to the appropriate prosecutor. A
13 civil penalty for false filing may not be imposed hereunder in the event
14 a category of "value" or "amount" reported hereunder is incorrect unless
15 such reported information is falsely understated. Notwithstanding any
16 other provision of law to the contrary, no other penalty, civil or crim-
17 inal may be imposed for a failure to file, or for a false filing, of
18 such statement, or a violation of subdivision six of section seventy-
19 three of the public officers law, except that the appointing authority
20 may impose disciplinary action as otherwise provided by law. The legis-
21 lative ethics commission shall be deemed to be an agency within the
22 meaning of article three of the state administrative procedure act and
23 shall adopt rules governing the conduct of adjudicatory proceedings and
24 appeals taken pursuant to a proceeding commenced under article seventy-
25 eight of the civil practice law and rules relating to the assessment of
26 the civil penalties herein authorized. Such rules, which shall not be
27 subject to the promulgation and hearing requirements of the state admin-
28 istrative procedure act, shall provide for due process procedural mech-
29 anisms substantially similar to those set forth in such article three
30 but such mechanisms need not be identical in terms or scope. Assessment
31 of a civil penalty shall be final unless modified, suspended or vacated
32 within thirty days of imposition, with respect to the assessment of such
33 penalty, or unless such denial of request is reversed within such time
34 period, and upon becoming final shall be subject to review at the
35 instance of the affected reporting individuals in a proceeding commenced
36 against the legislative ethics commission, pursuant to article seventy-
37 eight of the civil practice law and rules.

38 § 4. Paragraph (i) of subdivision 7 of section 80 of the legislative
39 law, as amended by section 4 of part QQ of chapter 56 of the laws of
40 2022, is amended to read as follows:

41 i. Upon written request from any person who is subject to the juris-
42 diction of the commission and the requirements of sections seventy-
43 three, seventy-three-a and seventy-four of the public officers law, and
44 section five-b of this chapter render formal advisory opinions on the
45 requirements of said provisions. A formal written opinion rendered by
46 the commission, until and unless amended or revoked, shall be binding on
47 the legislative ethics commission in any subsequent proceeding concern-
48 ing the person who requested the opinion and who acted in good faith,
49 unless material facts were omitted or misstated by the person in the
50 request for an opinion. Such opinion may also be relied upon by such
51 person, and may be introduced and shall be a defense in any criminal or
52 civil action. The commission on ethics and lobbying in government shall
53 not investigate an individual for potential violations of law based upon
54 conduct approved and covered in its entirety by such an opinion, except
55 that such opinion shall not prevent or preclude an investigation of and
56 report to the legislative ethics commission concerning the conduct of

1 the person who obtained it by the commission on ethics and lobbying in
2 government for violations of section seventy-three, seventy-three-a or
3 seventy-four of the public officers law and section 5-b of this chapter
4 to determine whether the person accurately and fully represented to the
5 legislative ethics commission the facts relevant to the formal advisory
6 opinion and whether the person's conduct conformed to those factual
7 representations. The commission on ethics and lobbying in government
8 shall be authorized and shall have jurisdiction to investigate potential
9 violations of the law arising from conduct outside of the scope of the
10 terms of the advisory opinion; and

11 § 5. Paragraph (a) of subdivision 10 of section 94 of the executive
12 law, as added by section 2 of part QQ of chapter 56 of the laws of 2022,
13 is amended to read as follows:

14 (a) The commission shall receive complaints and referrals alleging
15 violations of section seventy-three, seventy-three-a or seventy-four of
16 the public officers law, article one-A and section five-b of the legis-
17 lative law, or section one hundred seven of the civil service law.

18 § 6. If any clause, sentence, paragraph, section or part of this act
19 shall be adjudged by any court of competent jurisdiction to be invalid,
20 such judgment shall not affect, impair or invalidate the remainder ther-
21 eof, but shall be confined in its operation to the clause, sentence,
22 paragraph, section or part thereof directly involved in the controversy
23 in which such judgment shall have been rendered.

24 § 7. This act shall take effect January 1, 2023.