

5361--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

February 20, 2015

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Introduced by M. of A. LAVINE, COOK, RAIA, LAWRENCE, MAYER -- Multi-Sponsored by -- M. of A. BUTLER, CROUCH, PEOPLES-STOKES, THIELE -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- 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 SEVENTEEN, 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;

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

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(5) INCOME FROM A TRADE OR BUSINESS IN WHICH THE MEMBER OR THEIR FAMILY HOLDS A CONTROLLING INTEREST, WHERE THE MEMBER'S SERVICES ARE NOT A MATERIAL FACTOR IN THE PRODUCTION OF INCOME;

(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 SEVENTEEN, 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 SEVENTEEN, 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

1 BY PROFESSIONALS IN GOVERNMENT, ACADEMIA AND PRIVATE AND NONPROFIT  
2 ENTERPRISE; AND THE STATE'S ABILITY TO FUND INCREASES IN COMPENSATION  
3 AND NON-SALARY BENEFITS.

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

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

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

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

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

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

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

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

54 10. THE ANNUAL SALARIES AS PRESCRIBED PURSUANT TO THIS SECTION FOR THE  
55 MEMBERS OF THE STATE LEGISLATURE WHENEVER ADJUSTED PURSUANT TO THE

1 PROVISIONS OF THIS SECTION, SHALL BE ROUNDED UP TO THE NEAREST MULTIPLE  
2 OF ONE HUNDRED DOLLARS.

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

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

9 S 3. Paragraph (a) of subdivision 9 of section 80 of the legislative  
10 law, as amended by section 9 of part A of chapter 399 of the laws of  
11 2011, is amended to read as follows:

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

1 the civil penalties herein authorized. Such rules, which shall not be  
2 subject to the promulgation and hearing requirements of the state admin-  
3 istrative procedure act, shall provide for due process procedural mech-  
4 anisms substantially similar to those set forth in such article three  
5 but such mechanisms need not be identical in terms or scope. Assessment  
6 of a civil penalty shall be final unless modified, suspended or vacated  
7 within thirty days of imposition, with respect to the assessment of such  
8 penalty, or unless such denial of request is reversed within such time  
9 period, and upon becoming final shall be subject to review at the  
10 instance of the affected reporting individuals in a proceeding commenced  
11 against the legislative ethics commission, pursuant to article seventy-  
12 eight of the civil practice law and rules.

13 S 4. This act shall take effect on the first of January next succeed-  
14 ing the date upon which it shall have become a law.