

5361

2015-2016 Regular Sessions

I N A S S E M B L Y

February 20, 2015

Introduced by M. of A. LAVINE -- read once and referred to the Committee
on Governmental Operations

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 ASSEM-
BLY, 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 SIXTEEN, 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;
23 (6) COPYRIGHT ROYALTIES, FEES, AND THEIR FUNCTIONAL EQUIVALENT, FROM
24 THE USE OR SALE OF COPYRIGHT, PATENT AND SIMILAR FORMS OF INTELLECTUAL

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

LBD01499-01-5

1 PROPERTY RIGHTS, WHEN RECEIVED FROM ESTABLISHED USERS OR PURCHASERS OF
2 THOSE RIGHTS; AND

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

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

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

12 B. PERMITTING THEIR NAME TO BE USED BY SUCH A FIRM, PARTNERSHIP, ASSO-
13 CIATION, CORPORATION, OR OTHER ENTITY;

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

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

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

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

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

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

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

41 B. DETERMINE WHETHER, FOR ANY OF THE FOUR YEARS COMMENCING ON THE
42 FIRST OF APRIL OF SUCH YEARS, FOLLOWING THE YEAR IN WHICH THE COMMISSION
43 IS ESTABLISHED, THE ANNUAL SALARIES FOR THE MEMBERS OF THE STATE LEGIS-
44 LATURE WARRANT ADJUSTMENT.

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

55 2. THE COMMISSION SHALL CONSIST OF NINE MEMBERS TO BE APPOINTED AS
56 FOLLOWS: THREE SHALL BE APPOINTED BY THE GOVERNOR; ONE SHALL BE

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

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

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

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

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

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

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

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

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

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

55 F-1. PROMULGATE GUIDELINES FOR MEMBERS OF THE LEGISLATURE TO REQUEST
56 PERMISSION FROM THE COMMISSION TO ACCEPT COMPENSATION FOR TEACHING, AND

PROMULGATE GUIDELINES FOR THE COMMISSION TO EVALUATE AND ISSUE A DETERMINATION FOR SUCH REQUESTS.

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

(a) An individual subject to the jurisdiction of the commission with respect to the imposition of penalties who knowingly and intentionally violates the provisions of subdivisions two through five-a, seven, eight, twelve, fourteen or fifteen of section seventy-three of the public officers law OR SECTION FIVE-B OF THE LEGISLATIVE LAW or a reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, b, c, d, e, g, or i of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Assessment of a civil penalty hereunder shall be made by the commission with respect to persons subject to its jurisdiction. In assessing the amount of the civil penalties to be imposed, the commission shall consider the seriousness of the violation, the amount of gain to the individual and whether the individual previously had any civil or criminal penalties imposed pursuant to this section, and any other factors the commission deems appropriate. For a violation of this section, other than for conduct which constitutes a violation of subdivision twelve, fourteen or fifteen of section seventy-three or section seventy-four of the public officers law, the legislative ethics commission 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. Where the commission finds sufficient cause, it shall refer such matter to the appropriate prosecutor. A civil penalty for false filing may not be imposed hereunder in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported information is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, or a violation of subdivision six of section seventy-three of the public officers law, except that the appointing authority may impose disciplinary action as otherwise provided by law. The legislative ethics commission shall be deemed to be an agency within the meaning of article three of the state administrative procedure act and shall adopt rules governing the conduct of adjudicatory proceedings and appeals taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of the civil penalties herein authorized. Such rules, which shall not be subject to the promulgation and hearing requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in such article three but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty shall be final unless modified, suspended or vacated

1 within thirty days of imposition, with respect to the assessment of such
2 penalty, or unless such denial of request is reversed within such time
3 period, and upon becoming final shall be subject to review at the
4 instance of the affected reporting individuals in a proceeding commenced
5 against the legislative ethics commission, pursuant to article seventy-
6 eight of the civil practice law and rules.

7 S 4. This act shall take effect January 1, 2016.