S T A T E O F N E W Y O R K

5361--A

2015-2016 Regular Sessions

I N A S S E M B L Y

February 20, 2015

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:

Section 1. The legislative law is amended by adding two new sections 5-b and 5-c to read as follows:

S 5-B. PROHIBITION ON OUTSIDE EARNED INCOME FOR MEMBERS. 1. STARTING IN CALENDAR YEAR TWO THOUSAND SEVENTEEN, A MEMBER OF THE LEGISLATURE MAY NOT HAVE OUTSIDE EARNED INCOME ATTRIBUTABLE TO SUCH YEAR WHICH EXCEEDS FIFTEEN PERCENT OF THE GROSS ANNUAL SALARY OF MEMBERS OF THE LEGISLATURE, PURSUANT TO SECTION FIVE OF THIS ARTICLE.

2. A. FOR THE PURPOSES OF THIS SECTION, THE TERM "OUTSIDE EARNED INCOME" INCLUDES, BUT IS NOT LIMITED TO, WAGES, SALARIES, FEES, AND OTHER FORMS OF COMPENSATION FOR SERVICES ACTUALLY RENDERED.

B. FOR THE PURPOSES OF THIS SECTION, THE TERM "OUTSIDE EARNED INCOME" DOES NOT INCLUDE:

(1) SALARY, BENEFITS, AND ALLOWANCES PAID BY NEW YORK STATE;

(2) INCOME ATTRIBUTABLE TO SERVICE WITH THE MILITARY RESERVES OR NATIONAL GUARD;

(3) INCOME FROM PENSIONS AND OTHER CONTINUING BENEFITS ATTRIBUTABLE TO PREVIOUS EMPLOYMENT OR SERVICES;

(4) INCOME FROM INVESTMENT ACTIVITIES, WHERE THE MEMBER'S SERVICES ARE 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

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

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

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

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

5. TO THE MAXIMUM EXTENT FEASIBLE, THE COMMISSION SHALL BE ENTITLED TO REQUEST AND RECEIVE AND SHALL UTILIZE AND BE PROVIDED WITH SUCH FACILITIES, RESOURCES AND DATA OF ANY COURT, DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, AGENCY OR PUBLIC AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AS IT MAY REASONABLY REQUEST TO PROPERLY CARRY OUT ITS POWERS AND DUTIES PURSUANT TO THIS SECTION.

6. THE COMMISSION MAY REQUEST, AND SHALL RECEIVE, REASONABLE ASSISTANCE FROM STATE AGENCY PERSONNEL AS NECESSARY FOR THE PERFORMANCE OF ITS FUNCTIONS.

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

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

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

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

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

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

F-1. PROMULGATE GUIDELINES FOR MEMBERS OF THE LEGISLATURE TO REQUEST 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 within thirty days of imposition, with respect to the assessment of such penalty, or unless such denial of request is reversed within such time period, and upon becoming final shall be subject to review at the instance of the affected reporting individuals in a proceeding commenced against the legislative ethics commission, pursuant to article seventy-eight of the civil practice law and rules.

S 4. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.