STATE OF NEW YORK

9617

IN SENATE

December 19, 2022

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 Assembly, do enact as follows:

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

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

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

§ 5-b. Limit on outside earned income by members. 1. Effective January first, two thousand twenty-five a member of the legislature receiving a salary for legislative work from the state of New York shall be permitted to earn outside income each year for performing fee for service activities and compensated outside activities approved under the permanent joint rules of the Senate and Assembly in an amount totaling no greater than the earning limitations for retired persons in positions of public service allowed for the same year under subdivision two of section two hundred twelve of the retirement and social security law. Compliance with the limit on outside earned income described in this 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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lative activities from the state of New York, and voting as a member of the legislature of the state of New York.

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

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

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

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

(3) copyright royalties, fees, and their functional equivalent, from the use of copyrights, patents and similar forms of intellectual property rights, when received from established users or purchasers of such rights;

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

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

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

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

3. A member of the legislature who knowingly and intentionally violates the provisions of this section 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 in connection with such violation. Assessment of a civil penalty shall be made by the legislative ethics commission.

§ 3. Paragraph (a) of subdivision 9 of section 80 of the legislative law, as amended by section 4 of part QQ of chapter 56 of the laws of 2022, 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 this chapter 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.

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

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

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

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

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

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

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