

## Executive Summary

During the 2015 LWVNYS State Convention, the delegates approved the Board recommended Program Update Study of our position on **Legislative Procedures (1977)**. The section of the current position that we are looking at in this study reads:

**“The legislature should continue to serve as a part-time body. Terms for legislators should be longer, and possibly staggered.”**

The Legislative Procedures position (Appendix A), is critical to our core mission as a state good government group. Many of the public corruption scandals involving members of the state legislature involve outside income, self-dealing, bribery, and fraud. The Moreland Commission Report, issued in December 2013<sup>i</sup> cites, “One out of every eleven legislators to leave office since 1999 has done so under a cloud of ethical or criminal violations...” Banning or limiting outside income is a very important issue in ethics reform. Our current position warrants reexamination in this context since it constrains our approach to the outside income issue.

The update study will address the ambiguities in the current position and re-focus the position on the policies most significant to ethics reform and performance of the Legislature.

- Outside Income
- Length of terms
- Staggered terms
- Tenure for Legislative Leadership

## Outside Income

### Should outside income be banned/limited?

The two recent corruption convictions of New York lawmakers have left state good government groups and citizens concerned over the ethical issues inherent in outside income for legislators. In 2015, the Center for Public Integrity<sup>ii</sup> ranked New York State government as the most corrupt of the 50 states, with the most legislators forced out of office for ethical or criminal offenses.

### Impact of Outside Income

The base salary of a New York State legislator is \$79,500<sup>iii</sup>. As of 2012, the average legislative income for currently sitting legislators, including stipends for leadership

positions was approximately \$89,500 for members of the Assembly, and approximately \$95,500 for members of the Senate. In addition, legislators are reimbursed for the costs associated with being a legislator. Per-diem funding is paid for each night the legislator spends in Albany, at the rate of \$172.<sup>iv</sup> Legislators are also reimbursed for the cost of their travels based on miles traveled and toll costs for one round trip per week.

Studies of the legislature show that many lawmakers consider their legislative position their full-time job and forego other work<sup>v</sup>. Governor Cuomo noted in a 2015 speech that only 29 senators and 55 Assembly members reported outside earnings from employment<sup>vi</sup>. According to a Common Cause/NY analysis, the average lawmaker with outside income in 2014 made between \$47k and \$80k, with about 8% of elected legislators in both houses making between \$100k and 515K.<sup>vii</sup> These figures do not include investment income.

The majority of lawmakers with outside employment hold jobs as lawyers, with either the title "partner" or "of counsel" at a law firm for an average of \$73,592. The 4 legislators in the insurance industry make the highest amount of outside income with an average of \$140,750. For a complete list of industries providing income for legislators in both houses, see Appendix B.<sup>viii</sup>

### **Limits on Outside Income**

If there were to be limits on outside income, what form should it take? The Federal model offers one example. U.S. Representatives and Senators are limited to earning 15% in excess of their yearly Congressional salary<sup>ix</sup>. In addition, some specific sources of income are prohibited. Members can still earn more than 15% through investments which are considered "unearned income." In addition, certain other sources of income are excluded from the 15% rule such as service with the National Guard, pensions, annuities and deferred compensation. There are additional restrictions on income from financial interest groups and lobbyists.

There are no states with limits on outside income; although some are also considering it. Most states have reporting requirements and California bans speaking fees and has a limit on gifts from lobbyists.

### **Regional Cost of Living Adjustment**

If there limits on outside income, should there be a regional cost of living adjustment? The estimated cost of living for a family of four in New York City is \$93,500<sup>x</sup>. The cost of living upstate is far smaller with a family of four only needing \$71,627 to get by in the city of Albany<sup>xi</sup>. The recently enacted increase in the minimum wage recognized the disparity by having separate schedules for New York City; Westchester, Nassau and Suffolk counties; and the rest of the state.

### **Term Lengths and Staggered Terms**

Across the United States, there are wide varieties in term lengths, term limits and use of staggered elections. Only five states have representatives in the lower house serving four years instead of two;<sup>xii</sup> the reverse is true in state senates. There are only 12 states that have senators serving 2 years, while the rest serve 4 year terms or more.<sup>xiii</sup>

Staggered terms have not been used in the New York State legislature but have been used in some New York counties. The most familiar example of staggered terms is for the United States Senate; one third of the Senate seats are up for election at every general election for six (6) year terms, each  $\frac{1}{3}$  cycling through during a Presidential election year every 12 years. Staggered terms are generally thought of as a way to maintain institutional continuity and support the 'more deliberative' role of the upper house.

States have employed staggered elections in a variety of ways with a variety of different term lengths. The use of 2-4-4 term lengths has become more popular of late responding to the need to acknowledge reapportionment every 10 years and allow voters in changed districts the opportunity to vote in their new district. (see Appendix C for an example of 2-4-4 staggered terms).

*Note:* New York State does not have term limits for legislators, and the LWVNYS opposes term limits for state legislators or statewide elected officials. (The LWVNYS opposition is based on a 1996 concurrence; a state study rejected Term Limits in 2015). Comments collated from that study demonstrated that while there was no consensus on Term Limits for Legislators, more than 50% of the responding local Leagues expressed interest in the length of legislative terms.

## Tenure for Legislative Leadership

The New York State Constitution gives each house of the legislature the power to make its own rules. How they choose to do so is left up to them – there is no restriction in either the Constitution or the Laws of the State. The rules in each house lay out how they can be changed. In the Assembly, anyone making such a rule change proposal must give three days' notice.

The Senate Rules do not designate a time frame for making a change, but such change must be introduced as a resolution into the Senate Rules Committee and that committee must vote to bring it to the floor. You can find the current rules of each house of the legislature on its websites.

Assembly: [www.assembly.state.ny.us/Rules/](http://www.assembly.state.ny.us/Rules/)

Senate: [www.nysenate.gov/rules](http://www.nysenate.gov/rules)

In the current rules, the Senate has limited some of the Leadership titles to a maximum of 8 years: Temporary President of the Senate (by current rules, the Majority Leader serves as the Temporary President of the Senate), and the Minority Leader of the Senate and committee chairs.

*NOTE:* The President of the Senate is the Lieutenant Governor.

This is a relatively recent change to the rules for Senate committee chairs and no one has reached that limit since it was included in the Senate rules.

The Assembly Rules do not place any limitations on leadership positions or committee chairs.

There is a bill before the Legislature that would put the Senate rules in law in both houses. The bill was first proposed in 2007 in the Senate and has had sponsors in both houses since 2010. The Senate has passed it in some years, but the Assembly has never passed it.

The current rules do not address the issue of a break in service for a title or chair of a committee. There is nothing in the Senate rules that specifies whether a Senator who reaches the 8-year maximum can “take a term off” and then resume such position for another 8 years. Nor does it prevent a Senator from being appointed to a different title when the one he/she is holding reaches that 8-year limit. Finally, the majority of the Senate can change the rules if they choose to keep one or more Senators in the position they are holding when that 8-year time comes around.

Legislative leaders are limited in 15 states that have term limits for legislators. Five states have a tradition of limits on terms of the top four legislative leadership posts: Speaker of the House (Assembly), House Minority leader, President of the Senate and Senate Minority leader (two years for Florida, South Dakota, North Dakota and Wyoming, and six years for Connecticut). Maine has a statutory, not Constitutional limit.<sup>xiv</sup> Illinois has legislation currently making its way through the legislative process to limit leadership to 8 years.<sup>xv</sup>

### **Lulus**

Article 2, Section 5-a of the Legislative Law lists “Senate officers” and “Assembly officers.” Each of these officers receives an “allowance,” often referred to as a *lulu*. The leadership positions listed in the consensus questions all receive such an allowance. While there are 24 “Senate officers” and 34 “Assembly officers” under the Legislative Law, section 5a, we are only considering limits for chairs and certain officers.

In addition, the same section of law spells out members of each house “Serving in Special Capacity” ; committee Chairs and Ranking Minority members of each committee. <sup>xvi</sup>

Payment for these “jobs” has been an issue that the press highlights whenever salary is discussed. Each title is assigned an allowance, which is listed in the law. They range from \$41,500 for the top post in each house (Assembly Speaker and Temporary President of the Senate) to as little as \$9,000 for the Ranking Member of some of the less active committees in each house. Some members (especially in the Senate) have more than one title. The law specifies that they may receive only the higher paying of the allowances to which they might be entitled.

## Appendix A

### **LWVNY Impact on Issues 2015 LEGISLATIVE PROCEDURES –**

*Statement of Position as announced by the State Board, April 1977.*

Members of the state legislature should have a greater impact on legislative proceedings, with the aid of better and more equitable staffing, and a stronger role for committee.

The legislature should continue to serve as a part-time body. Terms for legislators should be longer, and possibly staggered. Legislative staff should be full-time professionals, independent of partisan control, and more equitably distributed among freshmen and more senior members, majority and minority, Senate and Assembly.

Information about staff salaries and assignments should be more readily available.

A variety of approaches is needed to reduce the number of bills submitted each year:

- reducing the number of “home rule” bills on which the legislature must act
- consolidating or eliminating individual sponsorship of bills, and requiring active support by sponsors for their own bills.

Lobbying regulation should require reporting by all groups and agents who expend significant funds for lobbying.

With regard to ethics, there is need for:

- a commission or board of ethics with citizen participation,
- disclosure by legislators of sources of income and financial holdings,
- a more specific code of ethics or formal guidelines for ethical behavior.

## Appendix B

Industry Providing Highest Percentage of Income Per Individual NYS Legislator from Both Houses			
Industry	Number of Individuals	Sum of Average Income	Average of Average Income
Insurance	4	\$563,000	\$140,750
Veterinary	1	\$125,000	\$125,000
Transportation	2	\$225,000	\$112,500
Funeral Services	1	\$103,000	\$103,000
Small Business	1	\$87,500	\$87,500
Real Estate	2	\$157,500	\$78,750
Manufacturing	1	\$75,501	\$75,501
Law	38	\$2,796,501	\$73,592
Construction	1	\$62,500	\$62,500
Investment Banking	1	\$62,500	\$62,500
Financial Advisory Services	2	\$88,001	\$44,000
Dry cleaning	1	\$35,000	\$35,000
Political Committee	1	\$35,000	\$35,000
Banking	3	\$95,000	\$31,667
Auction House	1	\$25,000	\$25,000
Lecture/Speech	2	\$35,501	\$17,750
University	6	\$100,001	\$16,667
Church	1	\$12,500	\$12,500
Securities	1	\$12,500	\$12,500
Solar Power	1	\$12,500	\$12,500
Media	1	\$3,000	\$3,000
Music	1	\$3,000	\$3,000

**Appendix C**

Example of 2-4-4 Staggered terms

<b>Year</b>	<b>Group 1</b>	<b>Group 2</b>
2020P	Elected for a 2-year term	
2022	Redistricting elected for a 4-year term	elected for a 4-year term
2026	elected for a 4-year term	elected for a 2-year term
2028P		elected for a 4-year term
2030	elected for a 2-year term	
2032P	Redistricting elected for a 4-year term	elected for a 4-year term
2036P	elected for a 4-year term	elected for a 2-year term
2038		elected for a 4-year term
2040P	elected for a 2-year term	
2042	Redistricting elected for a 4-year term	elected for a 4-year term
2046	elected for a 4-year term	elected for a 2-year term
2048P		elected for a 4-year term
2050	elected for a 2-year term	

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<sup>i</sup> [http://publiccorruption.moreland.ny.gov/sites/default/files/moreland\\_report\\_final.pdf](http://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf)  
(Moreland Report/The Commission to Investigate Public Corruption. December 2013.)

<sup>ii</sup> <https://www.publicintegrity.org/2015/11/09/18477/new-york-gets-d-grade-2015-state-integrity-investigation>

<sup>iii</sup> [http://publiccorruption.moreland.ny.gov/sites/default/files/moreland\\_report\\_final.pdf](http://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf)  
(Moreland Report/The Commission to Investigate Public Corruption. December 2013. Page14.)

<sup>iv</sup> For those who live more than 50 miles from Albany, per-diem funding is paid for each night the legislator spends in Albany, at the rate of \$172, or \$61 if no overnight stay is involved.

<sup>v</sup> <http://www.capitalnewyork.com/article/albany/2015/02/8562042/albany-considers-full-time-legislature>

<sup>vi</sup> <http://www.capitalnewyork.com/article/albany/2015/02/8562042/albany-considers-full-time-legislature>

<sup>vii</sup> <http://www.commoncause.org/states/new-york/research-and-reports/ccny-2015-review-of.pdf>

<sup>viii</sup> <http://www.commoncause.org/states/new-york/research-and-reports/ccny-2015-review-of.pdf>

<https://www.dos.ny.gov/info/constitution.htm>

<sup>ix</sup> <http://conginst.org/2007/09/18/how-much-outside-income-can-a-member-earn-in-a-year/>

<sup>x</sup> <http://www.nydailynews.com/new-york/nyc-tops-new-living-expenses-article-1.1390134>

<sup>xi</sup> <http://livingwage.mit.edu/counties/36001>

<sup>xii</sup> [https://ballotpedia.org/Length\\_of\\_terms\\_of\\_state\\_representatives](https://ballotpedia.org/Length_of_terms_of_state_representatives)

<sup>xiii</sup> [https://ballotpedia.org/Length\\_of\\_terms\\_of\\_state\\_senators](https://ballotpedia.org/Length_of_terms_of_state_senators)

<sup>xiv</sup> [http://articles.chicagotribune.com/2014-01-08/opinion/ct-illinois-speakers-term-limits-general-assembly--20140108\\_1\\_illinois-reform-commission-madigan-limits](http://articles.chicagotribune.com/2014-01-08/opinion/ct-illinois-speakers-term-limits-general-assembly--20140108_1_illinois-reform-commission-madigan-limits)

<sup>xv</sup> <http://www.chicagotribune.com/suburbs/daily-southtown/news/ct-sta-kadner-term-limits-st-1106-20151105-column.html>

<sup>xvi</sup> <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>