


# BAN & CAP

THE FUTURE OF  
OUTSIDE INCOME IN  
THE NEW YORK  
STATE LEGISLATURE



COMMON CAUSE/NY  
MARCH 2019



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## **BAN AND CAP: THE FUTURE OF OUTSIDE INCOME IN THE NEW YORK STATE LEGISLATURE**

### **EXECUTIVE SUMMARY**

At the beginning of 2019, the recommendations from the [2018 New York State Compensation Commission](#) went into effect- over the course of the next two years the New York State Legislature will receive a substantive salary increase in exchange for restrictions on outside income. The restrictions on outside income will begin in January 2020. Restrictions on outside income fall into one of two categories: a total ban on outside income earned by certain professions or permissible outside income earned in certain professions that is subject to a 15% cap.

The Commission's recommendations hew to the Congressional guidelines on outside income. This means that income that is derived from professional services that involve a fiduciary relationship will be banned.<sup>1</sup> Income that is derived from other sources will be subject to the 15% cap, which by 2021, will be \$19,500. Previously, no such ban or partial cap on outside income existed for New York state legislators. Common Cause/NY urged the Commission to adopt guidelines banning or limiting outside income.

Common Cause/NY examined the most recent financial disclosure forms for state legislators, filings from 2017, in order to determine the pervasiveness of outside income and the potential impact of the Commission's regulations. Our analysis shows:

- **The majority of returning state legislators in 2019 will be unaffected by the ban and cap on outside income.**
  - 66.3% of returning state legislators reported no outside income the year prior.
- **However, more than likely, most returning state legislators with outside income have income that will be banned by 2020 and must divest over the next year.**
  - Congress employs a wide ranging interpretation of 'fiduciary relationship' as it pertains to banned professions which goes beyond the traditional fiduciary relationship such as law, accounting, and financial services firms. Their expansive view includes real estate, consulting and advising, insurance, and architecture.<sup>2</sup>
- **Some returning state legislators with outside income will need to limit their outside income in order to comply with the 15% cap.**

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<sup>1</sup> A fiduciary relationship is traditionally defined by one party having an advisory role. For example, individuals working in law, financial services, or accounting all have fiduciary relationships with their clients.

<sup>2</sup> Furthermore, Congress bans any ancillary employment and collection of fees in relation to those industries. Those working in medicine are exempt under the Congressional model.

The State Legislature has long been plagued by perceived or actual conflicts of interest due to outside income. Common Cause/NY has advocated for either a total ban or a 15% cap on outside income for state legislators and continues to support the Compensation Commission's recommendations. State legislators are due for a raise, but, in exchange, must adhere to the reasonable ban and cap restrictions on outside income.

### **PROFILE OF RETURNING STATE LEGISLATORS WITH OUTSIDE INCOME**

Over 80% of state legislators who filed disclosure reports in 2017 returned to office in 2019. For those state legislators, CCNY determined:

#### **Two-thirds of returning state legislators will be unaffected by the ban and cap on outside income.**

- 33.7% of returning state legislators reported outside income.
- 66.3% returning state legislators reported no outside income.

#### **Returning state legislators with outside income are more likely to be in the Assembly.**

- 35% or 45 of 129 returning Assembly members have outside income.
- 30.4% or 14 of 46 returning State Senators have outside income.

#### **Returning Republican state legislators are more likely to have outside income.**

- 49.1% of returning Republican state legislators have outside income.
  - 50% of returning Republican Assembly members have outside income.
  - 47.6% of returning Republican State Senators have outside income.
- 26.3% of returning Democratic state legislators have outside income.
  - 29% of returning Democratic Assembly members have outside income.
  - 16% of returning Democratic State Senators have outside income.

#### **Returning state legislators with outside income are more likely to represent downstate districts.<sup>3</sup>**

- 56% of returning state legislators with outside income represent downstate districts.
- 33.8% of returning state legislators with outside income represent upstate districts.

### **PROFILE OF OUTSIDE INCOME FOR RETURNING STATE LEGISLATORS**

Common Cause/NY also examined the sources of income for state legislators. We found that most only have one source of outside income, that outside income is clustered in certain types of professions and over half earned less than \$50,000.

#### ***Count of Outside Income***

While just 59 returning state legislators have outside income, they reported 84 different types of outside income. Nearly 70% of returning state legislators with outside income had one source of outside income.

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<sup>3</sup> Downstate districts are defined as Districts 1-97 in the Assembly and Districts 1-38 in the State Senate.

*Count of Outside Income for 2019 Returning State Legislators with Outside Income*

<i>Count of Outside Income</i>	<i>% of Returning State Legislators</i>
1	67.7%
2	25.4%
3	5%
5	1.6%

***Source of Outside Income***

Returning state legislators derived outside income from 21 different trades and professions. However, state legislators tend to cluster in certain fields. Almost 75% of reported outside income is derived from just five professions: law, real estate, teaching, government,<sup>4</sup> and financial services.<sup>5</sup>

*Sources of Outside Income for Returning State Legislators with Outside Income*

<i>Profession</i>	<i>Source of Outside Income</i>
Law	40.5%
Real Estate	11.9%
Teaching	9.5%
Government	6%
Financial Services	4.8%
Total	72.7%

***Amount of Outside Income***

State legislators are required to disclose all outside income annually. Outside income reporting requirements are such that legislators do not have to report precise dollar amounts, but instead select a preset income band for earnings.<sup>6</sup> Therefore, it is impossible to precisely calculate how much each individual earns, as well as derive reliable aggregates for the state legislature.

However, as a good faith effort CCNY has calculated averages for the ranges of reported outside income for each returning state legislator. We found, that on average, 60% of state legislators earned less than \$50,000 in outside income.

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<sup>4</sup> Outside income derived from government does not include the normal salary of a state legislator nor pensions.

<sup>5</sup> Includes banking.

<sup>6</sup> For example, if a state legislator earned \$43,000 as a lawyer, the income would be reported in the \$20,000-\$50,000 income band.

*Average Outside Income for Returning State Legislators with Outside Income*

<i>Average Income</i>	<i>Source of Outside Income</i>
\$1-\$25k	33.8%
\$25k-\$50k	25.7%
\$50k-\$100k	20.3%
\$100k-\$125k	9.5%
\$125k +	10.8%
Total	100%

*Top 10 Highest Earning Returning State Legislators with Outside Income<sup>7</sup>*

<i>First</i>	<i>Last</i>	<i>House</i>	<i>District</i>	<i>Region</i>	<i>Count of Outside Income</i>	<i>Industry</i>	<i>Total Min</i>	<i>Total Max</i>	<i>Average</i>
George	Amedore	Senate	46	Upstate	2	Real estate, Construction	\$575,000	\$800,000	\$687,500
Stephen	Hawley	Assembly	139	Upstate	2	Insurance, Real estate	\$355,000	\$470,000	\$412,500
Andrew	Lanza	Senate	24	Downstate	2	Law (x2)	\$155,000	\$270,000	\$212,500
Rebecca	Seawright	Assembly	76	Downstate	1	Law	\$150,000	\$250,000	\$200,000
David	Weprin	Assembly	24	Downstate	2	Financial services, Law	\$101,000	\$155,000	\$128,000
William	Barclay	Assembly	120	Upstate	3	Law, Bank, Insurance	\$ 96,000	\$155,000	\$125,500
Michael	Norris	Assembly	144	Upstate	1	Law	\$100,000	\$150,000	\$125,000
Phillip	Steck	Assembly	110	Upstate	1	Law	\$100,000	\$150,000	\$125,000
Clyde	Vanel	Assembly	33	Downstate	1	Law	\$100,000	\$150,000	\$125,000
Thomas	O'Mara	Senate	58	Upstate	1	Law	\$100,000	\$150,000	\$125,000

**IMPACT OF THE 2018 NEW YORK STATE COMPENSATION COMMISSION RULING**

Assuming the State Legislature implements the ban and cap with fidelity to the Congressional model, state legislators with outside income will have to divest or curtail their earnings.

*Top 10 Professions for Returning State Legislators with Outside Income*

<i>Profession</i>	<i>%</i>	<i>Subject to Ban or Cap?</i>
Law	40.5%	Ban
Real Estate	11.9%	Ban

<sup>7</sup> Please see the companion spreadsheet for this analysis for the full list of returning state legislators with outside income.

Teaching	9.5%	Approval on a case by case basis
Government	6%	TBD
Financial Services	4.8%	Ban
Consultant	3.6%	Ban
Insurance	3.6%	Ban
Advisory Board	2.4%	Ban
Construction	2.4%	TBD
Nonprofit	2.4%	TBD

However, just a few months into 2019, with a substantive 38.3% salary increase in place, several state legislators have exhibited a troubling pattern of behavior that flouts the pending restrictions on outside income. It has been revealed:

- In January, State Senator Fred Akshar launched a private investigation and security consulting firm, [Akshar Consulting LLC](#).<sup>8</sup>
- In January, State Senator Kevin Parker filed paperwork to create a general consulting firm.<sup>9</sup>
- In February, Assemblyman Michael Blake obfuscated work for Hilltop Public Solutions, a political consulting firm, and its clients.<sup>10</sup>

Outside income from consulting firms would be banned in 2020.

### **RESTRICTIONS ON OUTSIDE INCOME ARE RIGHT FOR NEW YORK**

Citizens should never have to question the loyalty of their elected representatives to the public interest. Conflicts of interest, perceived or actual, erodes faith in our democratic institutions. The Compensation Commission's recommendations are a significant first step toward ensuring our elected officials earn a salary that is reflective of the job's demands and aligns outside income restrictions with the national standard.

### **METHODOLOGY STATEMENT**

Common Cause/NY reviewed the [2017 Financial Disclosure Statements](#) found on the NY State Joint Commission on Public Ethics (JCOPE) website. Data from 209 disclosure forms were migrated from individual PDF documents to an excel spreadsheet for analysis.

<sup>8</sup> Press Connects, [Senator for Hire: Fred Akshar Starts Private Eye Business, Working as Police Officer](#), 2/22/2019.

<sup>9</sup> Times Union, [Senator Kevin Parker Sets Up 'General Consulting' Firm, Plans Unclear](#), 1/10/2019.

<sup>10</sup> Politico New York, [Assemblyman Blake Worked for Hilltop and its Clients Before and After Publicly Rejecting Consulting Job](#), 2/4/2019.