

## LOST CENTURY:

*“...I want to represent you, the people of these counties and no one else.....I want to stay on the job representing you twelve months a year.”*

Franklin D. Roosevelt, 1910  
*Speech at Hudson upon being elected to the State Senate*

**DEDICATED  
LEGISLATURE**

## **FULL TIME, FULL PAY**

### **EXECUTIVE SUMMARY**

**Former Assembly Speaker Sheldon Silver's recent arrest once again proves that a New York State Legislature motivated to pursue outside income is a recipe for corruption.**

**In the aftermath of this latest scandal in Albany, it is clear that the state Legislature must finally become a full-time body that pays a salary adequate to attract the best and brightest to serve in state government.**

**As Governor Andrew Cuomo said recently, a full-time legislature is the "cleanest" solution to the epidemic of criminality that infects Albany.**

**But he has yet to take real action to make this solution a reality.**

**This report from Bill Samuels and EffectiveNY shows how Cuomo can create a full-time legislature. It presents specific salary increases and limits on outside income for Albany lawmakers that would enable a full-time legislature to meet high ethical standards.**

**EffectiveNY is not advocating for our state legislators to be rewarded for their bad behavior. Our aim is to encourage better behavior and make representation of the people of New York the sole concern of our state legislators. Serving the people, not the special interests trying to rig the system, must be the primary focus of all state legislators.**

**The members of the state Senate and Assembly have not received a raise in 16 years, and their base pay of \$79,500 is significantly less than the \$112,500 New York City Council members receive. This low-pay has motivated many lawmakers to seek outside income.**

**The members of the Senate and Assembly will not function as an ethical and dedicated full-time legislature unless they receive a salary commensurate with the importance of their position. This is why EffectiveNY supports a legislative pay increase to \$125,000 per year.**

**We arrive at the \$125,000 per year salary by adjusting legislators' pay for inflation since their last raise in 1999 and by equally distributing to all 213 members of the Legislature the \$2.5 million that is currently doled out in lulus. Adjustments for inflation alone raise the salary level to \$113,200. And the equal distribution of lulus would mean roughly an additional \$11,800 to each member of the Legislature.  $\$113,200 + \$11,800 = \$125,000$ .**

**Leaders of the Legislature distribute \$2.5 million in lulus as bonuses to keep their members in line. These lulus must be eliminated as a condition of any pay increase.**

Recently, Governor Cuomo called on New York to adopt the strongest disclosure laws in the country. This goal is laudable and should be pursued, but merely requiring our state’s elected officials to disclose their conflicts of interest does not eliminate them.

That is why we are also calling for the state Legislature to adopt the same strict limits on outside income—no more than 15% of their pay as legislators—and stringent disclosure requirements as Congress, as another condition of moving to a full-time legislature.

We agree with Governor Cuomo’s effort to establish a bipartisan legislative pay commission that would convene every four years to recommend how to adjust the salaries of New York’s statewide elected officials, state officers covered by section 169 of executive law, and members of the state Legislature.

This commission is necessary to depoliticize a process that currently makes legislators fearful of voting themselves a salary increase because of a likely backlash by voters who feel the performance of their representatives does not merit a pay hike.

EffectiveNY shares the public’s frustration, but we maintain that the low salary paid lawmakers is a direct cause of New Yorkers not receiving the high quality representation they deserve.

A salary increase to \$125,000 per year with strict limits on outside income will help end the culture of corruption in Albany and improve how the legislature functions and represents the people.

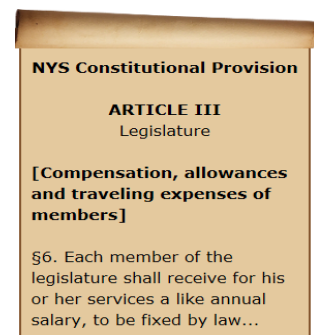
A century ago, newly minted State Senator Franklin Delano Roosevelt called for a “dedicated legislature” of full-time representatives. Since then, we have tried numerous ways of making a part-time legislature work for New York, but all of these efforts have failed because those intent upon abusing the system have always found new loopholes and workarounds to exploit it.

Now is the time to truly reform Albany by creating a new system that frees our lawmakers from being beholden to any employer other than the people who elected them to office.

Our goal is nothing less than the best state Legislature in the nation.

*Legislative Compensation in New York – Historically, Now, and Comparatively*

From 1967 to 1999, the Legislature set its salary at a level equivalent to approximately \$100,000 in today’s dollars. Currently, the members of the New York State Senate and Assembly earn \$79,500, a salary established by a vote of the Legislature 16 years ago. If this salary had been indexed to inflation, it would now be \$113,200.55 a year.



Article III, Section 6 of the New York State Constitution says that Legislators will determine their own salary and that amount is then fixed by law. While legislative compensation was initially set by the state Constitution, in 1938 the Constitution was amended to empower lawmakers to determine their own salaries. Since then, legislators have increased their pay on average every six years, and the current 16 year gap is the longest span without a raise in the modern era.

**New York State History of Legislative Compensation**  
*Indexed for Inflation*

<b>Annual Salary</b>	<b>Start Year</b>	<b>End Year</b>	<b>Salary Indexed to Inflation</b>	<b>Years Without Raise</b>	<b>Note</b>
\$3 a day	1846	1847		1	Set By Constitution
\$300	1848	1893		45	Set By Constitution
\$1,500	1894	1937		43	Set By Constitution
\$2,500	1938	1947		9	Salary Set By Law
\$5,000	1948	1954		6	
\$7,500	1955	1961		6	
\$10,000	1962	1967		5	
\$15,000	1967	1974		7	
\$23,500	1975	1982		7	
\$32,960	1983	1984		1	
\$43,000	1985	1988		3	
\$57,500	1989	1998		9	
\$79,500	1999	Today	\$113,200	16	

*Source: United States Department of Labor, Bureau of Labor Statistics, [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)*

Formerly, the Legislature tied judicial pay raises to its own salary hikes, but in 2010 that practice was found to be in violation of the State Constitution.<sup>1</sup>

As a result, in 2011 a commission created by state law awarded the members of New York’s judiciary a 27% raise over three years, upping state Supreme Court judges’ pay from \$136,700 to \$174,000 and members of the Court of Appeals’ compensation from \$151,200 to \$192,500. Moving forward, this Special Commission on Judicial Compensation is mandated to reconvene every four years to make binding recommendations on judicial compensation for New York State judges.

***Automatically Adjust Salaries by Commission***

Today, New York State legislators must vote for salary increases, but the likelihood of them doing so is slim because of the high probability of a backlash from voters, who generally react with outrage at the notion of lawmakers giving themselves a raise.

To uncouple policy from politics, the state’s legislators should be relieved of the onus of voting on their own pay. EffectiveNY endorses the proposal Gov. Cuomo made in his 2015 Opportunity Agenda policy book to create a new commission, modeled on the judicial compensation commission, that would be convened every four years starting on June 1, 2015, to determine the salaries of New York’s statewide elected officials, state officers covered by section 169 of executive law, and members of the state Legislature. Though it is not explicitly stated in the governor’s policy book that the recommendations of this commission be binding, that must be the case if the commission is to take the politics out of the process, which is the foremost aim of establishing it.

***Why the Increase Should Be to \$125,000, Not \$113,000***

New York State spends \$2,474,000 every year on legislators’ lulus above and beyond their salaries. This sum is basically hidden money which gives the leaders of both houses of the Legislature great power over their members, as they have absolute discretion over who gets how much of it—or none at all.

To both do away with this carrot-and-stick leverage and make serving in the Legislature a more attractive opportunity, lulus should be eliminated and this pool of money should be distributed to all of the members of the Legislature equally as an additional salary increase on top of adjusting the current pay level for 16 years of inflation.

The end result will be more freedom for each member to serve their constituents, as it diminishes the power of the “Three Men in a Room”, two of whom are the leaders of the Legislature.

In addition to getting rid of lulus, EffectiveNY supports the reform of the per diem system, which legislators have long taken advantage of as a way of augmenting their income. Just this past October, Assemblyman William Scarborough was arrested on a host of charges, including submitting allegedly fraudulent filings to obtain \$40,000 in travel reimbursements over 4 years.<sup>ii</sup>

Increasing our state lawmakers’ salary to \$125,000 would make it \$12,500 higher than the New York City Council, which is appropriate and will incentivize some of the city’s best elected officials to stay in the Legislature. At current, State Senate and Assembly members often opt to run for the “lower office” of City Council because the job pays more and requires far less travel.

We should also provide raises to New York’s statewide elected officials to make them commensurate with their municipal counterparts in New York City.

Current New York State <sup>iii</sup>		Current New York City <sup>iv</sup>		EffectiveNY’s Proposed Salaries for NYS Officials	
Governor	\$ 179,000	Mayor	\$225,000	Governor	\$250,000
Lieutenant Governor	\$ 151,500	Public Advocate	\$165,000	Lieutenant Governor	\$175,000
Comptroller	\$ 151,500	Comptroller	\$185,000	Comptroller	\$200,000
Attorney General	\$ 151,500	Manhattan District Attorney	\$190,000	Attorney General	\$200,000
Assembly	\$ 79,500	City Council	\$112,500	Assembly	\$125,000
Senate	\$ 79,500			Senate	\$125,000

## ***Implement a Dedicated Legislature, Limit Outside Income for Legislators***

There is no limit on a legislator's outside income.

Raising the base pay, in and of itself, is not sufficient to change our current system. To do that, our legislators need to serve full-time and follow strict rules limiting outside income.

New York State should strive to have the most honest, effective and adept legislature in the nation. To achieve this goal, we must attract top talent to serve independent of special interests. We must no longer allow legislators to be bought or bankrolled by law firms, realties, or consultancies. We must no longer allow legislators to use their influence for their own financial gain, as Sheldon Silver stands accused of doing. We must no longer allow legislators like disgraced former State Senator Pedro Espada to operate nonprofits that serve as their personal piggy banks.

A dedicated legislature, where lawmakers are liberated from the concern and temptation of seeking outside income, will allow the members of the Senate and Assembly to commit their full attention to their district. A dedicated legislature with a salary commensurate to the magnitude of the position will open up the possibility of public service in Albany to the state's best and brightest citizens, who right now are dissuaded from this career path because of the job's part-time nature and the need to seek additional outside income while doing it to support themselves and their families.

The implementation of a dedicated legislature in New York State would be a major step toward ending corruption and restoring voters' faith in our government—a goal which Gov. Cuomo declared on February 2, 2015 is “more important than anything else” because “if you don't have trust, you don't have anything.”

## ***The Landscape of Outside Income in Today's Legislature***

Outside income is currently allowed for New York State Senators and Assembly Members because the position is considered “part-time.” As a result, law firms, public relations firms, and consultants representing special interests can actually place a member of the State Legislature on their payroll. While the ethics law passed as part of the 2014 state budget requires legislators to disclose total outside income in specified ranges, it does not require the disclosure of the client list of the legislator's firm or employer unless the clients were directly solicited by the legislator or the legislator is working specifically on the client's projects—loopholes which leave room for serious conflicts of interest.<sup>v vi</sup>

In the previous Legislature, three of the five leaders of their respective conferences—Sheldon Silver, Dean Skelos and Jeff Klein—received outside income. Of these three, Silver is now under indictment for activities related to his outside income and Skelos is reportedly being investigated by the U.S. Attorney's office in connection with his other job as a counsel to a top law firm,<sup>vii</sup> though Skelos disputes that he is being probed.<sup>viii</sup>

Silver’s successor as Assembly Speaker, Carl Heastie, has promised that the post will be his “only job”,<sup>ix</sup> joining Senate Minority Leader Andrea Stewart-Cousins and Assembly Minority Leader Brian Kolb in voluntarily eschewing outside income.

Name	Outside Income	Type	2013 Outside Salary (Estimated)	Special Interest	House	Party	Title
Sheldon Silver	 Weitz & Luxenberg, other legal work	Law Firm	\$650,000-\$750,000 <sup>x</sup>	Personal Injury	Assembly	<b>Democrat</b>	Former Speaker
Dean Skelos	 Ruskin, Moscou, Faltischek	Law Firm	\$150,000-\$250,000	Big Business	Senate	<b>Republican</b>	Majority Coalition Leader
Jeffrey Klein	 Klein, Calderoni & Santucci	Law Firm	\$75,000-\$100,000 (law firm), \$10,000-\$40,000 (other legal work), \$1,000 (lecturing at Mercy College)	Personal Injury	Senate	<b>Independent Democratic Conference</b>	Former Majority Coalition Co-Leader
Brian Kolb	 NONE	NONE	NONE	NONE	Assembly	<b>Republican</b>	Minority Leader
Andrea Stewart-Cousins	 NONE	NONE	NONE	NONE	Senate	<b>Democrat</b>	Minority Leader
Carl Heastie	 NONE	NONE	<b>PROJECTED TO BE NONE IN 2015</b>	NONE	Assembly	<b>Democrat</b>	Speaker

This problem extends beyond leadership. According to a recent report, out of the 213 members of the two houses of the Legislature, 84 have outside income, primarily through employment as lawyers.<sup>xi</sup>

***Compensation in Congress: a Model for the New York State Legislature***

To be fair to the financial concerns of the current members of the Legislature, EffectiveNY recommends a phase-in period for the full-time legislature over three terms.

All newly elected state legislators should be subject to the same rules limiting outside income that apply to their counterparts in Congress. Currently elected members can immediately opt in to receiving the \$125,000 salary in exchange for giving up their outside income. For the 60% of the Legislature’s members who already receive no outside income, agreeing to this trade-off would be an easy choice. As for members who decide not to give up their outside income, they would be allowed to serve under the current compensation system (\$79,500 salary with unlimited outside income) for a maximum of three more terms, after which point these members would also be required to abide by a set of rules governing the acceptance of outside income mirroring those of Congress.

Article I, Section 6 of the United States Constitution empowers members of Congress to determine their own pay. Between 1789 and 1968 this clause was changed 22 times through the passage of specific legislation. Originally, members of Congress only received a per diem, but in 1817 Congress instituted an annual salary, which initially was \$1,500.

The Ethics in Government Act of 1978 made Congress a dedicated legislature by limiting the amount of outside income members could earn to 15% of their salary, which, at their current annual base of \$174,000 comes out to \$26,100.

### ***Congressional Limitation of Outside Income***

In addition, specific sources of income are prohibited,<sup>xii</sup> including:

- affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship (such as legal, accounting, or money management services);
- permitting that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;
- practicing a profession which involves a fiduciary relationship;
- serving as an officer or member of the board of any association, corporation, or other entity; and
- teaching, without the prior notification and approval.

Sources of income that are allowed to exceed the 15% outside income limit<sup>xiii</sup> are:

- service with the national guard;
- pensions, annuities, and deferred compensation;
- investments;
- business in which the member or their family has a controlling interest where income is unrelated to any services rendered by the member;
- royalties, fees, and their functional equivalent, from the use or sale of copyright, patent, and similar forms of legally recognized intellectual property rights; and
- approved teaching.

### ***Conclusion***

The arrest in January 2015 of Sheldon Silver for alleged crimes related to his outside income vividly dramatized what everyone who follows Albany has long known. The current system of legislative compensation is a recipe for conflicts of interest and corruption.

All of the partial fixes for our broken system have been tried, except the approach Gov. Cuomo has dubbed the “cleanest”: adopting a full-time legislature with strict limits on outside income. EffectiveNY strongly believes that this reform is the cornerstone of any effort to end the culture of criminality and self-dealing in Albany. Coupled with a pay increase to a salary more on par



with the importance of the position, this reform is also the key to attracting New York’s best and brightest to serve in the state Legislature.

For the more than 60 percent of the Legislature’s members who currently receive no outside income, the decision to change over to a dedicated legislature in exchange for a significantly larger salary is a no-brainer. Not only will these members make more money, they will get out from under the cloud of suspicion cast by their colleagues like Silver, whose outside employment call into question the integrity with which they perform the job they were elected to do.

EffectiveNY’s recommendation that the state Legislature become full-time with strict limits on outside income subject to the rules currently in use by Congress is neither theoretical, nor academic. Albany is in crisis—and the only way for us to bring out state government back from the brink of forever losing the trust of the people is to implement bold systemic reform now.

At the core of these watershed reforms must be the adoption of a dedicated legislature. F.D.R. understood 105 years ago that representing the people of New York in the Legislature was nothing less than a full-time job. It is high time we followed his lead.

## End Notes:

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<sup>i</sup> Joel Stashenko, “Denial of N.Y. Judicial Pay Raise is Ruled Unconstitutional,” *New York Law Journal*, February 24, 2010, available at [http://www.law.com/jsp/article.jsp?id=1202444420795&Denial\\_of\\_NY\\_Judicial\\_Pay\\_Raise\\_Is\\_Ruled\\_Unconstitutional](http://www.law.com/jsp/article.jsp?id=1202444420795&Denial_of_NY_Judicial_Pay_Raise_Is_Ruled_Unconstitutional).

<sup>ii</sup> Campanile, Carl. “Assemblyman William Scarborough Arrested,” *New York Post*, October 1, 2014.

<sup>iii</sup> “A Description of Elected Offices and Their Official Websites,” *New York City Campaign Finance Board*, available at <http://www.nyccfb.info/public/VRC/govtPages.aspx>.

<sup>iv</sup> *Id.*

<sup>v</sup> “Record Request Form,” *New York State Joint Commission on Public Ethics*, available at <http://www.jcope.ny.gov/public/request.html>.

<sup>vi</sup> Speaker Sheldon Silver, “Public Integrity Reform Act of 2011,” *Assembly Bill 8301 of 2011*, available at [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A08301&term=2011&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A08301&term=2011&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y).

<sup>vii</sup> Jonathan Dienst, Joe Valiquette and Kevin Nious. “U.S. Attorney Investigating NY Senate Leader Dean Skelos: Sources”, Jan. 30, 2014.

<sup>viii</sup> Reisman, Nick. “Skelos Denies Being Contacted By Feds”, *State of Politics*, Jan. 30, 2015.

<sup>ix</sup> Campbell, Jon. “Heastie: Speaker would be ‘my only job’”, *The Journal News*, Jan. 31, 2015.

<sup>x</sup> Jimmy Vielkind and Laura Nahmias. “Silver discloses a raise from outside work”, July 2, 2014.

<sup>xi</sup> “Gov. Cuomo Talks Reform,” *The New York Times*, Feb. 5, 2015.

<sup>xii</sup> 5a U.S.C. §502.

<sup>xiii</sup> Congressional Committee of Rules, Rule XXV - Limitations On Outside Earned Income And Acceptance Of Gifts (4)(d)(1) available at <http://www.rules.house.gov/singlepages.aspx?NewsID=145&rsbd=165>.