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An Honest Day's Work: Regulating State Lawmakers' Outside Income

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The practice of permitting legislators to earn *outside income*, income apart from compensation for service in office, is a frequent battlefield in the fight against legislative corruption in the United States. Critics of the practice argue that such income creates potential conflicts of interest, pitting legislators' personal pecuniary interests against the public interest. As public servants, legislators should not be accountable to other paymasters and should not use their legislative positions to enrich themselves beyond their official salary. On the other hand, legislators point out that their positions are generally low-paid and part-time, and that they have the right—perhaps even the need—to supplement their salaries. State legislatures have always included doctors and farmers and teachers and entrepreneurs; those legislators arguably should not have to give up their livelihoods to serve the public.

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In practice, many legislative corruption scandals have involved legislators receiving hefty sums from jobs outside of the legislature—often in exchange for little actual work—in apparent attempts to influence their votes. For example, New York Assembly Speaker Sheldon Silver was [convicted in 2015](#) on federal corruption charges for accepting millions of dollars in referral fees from two law firms in exchange for using his legislative office to benefit the firm and their clients by influencing certain legislation, steering public funds to affiliated entities, and other official acts. New York Assemblyman William Boyland, Jr. was [convicted in 2014](#) for setting up a real-estate deal in exchange for \$250,000 in fees related to a fake consulting job. Such lawmakers earned outside income by abusing their authority, not by engaging in honest work.

However, not all controversies concerning outside income are as clear-cut. Consider, for example: a California state senator who is an optometrist and [authored bills](#) that would allow medical practitioners (including himself) to provide a broader range of medical services; a Texas state legislator who ran a payday lending business and [fought against a bill](#) designed to help consumers entrapped by high-interest loans; or a legislator in New Mexico who runs a small oil and gas company and [opposed new fees and regulations](#) for his industry. However, those conflicts were out in the open, unlike in the criminal cases of Silver and Boyland, so that voters and legislative colleagues could consider them when evaluating a given legislator's position. To ensure that—at a minimum—legislative conflicts of interest are not hidden, state should adopt appropriate ethics rules and oversight mechanisms.

A Regulatory Toolbox

There are three basic tools available to legislatures to address ethical concerns about outside income. The most basic is financial disclosure. Disclosure requirements make legislators' financial interests accessible, so that watchdogs—and voters—can more easily identify apparent conflicts of interest and hold the legislators accountable for them. Disclosure requirements work best in tandem with other rules and regulations governing conflicts of interest, to set standards of official conduct and penalize noncompliance. However, both of those approaches are vulnerable to

abuse by unscrupulous legislators. When practical, it may be better to establish a bright-line rule, such as a cap on the amount of outside income that legislators are allowed to earn.

The best set of rules depends on the particular circumstances of a given state. Relatively strict or intrusive approaches may be more appropriate for states with relatively “full-time” legislatures in contrast to states with truly “part-time” legislatures. This distinction depends upon factors such as a legislator’s salary and allotment for staff and other resources, the size of a legislature and the frequency of its meetings, and the amount of time legislators typically devote to legislative duties including official travel. The National Conference of State Legislatures (NCSL) has [divided the state legislatures into five categories](#), ranging from “full-time” (e.g. California and New York) to “hybrid” (e.g. Oregon and Texas) to “part-time” (e.g. New Hampshire and Utah).

The United States Congress, clearly a full-time legislature (despite its enviably [long breaks](#)), might serve as a pacesetter for disclosure, conflict of interest rules, and an income cap. Members of Congress must [disclose all income sources](#) including the source, type, and amount or value of the income, as well as [legal expense funds](#), official or sponsored travel, official mail usage, and other items. All such disclosures are [publicly available](#) via the House Clerk. The ethics committees of the [House](#) and [Senate](#) also maintain broad conflict-of-interest policies and provide related advice to members.¹ And the United States Congress [caps outside income](#) at 15% of the annual salary of a top-level executive official (roughly \$175,000). Moreover, legislators may not earn any income from, be employed by, or be publicly associated with, any business providing professional services that involve a fiduciary relationship (such as law, finance, or insurance).

Those limitations on outside income have not stamped out corruption in Congress. Critics charge that the rules are still [too weak](#) or [too vague](#) and there are valid [concerns about a revolving door](#) enabling former legislators to work as lobbyists targeting their former colleagues. Nevertheless, Congress’s rules governing disclosure, conflicts of interest, and a cap on outside income have limited opportunities for legislators to wrongfully enrich themselves in public service. States looking to curb legislative corruption should follow suit.

Financial Disclosure

Financial disclosure informs the public of legislators’ financial interests and potential conflicts. [According to the NCSL](#), 47 states currently require legislators to file some type of financial disclosure, although their requirements vary widely. Colorado, for example, [requires disclosure](#) of all sources of income, regardless of the amount. [Connecticut](#) and [Iowa](#), in contrast, require disclosure only of income sources that exceed \$1000 in a given year. A few states, including [Florida](#) and [Illinois](#), have constitutional provisions that require lawmakers to make annual disclosures of financial interests. Many states also require other areas of disclosure including gifts, clients, and interests in businesses and real estate.

[States also vary](#) in whether legislators must make disclosures covering their spouses, dependent children, and other family members. Generally, those disclosures are less intrusive than those for legislators themselves, due to privacy concerns. For example, [Massachusetts requires](#) legislators to disclose income sources for family members, but not actual amounts earned.

Disclosure reveals information critical for investigations by oversight agencies and other government watchdogs, to hold legislators accountable for violations. Furthermore, financial transparency may encourage legislators to comply with ethics rules and avoid conflicts of interest to receive a favorable impression from voters and civil society

¹ Among other provisions, the [Senate bans](#) the earning of income “inconsistent or in conflict with the conscientious performance of official duties.” The [House Ethics manual](#) defines “conflict of interest” as a situation in which a member’s “conduct of his office conflicts with his private economic affairs.” In unclear cases, legislators are instructed to consult with their respective ethics committee.

groups. For example, Common Cause New York publishes an [annual review](#) of outside income earned by state legislators.

However, disclosure alone is an insufficient safeguard against legislative corruption. Unscrupulous legislators can avoid detection by [exploiting loopholes and disguising assets](#) and income through complex financial arrangements. A [decline in statehouse press coverage](#) has reduced scrutiny of legislators' filings. Finally, incumbent protection measures like [gerrymandering and uncontested primaries](#) as well as broader national trends such as [partisan polarization](#) and the [nationalization of local politics](#) have limited voters' ability to vote out corrupt legislators.

Regulating Conflicts of Interest

Beyond mere disclosure, many states regulate legislators' earning of outside income through laws and ethics rules governing when such income constitutes an improper conflict of interest, and how that conflict should be resolved. Some states define such conflicts of interest narrowly. Some definitions apply only to legislation that *directly* affects a legislator's personal financial interests. For example, [North Dakota](#) requires legislators (and judicial officers) to disclose when they have a "direct and substantial personal or pecuniary interest in a matter before that ... body." In such cases, a legislator can only vote with legislative consent.

In contrast, [New Hampshire](#) is an example of a state that defines conflict of interest more broadly, as "the condition in which a legislator has a financial interest in any official activity." This definition is broad in two ways. First, it encompasses any official activity and not merely voting. Second, it lacks a requirement of a "direct" impact on a legislator's financial interest. However, in New Hampshire, a conflict of interest triggers few ramifications; conflicted legislators must merely disclose the conflict and file a "declaration of intent" to resolve it.

Other states fall somewhere in between. Many states, like [New York](#) and [Florida](#), prohibit legislators from interests that are in "substantial conflict" with the proper discharge of ... duties in the public interest." [Alabama](#) defines conflicts as any decision or duty that would "materially affect" the financial interests of a legislator or his or her family members. [Connecticut](#) foresees a conflict if legislators have "reason to believe" they or their family members would derive a direct monetary gain or suffer a direct monetary loss. Connecticut and [Nebraska](#), among other states, carve out an exception for measures that merely affect a legislator's broader interests—such as legislation affecting a class or occupation to which the legislator belongs.

States vary not only in their definition of conflict of interest, but also in terms of the [consequences of such a conflict](#). Some states merely require disclosure, others require recusal. In some states a conflicted legislator need only officially swear to act impartially, while in others the legislature must vote to allow an exemption. Five states have constitutional provisions requiring lawmakers to disclose any conflicts of interest before voting on related matters: Alabama, Delaware, Kentucky, Oklahoma, and Texas.

The application of the rules may be just as important as the rules themselves.

It's difficult for states to set conflict-of-interest rules that are strict enough to deter ethical misconduct, flexible enough to encompass a range of scenarios, and yet clear enough to guide legislators. In most states, legislatures set their own ethics rules and police members' violations, compounding the impression that conflict-of-interest rules that look tough on paper may be flimsy in practice. Thus, the application of the rules may be just as important as the rules themselves. Lawmakers should have clear guidance to avoid conflicts, options to minimize conflicts that arise, and confidence that rules will be enforced fairly and predictably. Each state should have a powerful, independent ethics body responsible for training and enforcement. (For more on state watchdog institutions, see CAPI's [state-by-state oversight survey](#).)

Income Cap

Perhaps the clearest and strictest approach to outside income is an upper limit, or *cap*, on the amount of outside income a legislator can earn. A cap avoids many of the difficulties of defining and regulating conflicts of interest and affords legislators some degree of freedom to pursue personal and professional interests, such as a part-time medical practice or the upkeep of a small family farm. A cap would allow legislators with specialized professional knowledge to participate in relevant legislative debates while limiting their ability to profit from their outside employment. Of course, income caps are strongest in tandem with rules governing disclosure and conflicts of interest.

The specific requirements of a cap must strike a reasonable balance. A cap that is too permissive would be ineffective, but a cap that is too restrictive may impose financial hardship, deter legislators who are not independently wealthy, and raise the temptation of taking bribes.

Although no state currently maintains an income cap, income caps would be most feasible in legislatures in which lawmakers work a full-time schedule and are compensated accordingly. Unfortunately, [polls show](#) that voters often support full-time legislatures with income caps but oppose legislative pay raises. [Legislators in 42 states](#) are paid salaries lower than the national median household income of roughly \$56,000, although many also receive [generous reimbursements](#) for official travel and other expenses.

Conclusion

The income that legislators earn outside of their official salaries potentially creates conflicts of interest. Each state must determine the right mix of measures to minimize conflicts of interest, mindful of lawmakers' need for outside income, particularly considering the part-time nature of most state legislatures. Relatively full-time legislatures in states like California, New York, and Pennsylvania should consider following Congress's model and adopting robust disclosure requirements, fulsome regulations governing conflicts of interest, and an income cap. Indeed, most state legislatures govern states that are comparable to significant nations in size, population, and wealth—hardly part-time work.

However, restrictions on outside income are only as effective as their enforcement. It is not enough to regulate outside income on paper; powerful, independent watchdogs are needed to oversee disclosures and enforce conflict-of-interest rules and to provide reliable advice to lawmakers. In a gray area like outside income, bright lines and clear guidance are essential.



This publication is part of an ongoing series of contributions from practitioners, policymakers, and civil society leaders in the public integrity community. If you have expertise you would like to share, please contact us at CAPI@law.columbia.edu.

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