

STATE OF NEW YORK

8699

IN SENATE

June 20, 2008

Introduced by Sens. SKELOS, LAVALLE -- (at request of the Attorney

General) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law and the retirement and social security law, in relation to professional services providers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 41 of the education law is amended by adding a new part 3 to read as follows:

PART III

PROFESSIONAL SERVICES PROVIDERS Section 2050. Definition.

2051. Charging for professional services.

2052. Enforcement.

2053. Reports regarding lawyers.

2054. Non-exclusivity of rights or remedies.

§ 2050. Definition. As used in this part, a "lawyer" shall mean an attorney or counselor governed by article fifteen of the judiciary law, who receives remuneration or other compensation from a school district or board of cooperative educational services in exchange for legal services provided to such district or board.

§ 2051. Charging for professional services. 1. A lawyer shall not simultaneously be an independent contractor and an employee of a school district or board of

cooperative educational services for the purpose of providing legal services to such school district or board of cooperative educational services.

2. A lawyer who is not an employee of a school district or board of cooperative educational services, shall not seek to be or be considered, treated or otherwise reported by the school district, or board of cooperative educational services as an employee thereof for purposes of compensation, remuneration, health insurance, pension and all employment-related benefits and emoluments associated therewith.

§ 2052. Enforcement. 1. Any lawyer who violates section two thousand fifty-one of this part, shall be liable for a civil penalty not to exceed three times the charges and fees for contracted services or salary received by the lawyer and paid by such school district or board of cooperative educational services for legal services, and in addition, may be enjoined from continuing such violation. Civil penalties and injunctive relief provided in this section shall be recoverable in an action brought by the attorney general.

2. Any person who shall knowingly:

(a) violate subdivision two of section two thousand fifty-one of this part;

(b) make a false statement of material fact; or

(c) falsify or permit to be falsified any record or records of the retirement system established in this chapter in an attempt to defraud the retirement system established in this chapter as a result of such act for the purpose of obtaining a credit towards pension benefits, or a benefit or payment in excess of one thousand dollars from such retirement system for a professional services provider to which such professional services provider would not be entitled, shall be guilty of a class E felony.

§ 2053. Reports regarding lawyers. Every school district and board of cooperative educational services shall, on or before the forty-fifth day after the commencement of its fiscal year, file with the department, the comptroller and the attorney general a report specifying: (a) all lawyers who provide legal services to such district or board; (b) whether such district or board hired such lawyers as employees; and (c) all remuneration and compensation paid for legal services.

§ 2054. Non-exclusivity of rights or remedies. Nothing in this part shall be construed to limit, in any matter, any rights or remedies otherwise available under law against any party or to any person or entity, including, but not limited to, the attorney general or the comptroller of the state of New York.

§ 2. Subdivision 3 of section 2601-a of the education law, as amended by section 10-c of part L of chapter 405 of the laws of 1999, is amended to read as follows:

3. The board of education shall prepare a proposed school district budget for the ensuing year in accordance with the provisions of section seventeen hundred sixteen of this chapter, including all provisions relating to required notices and appendices to the statement of expenditures. No board of education shall incur a school district liability except as authorized by the provisions of section seventeen hundred eighteen of this chapter. Such proposed budget shall be presented in three components: a program component, a capital component and an administrative component which shall be separately delineated in accordance with regulations of the commissioner after consultation with local school district officials. The administrative component shall include, but need not be limited to, office and central administrative expenses, traveling expenses and ~~[salaries and benefits of all certified school administrators and supervisors who spend a majority of their time performing administrative or supervisory duties]~~ all compensation, salaries and benefits of all school administrators and supervisors, including business administrators, superintendents of schools and deputy, assistant, associate or other superintendents under all existing employment contracts or collective bargaining agreements, any and all expenditures associated with the operation of the board of education, the office of the superintendent of schools, general administration, the school business office, consulting costs not directly related to direct student services and programs, planning and all other administrative activities. The program component shall include, but need not be limited to, all program expenditures of the school district, including the salaries and benefits of teachers and any school administrators or supervisors who spend a majority of their time performing teaching duties, and all transportation operating expenses. The capital component shall include, but need not be limited to, all transportation capital, debt service, and lease expenditures; costs resulting from judgments in tax certiorari proceedings or the payment of awards from court judgments, administrative orders or settled or compromised claims; and all facilities costs of the school district, including facilities lease expenditures, the annual debt service and total debt for all facilities financed by bonds and notes of the school district, and the costs of construction, acquisition, reconstruction, rehabilitation or improvement of school buildings, provided that such budget shall include a rental, operations and maintenance section that includes base rent costs, total rent costs, operation and maintenance charges, cost per square foot for each facility leased by the school district, and any and all expenditures associated with custodial salaries and benefits, service contracts, supplies, utilities, and maintenance and repairs of school facilities. For the purposes of the development of a budget for the nineteen hundred ninety-seven--ninety-eight school year, the board of education shall separate its program, capital and administrative costs for the nineteen hundred ninety-six--ninety-seven school year in the manner as if the budget for such year had been presented in three components. Except as provided in subdivision four of this section, nothing in this section shall preclude the board, in its discretion, from submitting additional items of expenditure to the voters for approval as separate propositions or the voters from submitting propositions pursuant to sections two thousand eight and two thousand thirty-five of this chapter.

§ 3. The retirement and social security law is amended by adding a new section 217 to read as follows:

§ 217. Reporting requirements; school salary transparency and disclosure. 1. A school district and a board of cooperative educational services shall report all money earned by a retired person in their employ that is in excess of the earnings limitation outlined in section two hundred twelve of this article to the retirement system administered by the state or any of its political subdivisions from whom such retired person is collecting their retirement allowance.

2. A school district or a board of cooperative educational services employing a retired person who is eligible to collect or is already collecting a retirement allowance from a retirement system administered by the state or any of its political subdivisions shall report on an annual basis to the retirement system paying such retirement allowance to such retired person and to the state comptroller. This report shall consist of the re-employed retiree's name, date of birth, place of employment, current position and all earnings.

§ 4. Subdivision 4 of section 1608 of the education law, as amended by section 5 of part A of chapter 436 of the laws of 1997, is amended to read as follows:

4. Commencing with the proposed budget for the nineteen hundred ninety-eight--ninety-nine school year, such proposed budget shall be presented in three components: a program component, a capital component and an administrative component which shall be separately delineated in accordance with regulations of the commissioner after consultation with local school district officials. The administrative component shall include, but need not be limited to, office and central administrative expenses, traveling expenses and [~~salaries and benefits of all certified school administrators and supervisors who spend a majority of their time performing administrative or supervisory duties,~~] **all compensation, salaries and benefits of all school administrators and supervisors, including business administrators, superintendents of schools and deputy, assistant, associate or other superintendents under all existing employment contracts or collective bargaining agreements** any and all expenditures associated with the operation of the office of trustee or board of trustees, the office of the superintendent of schools, general administration, the school business office, consulting costs not directly related to direct student services and programs, planning and all other administrative activities. The program component shall include, but need not be limited to, all program expenditures of the school district, including the salaries and benefits of teachers and any school administrators or supervisors who spend a majority of their time performing teaching duties, and all transportation operating expenses. The capital component shall include, but need not be limited to, all transportation capital, debt service, and lease expenditures; costs resulting from judgments in tax certiorari proceedings or the payment of awards from court judgments, administrative orders or settled or compromised claims; and all facilities costs of the school district, including facilities lease expenditures, the annual debt service and total debt for all facilities financed by bonds and notes of the school district, and the costs of construction, acquisition, reconstruction, rehabilitation or improvement of school buildings, provided that such budget shall include a rental, operations and maintenance section that includes base rent costs, total rent costs, operation and maintenance charges, cost per square foot

for each facility leased by the school district, and any and all expenditures associated with custodial salaries and benefits, service contracts, supplies, utilities, and maintenance and repairs of school facilities. For the purposes of the development of a budget for the nineteen hundred ninety-eight--ninety-nine school year, the trustee or board of trustees shall separate the district's program, capital and administrative costs for the nineteen hundred ninety-seven--ninety-eight school year in the manner as if the budget for such year had been presented in three components.

§ 5. Subdivision 4 of section 1716 of the education law, as amended by section 7 of part A of chapter 436 of the laws of 1997, is amended to read as follows:

4. Commencing with the proposed budget for the nineteen hundred ninety-eight--ninety-nine school year, such proposed budget shall be presented in three components: a program component, a capital component and an administrative component which shall be separately delineated in accordance with regulations of the commissioner after consultation with local school district officials. The administrative component shall include, but need not be limited to, office and central administrative expenses, traveling expenses and [~~salaries and benefits of all certified school administrators and supervisors who spend a majority of their time performing administrative or supervisory duties~~] all compensation, salaries and benefits of all school administrators and supervisors, including business administrators, superintendents of schools and deputy, assistant, associate or other superintendents under all existing employment contracts or collective bargaining agreements, any and all expenditures associated with the operation of the board of education, the office of the superintendent of schools, general administration, the school business office, consulting costs not directly related to direct student services and programs, planning and all other administrative activities. The program component shall include, but need not be limited to, all program expenditures of the school district, including the salaries and benefits of teachers and any school administrators or supervisors who spend a majority of their time performing teaching duties, and all transportation operating expenses. The capital component shall include, but need not be limited to, all transportation capital, debt service, and lease expenditures; costs resulting from judgments in tax certiorari proceedings or the payment of awards from court judgments, administrative orders or settled or compromised claims; and all facilities costs of the school district, including facilities lease expenditures, the annual debt service and total debt for all facilities financed by bonds and notes of the school district, and the costs of construction, acquisition, reconstruction, rehabilitation or improvement of school buildings, provided that such budget shall include a rental, operations and maintenance section that includes base rent costs, total rent costs, operation and maintenance charges, cost per square foot for each facility leased by the school district, and any and all expenditures associated with custodial salaries and benefits, service contracts, supplies, utilities, and maintenance and repairs of school facilities. For the purposes of the development of a budget for the nineteen hundred ninety-eight--ninety-nine school year, the board of education shall separate the district's program, capital and administrative costs for the nineteen hundred ninety-seven--ninety-eight school year in the manner as if the budget for such year had been presented in three components.

§ 6. Subdivision 2 of section 1716 of the education law, as amended by section 7 of part A of chapter 436 of the laws of 1997, is amended to read as follows:

2. Such statement shall be completed at least seven days before the budget hearing at which it is to be presented and copies thereof shall be prepared and made available, upon request **and at the school district offices, at any public library or free association library within the district and on the school district's internet website, if one exists,** to residents within the district during the period of fourteen days immediately preceding the annual meeting and election or special district meeting at which the budget vote will occur and at such meeting or hearing. The board shall also as a part of the notice required by section two thousand four of this chapter give notice of the date, time and place of the budget hearing and that a copy of such statement may be obtained by any resident in the district at each schoolhouse in the district in which school is maintained during certain designated hours on each day other than a Saturday, Sunday or holiday during the fourteen days immediately preceding such meeting. The board shall include notice of the availability of such statement at least once during the school year in any district-wide mailing distributed.

§ 7. Subdivision 2 of section 1608 of the education law, as amended by section 5 of part A of chapter 436 of the laws of 1997, is amended to read as follows:

2. Such statement shall be completed at least seven days before the budget hearing at which it is to be presented and copies thereof shall be prepared and made available, upon request **and at the school district offices, at any public library or free association library within the district and on the school district's internet website, if one exists,** to residents within the district during the period of fourteen days immediately preceding the annual meeting and election or special district meeting at which the budget vote will occur and at such meeting or hearing. The board shall also as a part of the notice required by section two thousand three of this chapter give notice of the date, time and place of the budget hearing and that a copy of such statement may be obtained by any resident in the district at each schoolhouse in the district in which school is maintained during certain designated hours on each day other than a Saturday, Sunday or holiday during the fourteen days immediately preceding such meeting. The board shall include notice of the availability of such statement at least once during the school year in any district-wide mailing distributed.

§ 8. Subdivision 1 and paragraph (b) of subdivision 2 of section 211 of the retirement and social security law, subdivision 1 as amended by chapter 161 of the laws of 1969 and paragraph (b) of subdivision 2 as amended by chapter 635 of the laws of 1970, are amended to read as follows:

1. Notwithstanding the provisions of sections one hundred one, two hundred twelve and four hundred one of this chapter or section five hundred three of the education law, or the provisions of any local law or charter, a retired person may be employed and earn compensation in a position or positions in the public service, without any effect on his **or her** status as retired and without suspension or diminution of his **or her** retirement

allowance subject to one of the following: (a) His or her total compensation in such position or ~~[positions]~~ positions in any calendar year, including compensation earned under other provisions of this article, shall not exceed the multiple of five hundred dollars next higher than the difference between (1) the sum of his or her annual retirement allowance computed without optional modification plus annual supplemental retirement payments, if any, and (2) the salary on which his or her retirement allowance is based or his or her final salary, whichever is greater; or (b) The position in which he or she is employed is not a position in the service of a former employer.

(b) Such approval may be granted only on the written request of the prospective employer of such retired person, which request shall state detailed reasons therefor related to the standards set forth herein, and on a finding, on evidence satisfactory to the appropriate officer or authority specified in paragraph (a) of this subdivision,

(1) that the retired person is duly qualified, competent and physically fit for performance of the duties of the position in which he or she is to be employed and is properly certified where such certification is required;

(2) ~~[that there is need for his services in such position;~~

~~(3) if] that~~ he or she will earn more than one thousand dollars in one year, including compensation earned in such position under other provisions of this article~~;~~ that there are not readily available for recruitment persons qualified to perform the duties of such position; and (4)];

(3) that the prospective employer has prepared a detailed recruitment plan to fill such vacancy on a permanent basis;

(4) that his or her employment is in the best interests of the government service; and

(5)(i) that there is an urgent need for his or her services in such position as a result of an unplanned, unpredictable and unexpected vacancy where sufficient time is not available to recruit a qualified individual and that such hiring shall be deemed as non-permanent rather than a final filling of such position; or

(ii) that the prospective employer has undertaken extensive recruitment efforts to fill such vacancy and as a result thereof, has determined that there are no available non-retired persons qualified to perform the duties of such position.

Such approvals may be granted for periods not exceeding two years each, provided that such person may not return to work in the same or similar position for a period of one year following retirement. The authority or officer specified in paragraph (a) of this subdivision, upon approving employment of a retired person under this section, shall certify such approval to the retirement system or pension plan from which such person is receiving a retirement allowance.

§ 9. Subdivision 1 of section 212 of the retirement and social security law, as amended by chapter 474 of the laws of 2002, is amended to read as follows:

1. Notwithstanding the provisions of section one hundred one, two hundred eleven or four hundred one of this chapter or of section five hundred three of the education law, or the provisions of any local law or charter, any retired person may continue as retired and, without loss, suspension or diminution of his or her retirement allowance, earn in a position or positions in public service in any calendar year an amount not exceeding the amount set forth in the table in subdivision two of this section provided such retired person employed under this section duly executes and files with the retirement system from which he or she is receiving a retirement allowance a statement that he elects to have the provisions of this section apply to him or her. A statement of election executed and filed pursuant to this section may be withdrawn by a retired person at any time by a statement similarly executed and filed. However, there shall be no earning limitations under the provisions of this section on or after the calendar year in which any retired person attains age sixty-five. The retirement board of the New York state teachers' retirement system is authorized to adopt rules and regulations which would allow retired persons receiving a retirement allowance from such system to make such statements of earnings from a position or positions in public service as such board shall determine necessary to enforce the provisions of this section in lieu of the foregoing statement of election.

§ 10. Section 525 of the education law is amended to read as follows:

§ 525. Protection against fraud. **1.** Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of the state of New York.

2. Any violation of subdivision one of this section that results in a member or beneficiary of the retirement system receiving a benefit or payment in excess of one thousand dollars more than he or she would have been entitled to shall be a class E felony. Any violation of subdivision one of this section that results in a member or beneficiary of the retirement system to receive a benefit or payment in excess of three thousand dollars more than he or she would have been entitled to shall be a class D felony.

3. Should any change or error in records result in any employee or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then, on the discovery of any such error, the retirement board shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

§ 11. Section 111 of the retirement and social security law is amended to read as follows:

§ 111. Protection against fraud. a. Any person who shall:

1. Knowingly make any false statement, or
2. Falsify or permit to be falsified any record of the retirement system, in any attempt to defraud such system as the result of such act shall be guilty of a misdemeanor.

b. Any violation of subdivision a of this section that results in a member or beneficiary of the retirement system receiving a benefit or payment in excess of one thousand dollars more than he or she would have been entitled to shall be a class E felony. Any violation of subdivision a of this section that results in a member or beneficiary of the retirement system receiving a benefit or payment in excess of three thousand dollars more than he or she would have been entitled to shall be a class D felony.

c. In the event that any change or error in any record of the retirement system causes a member or beneficiary of such system to receive more or less than he would have been entitled to receive had such record been correct, the comptroller, upon the discovery of any such change or error, shall correct such record. As far as practicable, the comptroller shall adjust payments in such a manner that the actuarial equivalent of any benefit rightly due shall be paid.

§ 12. Section 411 of the retirement and social security law, as added by chapter 1000 of the laws of 1966, is amended to read as follows:

§ 411. Protection against fraud. a. Any person who shall:

1. Knowingly make any false statement, or
2. Falsify or permit to be falsified any record of the [~~police~~ **police**men's and firemen's] New York state and local police and fire retirement system, in any attempt to defraud such system as the result of such act shall be guilty of a misdemeanor.

b. Any violation of subdivision a of this section that results in a member or beneficiary of the retirement system receiving a benefit or payment in excess of one thousand dollars more than he or she would have been entitled to shall be a class E felony. Any violation of subdivision a of this section that results in a member or beneficiary of the retirement system receiving a benefit or payment in excess of three thousand dollars more than he or she would have been entitled to shall be a class D felony.

c. In the event that any change or error in any record of the [~~police~~ **police**men's and firemen's] New York state and local police and fire retirement system causes a member or beneficiary of such system to receive more or less than he would have been entitled to receive had such record been correct, the comptroller, upon the discovery of any such change or error, shall correct such record. As far as practicable, the comptroller

shall adjust payments in such a manner that the actuarial equivalent of any benefit rightly due shall be paid.

§ 13. This act shall take effect immediately, provided that sections one through seven of this act shall take effect on the ninetieth day after it shall have become a law; and provided further that section eight of this act shall not apply to individuals to whom waivers were granted prior to the effective date of this act.