

1/25/08  
10:00

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July 22, 2008



Honorable David A. Paterson  
Governor, State of New York  
Executive Chamber  
Albany, New York 12224

Re:: A11743/S8699

Dear Governor Paterson:

It is with regret that the New York State District Attorney's Association is compelled to vigorously oppose the above referenced legislation which passed both houses and is now before you for signature. We urge you to disapprove this bill, as it is detrimental to the interest of law enforcement and public safety.

The primary focus of this bill is to deal with the abuses that were recently uncovered in many school districts across the State. In many instances, attorneys in private law firms who were, in fact, independent contractors, were improperly listed as employees of school districts and were then enrolled in governmental pension systems. This resulted in these individuals fraudulently obtaining pensions. We strongly support the elimination of this abusive conduct and the squandering of public resources. Unfortunately, however, in pursuing this worthwhile goal, changes in existing law relating to waivers under Section 211 of the Retirement and Social Security Law have been made, no doubt unintentionally, that will have a seriously detrimental effect on law enforcement and public safety.

The bill contains what can be characterized as generic changes to Section 211 of the Retirement and Social Security Law. These changes will impact on all who seek a so-called Section 211 Waiver and all those who employ individuals with Section 211 Waivers. It is those changes that we oppose and which if enacted will negatively impact on law enforcement and public safety.

The District Attorneys of this State conduct investigations that are vital to the public safety of the People of the State of New York. These investigations are in such areas as narcotics trafficking, organized crime, money laundering, mortgage fraud, internet sexual exploitation of children, elder fraud and public corruption, to name but a few. The bill on your desk also includes enhanced criminal penalties for fraudulent activity in regard to pensions. Such crimes would, in fact, be investigated by District Attorneys' Offices. Many of the District Attorneys of this State employ investigators with the specialized talents and experience necessary to pursue these complex investigations. Virtually all of these investigators are experienced police officers who have retired from their initial police agencies and continue to provide their skills and experience to the public by virtue of the issuance of Section 211 Waivers. It would be

MUNICIPAL CENTER, 25 WEST HIGH STREET  
BALLSTON SPA, NY 12020  
TEL. (518) 885-2263 FAX (518) 884-8627

impossible to conduct these types of investigations without having these talented, experienced investigators available. It would be ironic indeed to have pension fraud made a felony and then deprive the District Attorneys of the caliber of investigators necessary to mount a successful prosecution. The language that the bill would insert in Section 211 calls into serious question our ability to obtain and maintain 211 Waivers in the future.

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We note also that after the tragic death of Nixmary Brown, a series of reforms were instituted at New York City's Administration For Children's Services (ACS). The cornerstone of those reforms was the employment of experienced investigators for ACS. To our knowledge, every one of those investigators was a retired police officer who continued in public service by virtue of a 211 Waiver. It would be tragic to undo this reform.

I and my colleagues are committed to working with the Bill's sponsors to draft acceptable language that will ensure the worthwhile goals of this legislation without causing what we believe was the unintended damage to public safety.

Accordingly, we respectfully request that you disapprove the bill in its present form.

Yours very truly,

James A. Murphy, III  
President

**STATUS:****A11743** Rules (Sweeney) Same as S 8699 SKELOS

Education Law

TITLE....Relates to professional services providers

06/21/08 referred to governmental employees

~~06/23/08 reported referred to codes~~

06/23/08 reported referred to ways and means

06/23/08 reported referred to rules

06/23/08 reported

06/23/08 rules report cal.687

06/23/08 substituted by s8699

**S08699 SKELOS**

06/20/08 REFERRED TO RULES

06/23/08 ORDERED TO THIRD READING CAL.2103

06/23/08 PASSED SENATE

06/23/08 DELIVERED TO ASSEMBLY

06/23/08 referred to governmental employees

06/23/08 substituted for a11743

06/23/08 ordered to third reading rules cal.687

06/23/08 passed assembly

06/23/08 returned to senate

**SUMMARY:**

RULES COM (Request of Sweeney, Abbate, Weisenberg, Schimel, Destito, Saladino, Weinstein)  
Add Art 41 Part III SS2050 - 2054, amd SS2601-a, 1608, 1716 & 525, Ed L; add S217, amd SS211,  
212, 111 & 411, R & SS L

Relates to professional services providers; enacts provisions providing reporting requirements by school districts and boards of cooperative educational services which employ retired persons that earn amounts in excess of limitations provided in law.

**BILL TEXT:****STATE OF NEW YORK**

11743

**IN ASSEMBLY**

June 20, 2008

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Sweeney,  
Abbate, Weisenberg) -- (at request of the Attorney General) -- read  
once and referred to the Committee on Governmental Employees

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 Assem-  
bly, do enact as follows:

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

3 PART III

4 PROFESSIONAL SERVICES PROVIDERS

5 Section 2050. Definition.

6 2051. Charging for professional services.

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7 2052. Enforcement.

8 2053. Reports regarding lawyers.

9 2054. Non-exclusivity of rights or remedies.

10 § 2050. Definition. As used in this part, a "lawyer" shall mean an  
11 attorney or counselor governed by article fifteen of the judiciary law,  
12 who receives remuneration or other compensation from a school district  
13 or board of cooperative educational services in exchange for legal  
14 services provided to such district or board.

15 § 2051. Charging for professional services. 1. A lawyer shall not  
16 simultaneously be an independent contractor and an employee of a school  
17 district or board of cooperative educational services for the purpose of  
18 providing legal services to such school district or board of cooperative  
19 educational services.

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

26 § 2052. Enforcement. 1. Any lawyer who violates section two thousand  
27 fifty-one of this part, shall be liable for a civil penalty not to

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 exceed three times the charges and fees for contracted services or sala-  
2 ry received by the lawyer and paid by such school district or board of  
3 cooperative educational services for legal services, and in addition,  
4 may be enjoined from continuing such violation. Civil penalties and  
5 injunctive relief provided in this section shall be recoverable in an  
6 action brought by the attorney general.

7 2. Any person who shall knowingly:

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

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

11 (c) falsify or permit to be falsified any record or records of the  
12 retirement system established in this chapter  
13 in an attempt to defraud the retirement system established in this chap-  
14 ter as a result of such act for the purpose of obtaining a credit  
15 towards pension benefits, or a benefit or payment in excess of one thou-  
16 sand dollars from such retirement system for a professional services  
17 provider to which such professional services provider would not be enti-  
18 tled, shall be guilty of a class E felony.

19 § 2053. Reports regarding lawyers. Every school district and board of  
20 cooperative educational services shall, on or before the forty-fifth day  
21 after the commencement of its fiscal year, file with the department, the  
22 comptroller and the attorney general a report specifying: (a) all  
23 lawyers who provide legal services to such district or board; (b) wheth-  
24 er such district or board hired such lawyers as employees; and (c) all  
25 remuneration and compensation paid for legal services.

26 § 2054. Non-exclusivity of rights or remedies. Nothing in this part  
27 shall be construed to limit, in any matter, any rights or remedies  
28 otherwise available under law against any party or to any person or  
29 entity, including, but not limited to, the attorney general or the comp-  
30 troller of the state of New York.

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

34 3. The board of education shall prepare a proposed school district  
35 budget for the ensuing year in accordance with the provisions of section  
36 seventeen hundred sixteen of this chapter, including all provisions  
37 relating to required notices and appendices to the statement of expendi-  
38 tures. No board of education shall incur a school district liability  
39 except as authorized by the provisions of section seventeen hundred  
40 eighteen of this chapter. Such proposed budget shall be presented in  
41 three components: a program component, a capital component and an admin-  
42 istrative component which shall be separately delineated in accordance  
43 with regulations of the commissioner after consultation with local  
44 school district officials. The administrative component shall include,  
45 but need not be limited to, office and central administrative expenses,  
46 traveling expenses and ~~salaries and benefits of all certified school~~  
47 ~~administrators and supervisors who spend a majority of their time~~  
48 ~~performing administrative or supervisory duties~~ all compensation, sala-  
49 ries and benefits of all school administrators and supervisors, includ-  
50 ing business administrators, superintendents of schools and deputy,  
51 assistant, associate or other superintendents under all existing employ-  
52 ment contracts or collective bargaining agreements, any and all expendi-  
53 tures associated with the operation of the board of education, the  
54 office of the superintendent of schools, general administration, the  
55 school business office, consulting costs not directly related to direct  
56 student services and programs, planning and all other administrative

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1 activities. The program component shall include, but need not be limited  
2 to, all program expenditures of the school district, including the sala-  
3 ries and benefits of teachers and any school administrators or supervi-  
4 sors who spend a majority of their time performing teaching duties, and  
5 ~~all transportation operating expenses. The capital component shall~~  
6 include, but need not be limited to, all transportation capital, debt  
7 service, and lease expenditures; costs resulting from judgments in tax  
8 certiorari proceedings or the payment of awards from court judgments,  
9 administrative orders or settled or compromised claims; and all facili-  
10 ties costs of the school district, including facilities lease expendi-  
11 tures, the annual debt service and total debt for all facilities  
12 financed by bonds and notes of the school district, and the costs of  
13 construction, acquisition, reconstruction, rehabilitation or improvement  
14 of school buildings, provided that such budget shall include a rental,  
15 operations and maintenance section that includes base rent costs, total  
16 rent costs, operation and maintenance charges, cost per square foot for  
17 each facility leased by the school district, and any and all expendi-  
18 tures associated with custodial salaries and benefits, service  
19 contracts, supplies, utilities, and maintenance and repairs of school  
20 facilities. For the purposes of the development of a budget for the  
21 nineteen hundred ninety-seven--ninety-eight school year, the board of  
22 education shall separate its program, capital and administrative costs  
23 for the nineteen hundred ninety-six--ninety-seven school year in the  
24 manner as if the budget for such year had been presented in three compo-  
25 nents. Except as provided in subdivision four of this section, nothing  
26 in this section shall preclude the board, in its discretion, from  
27 submitting additional items of expenditure to the voters for approval as  
28 separate propositions or the voters from submitting propositions pursu-  
29 ant to sections two thousand eight and two thousand thirty-five of this  
30 chapter.

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

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

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

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

51 4. Commencing with the proposed budget for the nineteen hundred nine-  
52 ty-eight--ninety-nine school year, such proposed budget shall be  
53 presented in three components: a program component, a capital component  
54 and an administrative component which shall be separately delineated in  
55 accordance with regulations of the commissioner after consultation with  
56 local school district officials. The administrative component shall

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1 include, but need not be limited to, office and central administrative  
2 expenses, traveling expenses and ~~[salaries and benefits of all certified~~  
3 ~~school administrators and supervisors who spend a majority of their time~~  
4 ~~performing administrative or supervisory duties,]~~ all compensation,  
5 ~~salaries and benefits of all school administrators and supervisors,~~  
6 including business administrators, superintendents of schools and depu-  
7 ty, assistant, associate or other superintendents under all existing  
8 employment contracts or collective bargaining agreements any and all  
9 expenditures associated with the operation of the office of trustee or  
10 board of trustees, the office of the superintendent of schools, general  
11 administration, the school business office, consulting costs not direct-  
12 ly related to direct student services and programs, planning and all  
13 other administrative activities. The program component shall include,  
14 but need not be limited to, all program expenditures of the school  
15 district, including the salaries and benefits of teachers and any school  
16 administrators or supervisors who spend a majority of their time  
17 performing teaching duties, and all transportation operating expenses.  
18 The capital component shall include, but need not be limited to, all  
19 transportation capital, debt service, and lease expenditures; costs  
20 resulting from judgments in tax certiorari proceedings or the payment of  
21 awards from court judgments, administrative orders or settled or compro-  
22 mised claims; and all facilities costs of the school district, including  
23 facilities lease expenditures, the annual debt service and total debt  
24 for all facilities financed by bonds and notes of the school district,  
25 and the costs of construction, acquisition, reconstruction, rehabili-  
26 tation or improvement of school buildings, provided that such budget  
27 shall include a rental, operations and maintenance section that includes  
28 base rent costs, total rent costs, operation and maintenance charges,  
29 cost per square foot for each facility leased by the school district,  
30 and any and all expenditures associated with custodial salaries and  
31 benefits, service contracts, supplies, utilities, and maintenance and  
32 repairs of school facilities. For the purposes of the development of a  
33 budget for the nineteen hundred ninety-eight--ninety-nine school year,  
34 the trustee or board of trustees shall separate the district's program,  
35 capital and administrative costs for the nineteen hundred ninety-seven-  
36 -ninety-eight school year in the manner as if the budget for such year  
37 had been presented in three components.

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

41 4. Commencing with the proposed budget for the nineteen hundred nine-  
42 ty-eight--ninety-nine school year, such proposed budget shall be  
43 presented in three components: a program component, a capital component  
44 and an administrative component which shall be separately delineated in  
45 accordance with regulations of the commissioner after consultation with  
46 local school district officials. The administrative component shall  
47 include, but need not be limited to, office and central administrative  
48 expenses, traveling expenses and ~~[salaries and benefits of all certified~~  
49 ~~school administrators and supervisors who spend a majority of their time~~  
50 ~~performing administrative or supervisory duties]~~ all compensation, sala-  
51 ries and benefits of all school administrators and supervisors, includ-  
52 ing business administrators, superintendents of schools and deputy,  
53 assistant, associate or other superintendents under all existing employ-  
54 ment contracts or collective bargaining agreements, any and all expendi-  
55 tures associated with the operation of the board of education, the  
56 office of the superintendent of schools, general administration, the

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1 school business office, consulting costs not directly related to direct  
2 student services and programs, planning and all other administrative  
3 activities. The program component shall include, but need not be limited  
4 to, all program expenditures of the school district, including the sala-  
5 ~~ries and benefits of teachers and any school administrators or supervi-~~  
6 sors who spend a majority of their time performing teaching duties, and  
7 all transportation operating expenses. The capital component shall  
8 include, but need not be limited to, all transportation capital, debt  
9 service, and lease expenditures; costs resulting from judgments in tax  
10 certiorari proceedings or the payment of awards from court judgments,  
11 administrative orders or settled or compromised claims; and all facili-  
12 ties costs of the school district, including facilities lease expendi-  
13 tures, the annual debt service and total debt for all facilities  
14 financed by bonds and notes of the school district, and the costs of  
15 construction, acquisition, reconstruction, rehabilitation or improvement  
16 of school buildings, provided that such budget shall include a rental,  
17 operations and maintenance section that includes base rent costs, total  
18 rent costs, operation and maintenance charges, cost per square foot for  
19 each facility leased by the school district, and any and all expendi-  
20 tures associated with custodial salaries and benefits, service  
21 contracts, supplies, utilities, and maintenance and repairs of school  
22 facilities. For the purposes of the development of a budget for the  
23 nineteen hundred ninety-eight--ninety-nine school year, the board of  
24 education shall separate the district's program, capital and administra-  
25 tive costs for the nineteen hundred ninety-seven--ninety-eight school  
26 year in the manner as if the budget for such year had been presented in  
27 three components.

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

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

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

51 2. Such statement shall be completed at least seven days before the  
52 budget hearing at which it is to be presented and copies thereof shall  
53 be prepared and made available, upon request and at the school district  
54 offices, at any public library or free association library within the  
55 district and on the school district's internet website, if one exists,  
56 to residents within the district during the period of fourteen days



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1 immediately preceding the annual meeting and election or special  
2 district meeting at which the budget vote will occur and at such meeting  
3 or hearing. The board shall also as a part of the notice required by  
4 section two thousand three of this chapter give notice of the date, time  
5 ~~and place of the budget hearing and that a copy of such statement may be~~  
6 obtained by any resident in the district at each schoolhouse in the  
7 district in which school is maintained during certain designated hours  
8 on each day other than a Saturday, Sunday or holiday during the fourteen  
9 days immediately preceding such meeting. The board shall include notice  
10 of the availability of such statement at least once during the school  
11 year in any district-wide mailing distributed.

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

17 1. Notwithstanding the provisions of sections one hundred one, two  
18 hundred twelve and four hundred one of this chapter or section five  
19 hundred three of the education law, or the provisions of any local law  
20 or charter, a retired person may be employed and earn compensation in a  
21 position or positions in the public service, without any effect on his  
22 or her status as retired and without suspension or diminution of his or  
23 her retirement allowance subject to one of the following: (a) His or her  
24 total compensation in such position or ~~[positions]~~ positions in any  
25 calendar year, including compensation earned under other provisions of  
26 this article, shall not exceed the multiple of five hundred dollars next  
27 higher than the difference between (1) the sum of his or her annual  
28 retirement allowance computed without optional modification plus annual  
29 supplemental retirement payments, if any, and (2) the salary on which  
30 his or her retirement allowance is based or his or her final salary,  
31 whichever is greater; or (b) The position in which he or she is employed  
32 is not a position in the service of a former employer.

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

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

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

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

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

50 (4) that his or her employment is in the best interests of the govern-  
51 ment service; and

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

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1 (ii) that the prospective employer has undertaken extensive recruit-  
2 ment efforts to fill such vacancy and as a result thereof, has deter-  
3 mined that there are no available non-retired persons qualified to  
4 perform the duties of such position.

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

12 § 9. Subdivision 1 of section 212 of the retirement and social securi-  
13 ty law, as amended by chapter 474 of the laws of 2002, is amended to  
14 read as follows:

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

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

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

44 2. Any violation of subdivision one of this section that results in a  
45 member or beneficiary of the retirement system receiving a benefit or  
46 payment in excess of one thousand dollars more than he or she would have  
47 been entitled to shall be a class E felony. Any violation of subdivi-  
48 sion one of this section that results in a member or beneficiary of the  
49 retirement system to receive a benefit or payment in excess of three  
50 thousand dollars more than he or she would have been entitled to shall  
51 be a class D felony.

52 3. Should any change or error in records result in any employee or  
53 beneficiary receiving from the retirement system more or less than he  
54 would have been entitled to receive had the records been correct, then,  
55 on the discovery of any such error, the retirement board shall correct  
56 such error, and, as far as practicable, shall adjust the payments in

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1 such a manner that the actuarial equivalent of the benefit to which he  
2 was correctly entitled shall be paid.

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

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

6 1. Knowingly make any false statement, or

7 2. Falsify or permit to be falsified any record of the retirement  
8 system, in any attempt to defraud such system as the result of such act  
9 shall be guilty of a misdemeanor.

10 b. Any violation of subdivision a of this section that results in a  
11 member or beneficiary of the retirement system receiving a benefit or  
12 payment in excess of one thousand dollars more than he or she would have  
13 been entitled to shall be a class E felony. Any violation of subdivision  
14 a of this section that results in a member or beneficiary of the retire-  
15 ment system receiving a benefit or payment in excess of three thousand  
16 dollars more than he or she would have been entitled to shall be a class  
17 D felony.

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

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

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

28 1. Knowingly make any false statement, or

29 2. Falsify or permit to be falsified any record of the [~~police-~~  
30 ~~men's and firemen's~~] New York state and local police and fire retirement  
31 system, in any attempt to defraud such system as the result of such act  
32 shall be guilty of a misdemeanor.

33 b. Any violation of subdivision a of this section that results in a  
34 member or beneficiary of the retirement system receiving a benefit or  
35 payment in excess of one thousand dollars more than he or she would have  
36 been entitled to shall be a class E felony. Any violation of subdivision  
37 a of this section that results in a member or beneficiary of the retire-  
38 ment system receiving a benefit or payment in excess of three thousand  
39 dollars more than he or she would have been entitled to shall be a class  
40 D felony.

41 c. In the event that any change or error in any record of the [~~police-~~  
42 ~~men's and firemen's~~] New York state and local police and fire retirement  
43 system causes a member or beneficiary of such system to receive more or  
44 less than he would have been entitled to receive had such record been  
45 correct, the comptroller, upon the discovery of any such change or  
46 error, shall correct such record. As far as practicable, the comp-  
47 troller shall adjust payments in such a manner that the actuarial equiv-  
48 alent of any benefit rightly due shall be paid.

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

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SPONSORS MEMO:

NEW YORK STATE ASSEMBLY

**MEMORANDUM IN SUPPORT OF LEGISLATION**  
**submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A11743

**SPONSOR:** Rules (Sweeney)

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**TITLE OF BILL:**

An act to amend the education law and the retirement and social security law, in relation to professional services providers

**PURPOSE:**

This bill establishes rigorous transparency and accountability measures to permanently stop waste, fraud and abuse in schools and in the public retirement system.

**SUMMARY OF SPECIFIC PROVISIONS:**

Section 1 amends the Education Law by adding a new Part 3 to Article 41 which sets forth certain prohibitions regarding lawyers who provide legal services to school districts or board of cooperative educational services ("BOCES"). Also, this section authorizes the Attorney General to commence a civil suit against persons who violate such prohibitions and to obtain a judgment imposing civil penalties, as well as injunctive relief. This section further creates a new criminal penalty. Finally, it requires schools and BOCES to submit to the state Comptroller, Attorney General and the State Education Department a list of all lawyers providing services, their classification as either employees or independent contractors, their compensation and other factors.

Section 2 amends subdivision 3 of section 2601-a of the Education Law by requiring school budgets of schools in cities with less than 175,000 people list all compensation, salaries and benefits of 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.

Section 3 amends the Retirement and Social Security Law by adding a new section 217 to require school districts and BOCES report the current position and all earnings by a retiree in their employ on an annual basis to the state Comptroller.

Sections 4 & 5 amend subdivision 4 of section 1608 and subdivision 4 of section 1716 of the Education Law by requiring school budgets of all common schools and union free school districts list all compensation, salaries and benefits of 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.

Section 6 & 7 amend subdivision 2 of section 1716 and subdivision 2 of

The subsequent investigations are ongoing.

In addition to the pension fraud investigation, OAG has also begun to investigate "double billing" or "double dipping"-i.e. the practice of allowing employees to earn both salaries and pensions simultaneously, often for the same job. One day, individuals are employees in the public sector. Then after retirement, a retiree comes back as a consultant ~~doing the same work, but now collecting a pension and a salary costing,~~ in many cases, hundreds of thousands of dollars to the taxpayers annually.

To further investigate the waste fraud and abuse in the public pension systems, as well as improper employment arrangements in school districts and BOCES, the Attorney General conducted a public hearing with leaders from the Senate and Assembly, including Senators Skelos and LaValle, and Assembly members Sweeney and Weisenberg. The panel heard from law enforcement, public officials, auditors, school officials, community leaders and academics. Based on that hearing and the OAG investigation, the panel concluded that legislative action was needed to strengthen accountability and transparency, and to help stop this kind of waste, fraud and abuse in the public pension systems.

This bill enacts rigorous transparency and accountability measures to permanently stop waste, fraud and abuse in schools and in the public retirement system. Further, it expands the Attorney General's civil authority, closes loopholes in the pension waiver process, imposes new restrictions for lawyers who are seek to simultaneously be independent contractors and employees, increases accountability in schools, and increases penalties for pension fraud.

Notably, existing law has long prohibited the conduct that the Attorney General's investigation has uncovered. For example, well settled decisional law, as well as opinions of both the State Comptroller and the Attorney General, have long held that an attorney who is not an employee or officer of a governmental entity is ineligible to participate in a public retirement system in connection with legal services provided to such entity. Indeed, on numerous occasions, the Comptroller and courts have disallowed service credit and/or membership in retirement systems, on the ground that a person was an independent contractor of a governmental entity, rather than an employee, as the person and/or entity characterized his or her status. See, e.g., *Matter of Erwin v. Regan*, 58 N.Y.2d 722 (1982), *affg* for reason stated at 89 A.D.2d 753 (3d Dep't 1982) (confirming denial of service credit for work as town attorney because the work was performed as an independent contractor); *Matter of Mancuso v. Regan*, 190 A.D.2d 948 (3d Dep't 1993) (confirming Comptroller's denial of service credit for work as an attorney in eviction cases for a housing authority because the work was performed as an independent contractor); *Matter of Brosnahan v. New York State Employees' Retirement Sys.*, 174 A.D.2d 954, 954 (3d Dep't 1991) (confirming Comptroller's denial of service credit for work as an attorney for a regional OTB corporation because such work was performed as an independent contractor); *Matter of Barbiero v. New York State Employees' Retirement Sys.*, 92 A.D.2d 1078 (3d Dep't 1983) (confirming Comptroller's denial membership in the ERS for work as a part-time fire district's attorney because such work was performed as an independent contractor and not an employee); *Matter of Sitrin v. Regan*, 90 A.D.2d 583, 584 (3d Dep't 1982), *lv. denied*, 58 N.Y.2d 605 (1983) (confirming Comptroller's denial of service credit and retroactive membership as a consultant for the education department because such work was performed as an independent contractor and not an employee); *Matter of Senapole v. Field*, 88 A.D.2d 1012 (3d Dep't 1982) (affirming Comptroller's denial of service credit for work as town's "Clerk of the Works" because the work was performed as an independent contractor and not an employee). However, all too often existing law has been flouted by lawyers provid-

ing legal services to school districts and BOCES. This bill addresses that problem by establishing tough penalties and sanctions to deter against unlawful conduct. Thus, for example, section 1 provides strict standards and enhanced penalties for persons who violate established law against seeking to obtain, among other things, pension benefits in connection with legal services provided to a school district or BOCES ~~not as an employee, but rather, as an independent contractor. Under this~~ bill, lawyers who violate this prohibition may be subject to potentially treble damages, following a civil suit brought by the Attorney General. Additionally, the bill creates new felony crimes for pension fraud. Fraudulent placement of professionals on public payrolls costs taxpayers tens of millions of dollars by giving public pension benefits to those who otherwise would not be eligible. The fraud that has been uncovered is inexcusable. This bill will help put an end to this systematic abuse of the public treasury.

**PRIOR LEGISLATIVE HISTORY:**

New legislation.

**FISCAL IMPLICATIONS:**

Not known.

**EFFECTIVE DATE:**

This bill becomes law immediately, provided that sections 1 through 7 take effect on the 90th day; and provided further that section 8 of this act shall not apply to individuals to whom waivers were granted prior to the effective date of this act.

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