



LEADERS • EDUCATORS • ADVOCATES

AMEND

S. 8699 (Skelos)/A.11743 (Rules/Sweeney)

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

This bill is intended to address recent controversies concerning public retirement system participation by private attorneys and retired school personnel returning to work in schools and thereby earning a salary while collecting a pension.

The Council supports some elements of this legislation and has put forth its own recommendations to promote greater accountability in the employment of retirees.

*However, this bill is flawed and **the Council urges that it be amended.** Failure to at least amend this bill will result in cumbersome new processes which districts may not be able to fully implement.*

One-year ban on public employees working in retirement: Our primary objection to this bill is that it would require *any* retiree in a New York public sector retirement system (superintendents, other school personnel and other former public employees) to be retired for one full year before they would be permitted to receive a waiver to work in retirement as a superintendent while collecting pensions earned through previous public employment.

Under current law, state public retirement system members who are under age 65 must obtain a waiver from a state agency if they are to retain their pension while working for a public employer in New York State if they earn in excess of \$30,000 in a year. Retirees age 65 or over have no limitations on their earnings.

Why is the one-year prohibition a bad idea?

- Retired superintendents perform an essential role in providing transitional leadership for school districts. It makes no sense to require a superintendent to spend a year away from schools, allowing his or her experience to become stale. Also, forcing them to wait a year might result in these veteran leaders being lost to New York public schools altogether – they can work with no earnings limitations at all either in other fields in New York, or in public schools in another state.
- Many districts are small and do not have an “heir apparent” to take over upon a superintendent’s retirement or in the event an unforeseen vacancy. (Over 40 percent of districts report having no deputy or assistant superintendents). Retired superintendents comprise a corps of tested executives with the flexibility to take on short-term leadership assignments.

Thomas L. Rogers

Executive Director
tom@nyscoss.org

Robert B. McClure

Superintendent-in-Residence
mcclure@nyscoss.org

Robert N. Lowry, Jr.

Deputy Director for
Advocacy, Research and
Communications
boblwry@nyscoss.org

Kelly O. Masline

Senior Associate Director
kelly@nyscoss.org

Douglas E. Gerhardt

General Counsel
douglas@nyscoss.org

Theresa A. Wutzer

Associate Director
theresa@nyscoss.org

2007-08 OFFICERS

Henry L. Grishman

President
Jericho
99 Cedar Swamp Road
Jericho, NY 11753
516.203.3600

Clark J. Godshall

President-Elect
Orleans-Niagara BOCES

L. Oliver Robinson

VP/Treasurer
Shenendehowa

Leslie G. Loomis

Past President
Bethlehem

EXECUTIVE COMMITTEE

William R. Bolton

Copiapue (2009)

Robert W. Christmann

Grand Island (2008)

Constance R. Clark

Westbury (2009)

Carol Franks-Randall

Elmsford (2008)

Douglas W. Huntley

Massena (2008)

James T. Langlois

Putnam-Northern
Westchester BOCES
(2009)

Marcia V. Lyles

NYC Dept. of Education

Mary Alice Price

Pittsford (2009)

Marilyn C. Terranova

Eastchester (2009)

NEW YORK STATE COUNCIL OF SCHOOL SUPERINTENDENTS

Seven Elk Street, Third Floor • Albany, New York 12207-1002 • 518.449.1063 FAX 518.426.2229 • www.nyscoss.org

- Also, in some cases a district is best served by employing a retiree as an interim superintendent as a planned transition. Sometimes a school board is too divided to commit to a permanent leader and needs to resolve its internal differences first. Also, a veteran is sometimes needed to make tough decisions to clear-up problems so that a permanent superintendent can assume leadership with a clean slate.
- This ban would also complicate the filling of business administrator and principal positions and some teaching positions. Again, it risks losing capable professionals to other fields or states where they may receive their pensions and work without earnings limitations.
- This provision is intended to limit the practice of employees retiring then being promptly rehired by the same district for the same position, enabling them to receive both a pension and a salary. Council leaders are also troubled by this practice. The legislation is a flawed response, however, as most of the current beneficiaries of the practice are over age 65 and thus do not require a waiver and would not be affected by this bill. As an alternative, the Council recommends that *at least* six months pass before a retiree – *whether under age 65 or not* – be allowed to return to *his or her former district* in the same position and earn over \$30,000.
- Finally, it should be understood, that employing a retiree should save money for taxpayers, especially with superintendents because of the competitive labor market. Pensions are paid out of investment earnings on past contributions; once someone retires, the employer stops making contributions on his or her behalf. So, with a retiree, a district avoids a pension contribution, generally pays a smaller salary, and often saves on health insurance. Also, if the district employed another person, it would still be paying a salary and benefits and the retiree would still be collecting a pension.

New Waiver Approval Criteria: New criteria would be set for school districts to satisfy before the Education Commissioner would be permitted to grant a waiver allowing the employment of a retiree under age 65 whose earnings will exceed \$30,000. Again, no waiver is required if the employee's earnings will not exceed \$30,000 for the year, or if he or she is 65 or older.

Waivers would not be permissible unless:

- Districts have a detailed recruitment plan for a permanent successor. (*This is a reasonable requirement*); **and**
- The district has undertaken extensive recruitment efforts to fill the vacancy (*Also reasonable*); **or**
- There is an urgent need for the retiree's services as result of an "unplanned, unpredictable, and unexpected vacancy" not allowing adequate time to recruit a qualified individual.

Our concern is with the third criteria. In some cases, a district is best served by employing a retiree as an interim superintendent on a planned basis – for example, to allow a divided school board to resolve differences before committing to permanent leadership; or to allow an effective veteran leader to clear-up problems so that a permanent superintendent can assume leadership with a clean slate.

The Council recommends a third option, to allow the Commissioner to grant an "exceptional" waiver for an interim superintendent for a period not to exceed one year, upon determination that the district's best interests would be served by such transitional leadership.

Prohibition against attorneys simultaneously being independent contractors and school district employees: The Council has *no objection* to prohibiting private attorneys from simultaneously serving as independent contractors and as school district or BOCES employees for the purpose of participating in public pension systems.

However, we would point out two gratuitous flaws.

- *The bill would apply this prohibition only to school districts, not to other local governments* or state entities, despite the fact that many politically well-connected attorneys have been found to be working under similar arrangements for county, town and village governments.
- Further, the bill would require school districts and BOCES to report to three separate state agencies (State Education Department, Comptroller and Attorney General) the names of all attorneys providing legal services, their employment status, and all remuneration paid for legal services. Reporting to three different agencies to accomplish a single purpose seems excessive. The bill also seeks reporting of all “compensation and remuneration” paid without making clear what the difference is.

Disclosure of all compensation of certain administrators: School districts would be required to include with their proposed budgets, all compensation, salaries, and benefits of all superintendents, deputy/associate/assistant superintendents, and business administrators. Under current law, districts are required to disclose the salaries and benefits of all certified administrators who devote a majority of their time to administrative duties. *The intent of the proposed change is unclear and it would seem to reduce the number of employees whose compensation would be required to be reported (e.g., principals, assistant principals and other central office administrators).*

Reporting of salary earnings of personnel working in retirement: School districts and BOCES would be required to report to the appropriate retirement system the names, positions and employment earnings of any retired persons whom they employ. *This is a reasonable requirement.* However, the bill would also require reporting of “a retired person who is eligible to collect ... a retirement allowance,” not only those actually collecting a pension. This is a puzzling mandate – it is impossible for a school district to know if an employee is eligible to collect a pension, making this requirement impossible to meet.

Require wider dissemination of school district budgets: School districts would be required to post proposed budgets on their websites (if one exists) and to provide copies to all public libraries within their boundaries. Under current law, districts are required to make this information available upon request and to note its availability in a district-wide mailing.

School districts already have the most transparent budget development and approval process of any governmental entity in New York State, culminating with the annual budget vote, something not required of counties, cities, towns, or villages.

Pension fraud to be a class D or E felony: Under the bill it would become a class E felony to knowingly make a false statement or falsify or cause be falsified any retirement system records leading to a recipient gaining an undue benefit of \$1,000 or more. Doing so to receive an undue benefit of \$3,000 or more would become a D felony. The Council supports this change in principle. However, the interplay of this section with the waiver process is a concern – a rejected waiver submitted in good faith cannot become grounds for criminal charges.