

40A:2-38.1

Legislative History on N.J.S.A. 40A:2-38.1  
18A:24-13.1  
(Attorneys' Bonding Fees)

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PREVIOUS BILLS - 1970-1971

- A2477 - Fay, Brown, Wilson, Rinaldi and Gavan.
- Text reads same as A66 (1972).
- No statement.
- Died in Committee.

SIMILAR BILLS - 1972-1973

- ~~S80 - Hirkala~~
- A551 - Yates
- All10 - Burstein, Baer, Hynes, Sinsimer, Hamilton
- A1617 - Gewertz, A. Klein, Colasurdo, Fay, Gorman
- S2287 - Wallwork

All bills died in committee.  
No statements on any of these bills.  
Copies enclosed.

Laws of 1973, Chapter 114, Assembly Bill No. 66

Pre-filed by Fay.

- April 10, 1972 - Reported with committee amendment.
- April 17, 1972 - Amended again.
- April 20, 1972 - Passed in Assembly, as amended.
- Received in Senate.
- April 16, 1973 - Passed in Senate.
- May 7, 1973 - Approved.

No sponsor's statement.  
Copies enclosed of A66 and amendments.  
Governor's press release 5/7/73 enclosed.

BACKGROUND

NJ / New Jersey School Boards Association.  
TB261 Report on Attorneys' Fees for Bond Issues, by  
M547 Mrs. Ruth H. Page. December 5, 1970, 11pp.

J340  
S372

Do Not Remove From Library  
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- J352.12 Center for Analysis of Public Issues.  
C397 Local Attorney's Fees in Bond Issues--  
"Nice Work If You Can Get It." John N. Kolesar,  
Project Director. Princeton, NJ, 1971.
- LP New Jersey State Bar Association. Local Gov't. Law Section.  
NJ "Bond Fee Study" [Notice appeared in Newsletter that  
L811 availability of report was imminent], vol. 6, no. 1,  
May 1971, p. 3. (Copy enclosed)
- ~~NJ~~ New Jersey State Bar Association. Local Gov't. Law Section.  
~~TB261~~ Committee on Municipal Bond Representation. Report.  
~~N548b~~ May 13, 1971. [No further report was issued by this  
I340 committee on attorney's bonding fees]  
B223a
- 974.905 Kolesar, John N.  
S33 "School Board Attorneys...How Should They Be Paid?"  
School Board Notes, a publication of New Jersey School  
Boards Assn., vol. 18, no.5, May/June 1972, pp. 17-18.  
(copy enclosed)

JOURNAL ARTICLES

- 94N.J.L.J. 252 April 8, 1971 "Lawyers Fees." [editorial]
- 94 N.J.L.J. 423 May 20, 1971 "Governor Cahill Addresses State  
Bar Convention." (copy enclosed)
- 94 N.J.L.J. 444 May 20, 1971 "Uniform Suggested Fee Schedule for  
Public Work Urged"
- 94 N.J.L.J. 449 May 27, 1971 "N.J. State Bar Municipal Bond  
Committee Recommendations". (copy enclosed)
- 94 N.J.L.J. 971 Oct. 14, 1971 "State Bar Seeking Alternatives to  
Municipal Bond Fee Practices."
- 95 N.J.L.J. 35 Jan. 13, 1972 Digest from O'Connor v. Union  
City et al., Dec. 6, 1971.
- 95 N.J.L.J. 148 Feb. 17, 1972 "Fees for Bonding Counsel"  
[editorial on Larner decision]
- 95 N.J.L.J. 416 May 4, 1972 "Excessive Bond Fees; it's up to  
the Senate now" [editorial on Assembly Bill No 66]. (copy enclosed)
- 96 N.J.L.J. 57,60 Jan. 11, 1973 Voice of the Bar letter re:All0 (1973)

NEWSPAPER CLIPPINGS

Clippings selected from the New Jersey Vertical File  
are enclosed.

NJ-- Lawyers 1970-1972.  
NJ-- Lawyers 1973

JA/ks

January 7, 1976

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[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 66

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Assemblyman FAY

AN ACT concerning attorneys' bonding fees and supplementing Title 18A of the New Jersey Statutes and Title 40 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. No county, municipality or other political subdivision of the  
2 State or any board, commission or agency thereof, shall compensate  
3 an attorney for services rendered in connection with the issuance  
4 of bonds other than at a reasonable **\*\*[hourly]\*\*** rate agreed on  
5 prior to the rendering of the services.

1 2. No school district shall compensate an attorney for services  
2 rendered in connection with the issuance of bonds other than at a  
3 reasonable **\*\*[hourly]\*\*** rate agreed on prior to the rendering of  
4 the services.

1 *\*3. This act shall not apply to compensation of attorneys for ser-*  
2 *vices rendered in connection with a bond issue which has been pro-*  
3 *posed before January 1, 1973.\**

1 **\*[3.]\*** *\*4.\** This act shall take effect January 1, 1973.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

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2 State or any board, commission or agency thereof, shall compensate  
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4 of bonds other than at a reasonable hourly rate agreed on prior  
5 to the rendering of the services.

1 2. No school district shall compensate an attorney for services  
2 rendered in connection with the issuance of bonds other than at a  
3 reasonable hourly rate agreed on prior to the rendering of the  
4 services.

1 \*3. *This act shall not apply to compensation of attorneys for ser-*  
2 *vices rendered in connection with a bond issue which has been pro-*  
3 *posed before January 1, 1973.\**

1 \***[3.]**\* \*4.\* This act shall take effect January 1, 1973.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

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1 2. No school district shall compensate an attorney for services  
2 rendered in connection with the issuance of bonds other than at a  
3 reasonable hourly rate agreed on prior to the rendering of the  
4 services.

1 3. This act shall take effect January 1, 1973.

ASSEMBLY COMMITTEE AMENDMENTS TO  
**ASSEMBLY, No. 66**

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**STATE OF NEW JERSEY**

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ADOPTED APRIL 10, 1972

Amend page 1, section 2, after line 4, insert: "3. This act shall not apply to compensation of attorneys for services rendered in connection with a bond issue which has been proposed before January 1, 1973."

Amend page 1, section 3, line 1, omit "3", and insert "4".

ASSEMBLY AMENDMENTS TO  
**ASSEMBLY, No. 66**  
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**STATE OF NEW JERSEY**

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ADOPTED APRIL 17, 1972

Amend page 1, section 1, line 4, omit "hourly".

Amend page 1, section 2, line 3, omit "hourly".



FROM THE OFFICE OF THE GOVERNOR

MAY 7, 1973

FOR RELEASE:  
IMMEDIATE

Governor William T. Cahill signed into law today a bill extending immunity protection to persons testifying, in accordance with a U.S. Supreme Court ruling.

Senate Bill 1154, sponsored by Senator Joseph C. Woodcock, Jr., (R., Bergen), broadens New Jersey immunity statute to include any information directly or indirectly derived from testimony or evidence.

Under the previous New Jersey statute, a person granted immunity to testify was protected only against the use of his testimony. Under the new law he would also be protected from any evidence which might be developed as a result of his testimony.

The Governor also signed into law the following bills:

Senate Bill 1264, sponsored by Senator Harold C. Hollenbeck, (R., Bergen), which prescribes additional methods for the destruction of hypodermic needles or syringes.

Assembly Bill 66, sponsored by Assemblyman John J. Fay, Jr., (D. Middlesex), which provides that an attorney shall be compensated for services rendered in connection with the issuance of bonds at a reasonable rate agreed on prior to the rendering of the services, not applicable to bond issues proposed before January 1, 1973. ✓

Assembly Bill 329, sponsored by Assemblyman John H. Ewing, (R., Somerset), which requires written consent of a parent or guardian of a pupil and of a physician of the parents' or guardians' choice prior to the administration to a pupil by school authorities of any drug or medication for experimental purposes for stimulating the learning process.

-more-

"BOND FEE STUDY"

LP  
NJ  
L811 p.3

During the year, a special committee to consider the question of fees and charges made by attorneys in connection with public bond issues has been gathering information preparatory to the making of a report, which is expected to be available at the Annual Meeting in May 1971. This committee was very ably headed by John L. Kraft, Associate Counsel to the Governor, who is also a Director of our Section, William John Kearns, Jr., and Alfred A. Porro, Jr. Recently, when Jack Kraft was forced to resign as Chairman of the Committee due to the pressure of other affairs, the Committee has continued to function under the able leadership of Bill Kearns. In the face of growing criticism of various sections of the public concerning the matter of bond issue fees charged by attorneys, the report of this special committee will be awaited with a considerable amount of interest, not only by members of the Bar but by public officials and members of the public generally. It should be noted that this committee conducted the September Section meeting which was not well attended, with many attorneys showing a great deal of interest in the subject.

At the February meeting the main topic was a discussion of the proposed Land Use Law which was to have been introduced early in 1971. For various reasons this bill will not be introduced until the fall of 1971, but it should be noted that no less than four members of the Local Government Law Section served on the drafting committee for this bill, namely, Fred G. Stickel, III, Walter T. Wittman, Harry E. Bernstein, and your chairman.

"ANNUAL MEETING PROGRAM"

~~Presently, zoning continues to be a topic of great importance throughout the State, with growing criticism of zoning processes and the willingness of many persons to lay at the doorstep of zoning just about every ill of our society. For this reason the topic selected for the Annual Meeting in May at the Hotel Shelburne, Atlantic City to be held at 10:00 A.M. on Saturday, May 15th is "Zoning in Crisis". The program will be presented in the East Ballroom. The panel will consist of your chairman as moderator, with Senator Willard B. Knowlton of Bergen County, Walter T. Wittman, Harry E. Bernstein and Sidney L. Willis, Director of the Division of State and Regional Planning. In addition, the special committee dealing with bond issue fees will have a report to submit to the membership of the Section.~~

~~It has been a pleasure to have served during this past year as Chairman of the Section, and I particularly wish to thank the other officers who have served so ably and well, and the chairmen and members of the special committees who have done an outstanding job throughout the year. It is my hope that the members of this Section will continue to give to their new chairman the same wonderful cooperation which I have received during the last two years, so that the worthwhile activities which have been commenced can be continued and brought to successful fruition.~~

William M. Cox, Chairman

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*W. J. St. Bar. Assn.  
Local Gov't Law Section*



## **Attorney's Fees for Bond Work**

WILLIAM JOHN KEARNS, JR., ESQ.

William John Kearns, Jr., is a graduate of St. Peters College and the Rutgers University School of Law. Engaged in the general practice of law in Willingboro, New Jersey, Mr. Kearns serves as Chairman of the New Jersey State Bar Association, Section on Local Government Law Committee on Municipal Bonding Fees. He has also served as Chairman of the Bar Association's Committee on Financing of Projects and on Legislative Action.

It is a pleasure to be here today for a discussion of what is probably one of the most controversial topics among lawyers today. The subject of Legal Fees on bond issues has been discussed in several reports over the past several years - a report issued by the New Jersey School Boards Association on December 5, 1970, an extensive report in March of this year by the Center for Analysis of Public Issues (a report researched and prepared by Mr. Kolesar), and, most recently, a report last May prepared by the Committee on Municipal Bond Representation of the Local Government Law Section of the New Jersey State Bar Association (a committee of which I was Chairman and which was established by Bill Cox as Chairman of the Local Government Law Section). Even before these reports were prepared, legal fees on bond issues received much unfavorable comment in the public news media and at public meetings of boards of education and municipal governing bodies.

The Committee on Municipal Bond Representation was established in February of 1970 and began an analysis of bonding fees along with an examination of the work performed by local attorneys. The primary source of information was a

survey circulated to members of the Institute of Municipal Attorneys and the New Jersey Association of School Board Attorneys.

This survey revealed that there was an absence of any uniform approach to legal fees on public bond work. There was, for instance, an equal division between those who submitted itemized bills for the work performed and those who did not submit itemized bills. It was almost impossible to draw any meaningful comparison between fees since some attorneys made a practice of including the fee of special bond counsel in their fee, while others had the special bond counsel submit a separate bill. There was also the factor that the work performed by one attorney might not include such items as land acquisition, negotiations with the architect and negotiations with the contractors, while another attorney would include these items in the overall fee.

When our committee report was submitted last May, we recognized it as preliminary, since our approach had been to identify problem areas and make basic suggestions for corrective action. We suggested that a new committee be established by the New Jersey State Bar Association to explore alternative methods of financing public projects and to follow up on the basic suggestions of the original committee report. I will bring you up to date on these recent developments in just a few minutes.

The committee suggestions included the following:

First, that a standardized practice be established of submission of itemized bills for all work performed for public agencies. These bills should clearly set forth the work performed so that the public will be able to relate the fee to the amount of time and effort devoted to the project by the attorney.

Second, billings should not be made on the basis of a flat percentage, but should, instead, be related to the amount of work performed, the time devoted to the project, the expertise of the attorney involved in the work, and the responsibilities accepted by the attorney. These are, of course, the very same factors that enter into the billings for any client and there is no valid reason to apply a different standard to a public agency. While our committee did discuss the possibility of developing a "suggested fee schedule" we found the factor of responsibility very difficult to pin down and we did not pursue this topic further due to the desire to complete our report in time for the Annual Meeting of the New Jersey State Bar Association in May.

Third, that there should be some measure of uniformity throughout the state on the basis on which fees are to be charged for work for public agencies. The nature of the work is not going to change, in the normal situation, simply because a county line is crossed.

Fourth, the practice of citing a "minimum fee schedule" as justification for a particular fee should be discontinued. The term itself is a misnomer since it implies that these fees are binding minimums and that violation of the schedule would constitute unethical conduct. The more appropriate term would be "suggested fee schedule" and it could be used for guidance of both the attorney and the public agency without becoming a crutch for the attorney attempting to silence any questions on his fees.

Fifth, the use of a formal retainer agreement between the attorney and the public agency was encouraged. This practice would eliminate any confusion over what work was to be performed and the basis for the fees to be charged.

Sixth, it was strongly suggested that the practice of local attorneys paying the special bond counsel out of their fee be discontinued so that the public

may distinguish between the fee being paid to local attorneys and the fee paid to special bond counsel. In the same area, it was suggested that the use of Project Fee be used instead of the term "Bonding Fee" since many of the items of work performed by the local attorney are not directly related to the issuance of bonds but are related to the overall project.

Seventh, attorneys performing work for public agencies on a regular basis should be compensated for that work on the basis of the work that is being performed. Attorneys should not submit unrealistically low bills for work being performed on a regular basis, in anticipation of receiving high compensation on bond issues. This practice is deceptive and unfair to the public. Many attorneys have indicated that this practice is followed by public agencies that wish to keep current expense budgets appearing to be lower than they realistically are.

Eighth, a final suggestion that is, perhaps, the key to much of the unfavorable press received by attorneys. Members of the Bar should develop an openness in dealing with the public on matters of public business and should develop their own function and unique ability to serve as a protector of the public interest. While an attorney may be engaged by a public agency, his client is not specifically that agency but is, in fact, the public itself. All too often attorneys refuse to discuss anything, even the weather, with representatives of the press and this leads to an erroneous conclusion that there is something being hidden. There are many areas in which the attorney can clarify, explain and inform without violating any confidential relationship.

With regard to my earlier comments about following up on the initial report and exploring alternative methods of financing some of our public projects, I can advise you that the Board of Trustees of the New Jersey State Bar Association has authorized the formation of a "Public Project Financing Committee" for this

very purpose. It happens that I am the chairman of this new committee, and I want to enlist your aid so that our report will be as thorough and as useful as is possible. We are in the process of drafting a new survey and your cooperation in responding will be crucial to the work of our committee. In addition, we solicit your suggestions and comments on alternative methods of financing public projects and on the basis on which fees should be established -- with particular emphasis on the factor of responsibility. Our committee will be establishing a liaison with the New Jersey School Boards Association, the State Department of Education, the New Jersey State League of Municipalities and the State Department of Community Affairs.

Our committee is not interested in sensationalism or in dramatics for the sake of dramatics. We are interested in serving the public interest and in assisting the vast majority of highly responsible attorneys who represent the public. Your help and cooperation is needed. Your comments and suggestions can be forwarded to our committee in care of the New Jersey State Bar Association at 172 West State Street in Trenton. Thank you.

SENATE, No. 80

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Senator HIRKALA

AN ACT concerning attorneys' bonding fees and supplementing Title 18A of the New Jersey Statutes and Title 40 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. No county, municipality or other political subdivision of the  
2 State or any board, commission or agency thereof, shall compensate  
3 an attorney for services rendered in connection with the issuance  
4 of bonds other than at a reasonable hourly rate agreed on prior  
5 to the rendering of the services.

1 2. No school district shall compensate an attorney for services  
2 rendered in connection with the issuance of bonds other than at a  
3 reasonable hourly rate agreed on prior to the rendering of the  
4 services.

1 3. This act shall take effect January 1, 1973.



ASSEMBLY, No. 551

STATE OF NEW JERSEY

INTRODUCED JANUARY 31, 1972

By Assemblyman YATES

Referred to Committee on Judiciary

AN ACT concerning attorney's fees under certain circumstances,  
and supplementing Title 18A of the New Jersey Statutes and  
Title 40A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. A county, municipality or other political subdivision of the  
2 State or any board, commission or agency thereof shall by resolu-  
3 tion or ordinance, as the case may be, engage an attorney for ser-  
4 vices to be rendered in connection with the issuance of bonds or  
5 in connection with condemnation of property under the exercise  
6 of eminent domain at a reasonable hourly rate specified in such  
7 resolution or ordinance. No county, municipality or other political  
8 subdivision of the State or any board, commission or agency  
9 thereof, shall compensate an attorney for services rendered as  
10 described herein other than at a reasonable hourly rate agreed on  
11 prior to the rendering of services.

1 2. A school district shall by resolution or ordinance, as the case  
2 may be, engage an attorney for services to be rendered in connec-  
3 tion with the issuance of bonds or in connection with condemnation  
4 of property under the exercise of eminent domain at a reasonable  
5 hourly rate specified in such resolution or ordinance. No school  
6 district shall compensate an attorney for services rendered as  
7 described herein other than at a reasonable hourly rate agreed on  
8 prior to the rendering of services.

1 3. This act shall take effect January 1 next following enactment.

ASSEMBLY, No. 1110

STATE OF NEW JERSEY

INTRODUCED MAY 1, 1972

By Assemblymen BURSTEIN, BAER, HYNES, SINSIMER and  
HAMILTON

Referred to Committee on Judiciary

AN ACT concerning compensation of attorneys in bond proceedings  
in certain cases.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. No State, county, municipality or any political subdivision  
2 thereof, or any board, commission or agency thereof, and no school  
3 district, shall compensate an attorney for services rendered in con-  
4 nection with the issuance of bonds except upon application having  
5 been made by such attorney to the Superior Court of New Jersey  
6 for approval of same.

1 2. The amount of such compensation shall be fixed by the court  
2 in accordance with the rules governing the courts of the State of  
3 New Jersey in such case made and provided.

1 3. This act shall not apply to compensation of attorneys for  
2 services rendered in connection with the bond issue, the terms of  
3 issuance of which have been completed prior to January 1, 1973.

1 4. This act shall take effect January 1, 1973.

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ASSEMBLY, No. 1617

STATE OF NEW JERSEY

INTRODUCED DECEMBER 14, 1972

By Assemblyman GEWERTZ, Assemblywoman A. KLEIN,  
Assemblymen COLASURDO, FAY and GORMAN

Referred to Committee on Judiciary

AN ACT concerning attorneys' bonding fees and supplementing  
Title 18A of the New Jersey Statutes and Title 40 of the Revised  
Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. No county, municipality or other political subdivision of the  
2 State or any board, commissioner or agency thereof, shall com-  
3 pensate an attorney for services rendered in connection with the  
4 issuance of bonds other than at a reasonable hourly rate agreed  
5 on prior to the rendering of services; provided, however, that any  
6 county, municipality or other political subdivision of the State or  
7 any board, commission or agency thereof may reimburse the  
8 attorney serving as bond counsel for any expenses actually and  
9 necessarily incurred in the performance of his duties as bond  
10 counsel.

1 2. No school district shall compensate an attorney for services  
2 rendered in connection with the issuance of bonds other than at a  
3 reasonable hourly rate agreed on prior to the rendering of services;  
4 provided, however, that any school district may reimburse the  
5 attorney serving as bond counsel for any expenses actually and  
6 necessarily incurred in the performance of his duties as bond  
7 counsel.

1 3. This act shall take effect immediately and shall apply to all  
2 bonds authorized after the effective date of this act.

SENATE, No. 2287

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1973

By Senator WALLWORK

Referred to Committee on State Government and Federal and  
Interstate Relations

AN ACT concerning compensation of attorneys in bond proceedings  
in certain cases.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Neither the State nor any county, municipality or other  
2 political subdivision of the State, nor any board, commission,  
3 instrumentality or agency thereof, nor any school district, shall  
4 compensate an attorney for services rendered in connection with  
5 the issuance of bonds other than at a reasonable hourly rate agreed  
6 upon prior to the rendering of the services.

1 2. This act shall take effect January 1 next following its  
2 enactment.