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ASSEMBLY, No. 1755

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

Assemblyman JOEL WEINGARTEN

District 21 (Essex and Union)

Co-Sponsored by:

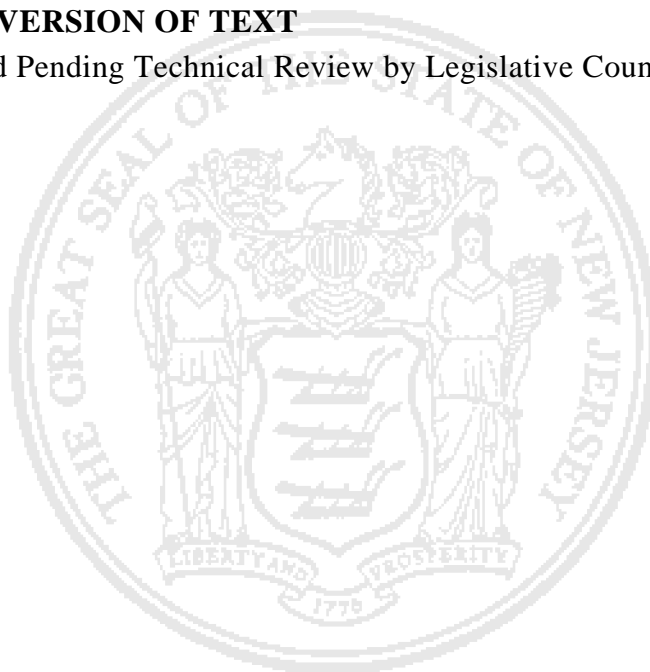
Assemblyman O'Toole

SYNOPSIS

Expands indemnification for school board members and employees and establishes a code of ethics for school board members.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A1755 WOLFE, WEINGARTEN

2

1 AN ACT concerning school board members and employees, amending
2 N.J.S.18A:12-20, N.J.S.18A:16-6, and N.J.S.18A:16-6.1 and
3 amending and supplementing P.L.1991, c.393.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.18A:12-20 is amended to read as follows:

9 18A:12-20. Whenever a civil **[or a]** administrative, criminal or
10 quasi-criminal action or other legal proceeding has been or shall be
11 brought against any person for any act or omission arising out of and
12 in the course of the performance of his duties as a member of a board
13 of education, and in the case of a criminal or quasi-criminal action
14 such action results in final disposition in favor of such person, the
15 board of education shall defray all costs of defending such action,
16 including reasonable counsel fees and expenses, together with costs of
17 appeal, if any, and shall save harmless and protect such person from
18 any financial loss resulting therefrom. Indemnification for exemplary
19 or punitive damages shall not be mandated and shall be governed by
20 the standards and procedures set forth in N.J.S.59:10-4. Any board
21 of education may arrange for and maintain appropriate insurance to
22 cover all such damages, losses and expenses.

23 (cf: P.L.1973, c.336, s.1)

24

25 2. N.J.S.18A:16-6 is amended to read as follows:

26 18A:16-6. Whenever any civil or administrative action or other
27 legal proceeding has been or shall be brought against any person
28 holding any office, position or employment under the jurisdiction of
29 any board of education, including any student teacher or person
30 assigned to other professional pre-teaching field experience, for any
31 act or omission arising out of and in the course of the performance of
32 the duties of such office, position, employment or student teaching or
33 other assignment to professional field experience, the board shall
34 defray all costs of defending such action, including reasonable counsel
35 fees and expenses, together with costs of appeal, if any, and shall save
36 harmless and protect such person from any financial loss resulting
37 therefrom; **[and said]** provided that

38 a. no employee shall be entitled to be held harmless or have his
39 defense costs defrayed in a disciplinary proceeding instituted against
40 him by the board or when the employee is appealing an action taken by
41 the board; and

42 b. indemnification for exemplary or punitive damages shall not be
43 mandated and shall be governed by the standards and procedures set

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

Matter underlined thus is new matter.

1 forth in N.J.S.59:10-4.

2 Any board of education may arrange for and maintain appropriate
3 insurance to cover all such damages, losses and expenses.

4 (cf: P.L.1977, c.216, s.1)

5

6 3. N.J.S.18A:16-6.1 is amended to read as follows:

7 18A:16-6.1. Should any criminal or quasi-criminal action be
8 instituted against any such person for any such act or omission and
9 should such proceeding be dismissed or result in a final disposition in
10 favor of such person, the board of education shall reimburse him for
11 the cost of defending such proceeding, including reasonable counsel
12 fees and expenses of the original hearing or trial and all appeals. No
13 employee shall be entitled to be held harmless or have his defense
14 costs defrayed as a result of a criminal or quasi-criminal complaint
15 filed against the employee by or on behalf of the board of education.

16 Any board of education may arrange for and maintain appropriate
17 insurance to cover all such damages, losses and expenses.

18 (cf: N.J.S.18A:16-6.1)

19

20 4. Section 9 of P.L.1991, c.393 (C.18A:12-29) is amended to read
21 as follows:

22 9. a. Any person, including a member of the commission, may file
23 a complaint alleging a violation of the provisions of this act or the
24 Code of Ethics for School Board Members as set forth in section 5 of
25 P.L. , c. (C.)(now pending before the Legislature as this bill),
26 by submitting it, on a form prescribed by the commission, to the
27 commission. No complaint shall be accepted by the commission unless
28 it has been signed under oath by the complainant. If a member of the
29 commission submits the complaint, the member shall not participate in
30 any subsequent proceedings on that complaint in the capacity of a
31 commission member. If a commission member serves on the school
32 board of, or is employed by, the school district which employs or on
33 whose board the school official named in the complaint serves, the
34 commission member shall not participate in any subsequent
35 proceedings on that complaint.

36 b. Upon receipt of a complaint, the commission shall serve a copy
37 of the complaint on each school official named therein and shall
38 provide each named school official with the opportunity to submit a
39 written statement under oath. The commission shall thereafter decide
40 by majority vote whether probable cause exists to credit the allegations
41 in the complaint. If the commission decides that probable cause does
42 not exist, it shall dismiss the complaint and shall so notify the
43 complainant and any school official named in the complaint. The
44 dismissal shall constitute final agency action. If the commission
45 determines that probable cause exists, it shall refer the matter to the
46 Office of Administrative Law for a hearing to be conducted in

1 accordance with the "Administrative Procedure Act," P.L.1968, c.410
2 (C.52:14B-1 et seq.), and shall so notify the complainant and each
3 school official named in the complaint.

4 In making a determination regarding an alleged violation of the
5 Code of Ethics for School Board Members, the burden of proof shall
6 be on the accusing party to establish factually a violation of the code.
7 A decision regarding a complaint alleging violations of the code shall
8 be rendered by the commission within 60 days of the receipt of the
9 complaint by the commission.

10 c. Upon completion of the hearing, the commission, by majority
11 vote, shall determine whether the conduct complained of constitutes
12 a violation of this act or whether the complaint should be dismissed.
13 If a violation is found, the commission shall, by majority vote,
14 recommend to the commissioner the reprimand, censure, suspension,
15 or removal of the school official found to have violated this act. The
16 commission shall state in writing its findings of fact and conclusions
17 of law. The commissioner shall then act on the commission's
18 recommendation regarding the sanction.

19 d. Any appeal of the commission's determination regarding a
20 violation of this act and of the commissioner's decision regarding the
21 sanction shall be to the State Board of Education in accordance with
22 Title 18A of the New Jersey Statutes.

23 e. If prior to the hearing the commission determines, by majority
24 vote, that the complaint is frivolous, the commission may impose on
25 the complainant a fine not to exceed \$500. The standard for
26 determining whether a complaint is frivolous shall be the same as that
27 provided in subsection b. of section 1 of P.L.1988, c.46
28 (C.2A:15-59.1).

29 f. Notwithstanding the provisions of subsections c. and d. of this
30 section, the commission shall be authorized to determine and impose
31 the appropriate sanction including reprimand, censure, suspension or
32 removal of any school official found to have violated this act who is
33 an officer or employee of the New Jersey School Boards Association.
34 Any action of the commission regarding a violation of P.L.1991, c.393
35 (C.18A:12-21 et seq.) or the sanction to be imposed in the event that
36 the school official involved is an officer or employee of the New Jersey
37 School Boards Association shall be considered final agency action and
38 an appeal of that action shall be directly to the Appellate Division of
39 the Superior Court.

40 (cf: P.L.1995, c.14, s.4)

41
42 5. (New section) A school board member shall abide by the
43 following Code of Ethics for School Board Members:

44 a. I will uphold and enforce all laws, rules and regulations of the
45 State Board of Education, and court orders pertaining to schools.
46 Desired changes shall be brought about only through legal and ethical

1 procedures.

2 b. I will make decisions in terms of the educational welfare of
3 children and will seek to develop and maintain public schools that meet
4 the individual needs of all children regardless of their ability, race,
5 creed, sex, or social standing.

6 c. I will confine my board action to policy making, planning, and
7 appraisal, and I will help to frame policies and plans only after the
8 board has consulted those who will be affected by them.

9 d. I will carry out my responsibility, not to administer the schools,
10 but, together with my fellow board members, to see that they are well
11 run.

12 e. I will recognize that authority rests with the board of education
13 and will make no personal promises nor take any private action that
14 may compromise the board.

15 f. I will refuse to surrender my independent judgment to special
16 interest or partisan political groups or to use the schools for personal
17 gain or for the gain of friends.

18 g. I will hold confidential all matters pertaining to the schools [,]
19 which, if disclosed, would needlessly injure individuals or the schools.
20 In all other matters, I will provide accurate information and, in concert
21 with my fellow board members, interpret to the staff the aspirations of
22 the community for its school.

23 h. I will vote to appoint the best qualified personnel available after
24 consideration of the recommendation of the chief administrative
25 officer.

26 i. I will support and protect school personnel in proper
27 performance of their duties.

28 j. I will refer all complaints to the chief administrative officer and
29 will act on the complaints at public meetings only after failure of an
30 administrative solution.

31

32 6. This act shall take effect immediately and shall also apply to any
33 claim for reimbursement, defrayal or indemnity made in writing to a
34 board in the two years preceding the effective date.

35

36

37

STATEMENT

38

39 This committee bill expands the indemnification presently provided
40 under the statutes to school board members and school board
41 employees. Currently school board members and employees are
42 indemnified in civil actions and in criminal proceedings if the criminal
43 proceeding results in a final disposition in favor of the board member
44 or employee. The bill expands indemnification to administrative and
45 quasi-criminal actions and other legal proceedings and again stipulates
46 that in the case of a quasi-criminal action indemnification shall only be

1 extended if the proceeding results in a final disposition in favor of the
2 board member or employee. In the case of school board employees,
3 the bill further stipulates that an employee shall not be entitled to
4 indemnification in a disciplinary proceeding instituted against the
5 employee by the board of education or when the employee is appealing
6 an action taken by the board. Similarly, an employee shall not be
7 entitled to indemnification in any criminal or quasi-criminal complaint
8 filed against him by the board of education.

9 The bill further provides that indemnification for exemplary or
10 punitive damages is not mandated and shall be governed by the
11 standards and procedures set forth at N.J.S.59:10-4. That section of
12 law provides for indemnification in the case of exemplary or punitive
13 damages at the discretion of a local public entity only if the actions on
14 which the damages were based did not constitute actual fraud, actual
15 malice, willful misconduct or an intentional error.

16 The bill also establishes a code of ethics for school board members
17 and provides that complaints regarding alleged violations of the code
18 would be processed in the same manner as other complaints filed with
19 the School Ethics Commission. A complaint regarding an alleged
20 violation of the code of ethics would be heard on an expedited basis
21 with the decision of the commissioner being rendered within 60 days
22 of receipt of the complaint. The burden of proof would be on the
23 accusing party to establish factually a violation of the code of ethics.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1755

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 16, 2000

The Assembly Education Committee favorably reports Assembly Bill No.1755 with committee amendments.

As amended by committee, this bill expands the indemnification presently provided under the statutes to school board members and school board employees. Currently school board members and employees are indemnified in civil actions and in criminal proceedings if the criminal proceeding results in a final disposition in favor of the board member or employee. The bill expands indemnification to administrative and quasi-criminal actions and other legal proceedings and again stipulates that in the case of a quasi-criminal action indemnification shall only be extended if the proceeding results in a final disposition in favor of the board member or employee. In the case of school board employees, the bill further stipulates that an employee shall not be entitled to indemnification in a disciplinary proceeding instituted against the employee by the board of education or when the employee is appealing an action taken by the board. Similarly, an employee shall not be entitled to indemnification in any criminal or quasi-criminal complaint filed against him by the board of education.

The bill further provides that indemnification for exemplary or punitive damages is not mandated and shall be governed by the standards and procedures set forth at N.J.S.59:10-4. That section of law provides for indemnification in the case of exemplary or punitive damages at the discretion of a local public entity only if the actions on which the damages were based did not constitute actual fraud, actual malice, willful misconduct or an intentional error.

The bill also establishes a code of ethics for school board members and provides that complaints regarding alleged violations of the code would be processed in the same manner as other complaints filed with the School Ethics Commission. The decision of the commission concerning an alleged violation of the code would be rendered within 90 days of receipt of the complaint. The burden of proof would be on the accusing party to establish factually a violation of the code of ethics.

The committee amended the bill to provide that a decision of the commission regarding an alleged violation of the Code of Ethics for School Board Members would be required to be made within 90 days of the receipt of the complaint as opposed to 60 days under the original bill. The committee also made a technical amendment to the bill to clarify that the procedures established under the "School Ethics Act" for the hearing and determination of violations apply to complaints of violations of the Code of Ethics for School Board Members.

This bill was pre-filed for introduction in the 2000-2001 legislative session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

[First Reprint]

ASSEMBLY, No. 1755

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

Assemblyman JOEL WEINGARTEN

District 21 (Essex and Union)

Co-Sponsored by:

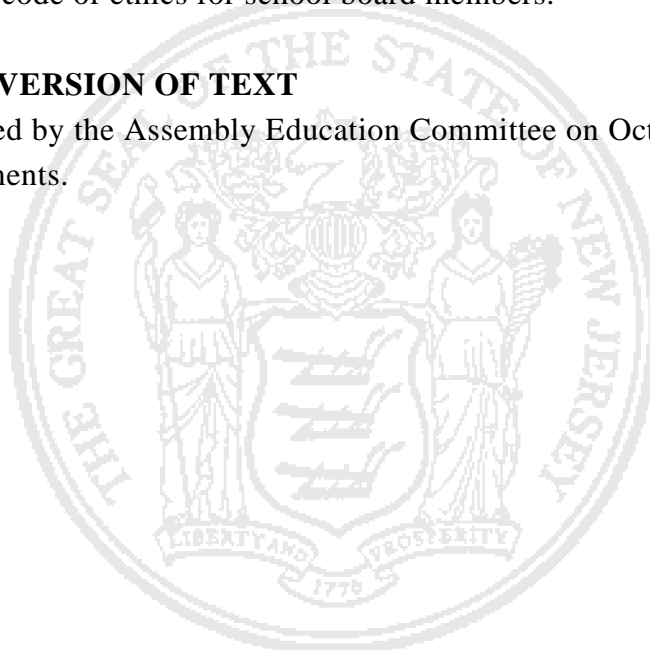
Assemblyman O'Toole

SYNOPSIS

Expands indemnification for school board members and employees and establishes a code of ethics for school board members.

CURRENT VERSION OF TEXT

As reported by the Assembly Education Committee on October 16, 2000, with amendments.



1 AN ACT concerning school board members and employees, amending
2 N.J.S.18A:12-20, N.J.S.18A:16-6, and N.J.S.18A:16-6.1 and
3 amending and supplementing P.L.1991, c.393.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.18A:12-20 is amended to read as follows:

9 18A:12-20. Whenever a civil [or a] administrative, criminal or
10 quasi-criminal action or other legal proceeding has been or shall be
11 brought against any person for any act or omission arising out of and
12 in the course of the performance of his duties as a member of a board
13 of education, and in the case of a criminal or quasi-criminal action
14 such action results in final disposition in favor of such person, the
15 board of education shall defray all costs of defending such action,
16 including reasonable counsel fees and expenses, together with costs of
17 appeal, if any, and shall save harmless and protect such person from
18 any financial loss resulting therefrom. Indemnification for exemplary
19 or punitive damages shall not be mandated and shall be governed by
20 the standards and procedures set forth in N.J.S.59:10-4. Any board
21 of education may arrange for and maintain appropriate insurance to
22 cover all such damages, losses and expenses.

23 (cf: P.L.1973, c.336, s.1)

24

25 2. N.J.S.18A:16-6 is amended to read as follows:

26 18A:16-6. Whenever any civil or administrative action or other
27 legal proceeding has been or shall be brought against any person
28 holding any office, position or employment under the jurisdiction of
29 any board of education, including any student teacher or person
30 assigned to other professional pre-teaching field experience, for any
31 act or omission arising out of and in the course of the performance of
32 the duties of such office, position, employment or student teaching or
33 other assignment to professional field experience, the board shall
34 defray all costs of defending such action, including reasonable counsel
35 fees and expenses, together with costs of appeal, if any, and shall save
36 harmless and protect such person from any financial loss resulting
37 therefrom; [and said] provided that

38 a. no employee shall be entitled to be held harmless or have his
39 defense costs defrayed in a disciplinary proceeding instituted against
40 him by the board or when the employee is appealing an action taken by
41 the board; and

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AED committee amendments adopted October 16, 2000.

1 b. indemnification for exemplary or punitive damages shall not be
2 mandated and shall be governed by the standards and procedures set
3 forth in N.J.S.59:10-4.

4 Any board of education may arrange for and maintain appropriate
5 insurance to cover all such damages, losses and expenses.

6 (cf: P.L.1977, c.216, s.1)

7
8 3. N.J.S.18A:16-6.1 is amended to read as follows:

9 18A:16-6.1. Should any criminal or quasi-criminal action be
10 instituted against any such person for any such act or omission and
11 should such proceeding be dismissed or result in a final disposition in
12 favor of such person, the board of education shall reimburse him for
13 the cost of defending such proceeding, including reasonable counsel
14 fees and expenses of the original hearing or trial and all appeals. No
15 employee shall be entitled to be held harmless or have his defense
16 costs defrayed as a result of a criminal or quasi-criminal complaint
17 filed against the employee by or on behalf of the board of education.

18 Any board of education may arrange for and maintain appropriate
19 insurance to cover all such damages, losses and expenses.

20 (cf: N.J.S.18A:16-6.1)

21
22 4. Section 9 of P.L.1991, c.393 (C.18A:12-29) is amended to read
23 as follows:

24 9. a. Any person, including a member of the commission, may file
25 a complaint alleging a violation of the provisions of this act or the
26 Code of Ethics for School Board Members as set forth in section 5 of
27 P.L. _____, c. _____ (C. _____) (now pending before the Legislature as this
28 bill), by submitting it, on a form prescribed by the commission, to the
29 commission. No complaint shall be accepted by the commission unless
30 it has been signed under oath by the complainant. If a member of the
31 commission submits the complaint, the member shall not participate in
32 any subsequent proceedings on that complaint in the capacity of a
33 commission member. If a commission member serves on the school
34 board of, or is employed by, the school district which employs or on
35 whose board the school official named in the complaint serves, the
36 commission member shall not participate in any subsequent
37 proceedings on that complaint.

38 b. Upon receipt of a complaint, the commission shall serve a copy
39 of the complaint on each school official named therein and shall
40 provide each named school official with the opportunity to submit a
41 written statement under oath. The commission shall thereafter decide
42 by majority vote whether probable cause exists to credit the allegations
43 in the complaint. If the commission decides that probable cause does
44 not exist, it shall dismiss the complaint and shall so notify the
45 complainant and any school official named in the complaint. The
46 dismissal shall constitute final agency action. If the commission

1 determines that probable cause exists, it shall refer the matter to the
2 Office of Administrative Law for a hearing to be conducted in
3 accordance with the "Administrative Procedure Act," P.L.1968, c.410
4 (C.52:14B-1 et seq.), and shall so notify the complainant and each
5 school official named in the complaint.

6 In making a determination regarding an alleged violation of the
7 Code of Ethics for School Board Members, the burden of proof shall
8 be on the accusing party to establish factually a violation of the code.
9 A decision regarding a complaint alleging violations of the code shall
10 be rendered by the commission within ¹[60] 90¹ days of the receipt of
11 the complaint by the commission.

12 c. Upon completion of the hearing, the commission, by majority
13 vote, shall determine whether the conduct complained of constitutes
14 a violation of this act ¹,or in the case of a board member, this act or
15 the code of ethics,¹ or whether the complaint should be dismissed. If
16 a violation is found, the commission shall, by majority vote,
17 recommend to the commissioner the reprimand, censure, suspension,
18 or removal of the school official found to have violated this act ¹,or in
19 the case of a board member, this act or the code of ethics¹. The
20 commission shall state in writing its findings of fact and conclusions
21 of law. The commissioner shall then act on the commission's
22 recommendation regarding the sanction.

23 d. Any appeal of the commission's determination regarding a
24 violation of this act ¹,or in the case of a board member, this act or the
25 code of ethics,¹ and of the commissioner's decision regarding the
26 sanction shall be to the State Board of Education in accordance with
27 Title 18A of the New Jersey Statutes.

28 e. If prior to the hearing the commission determines, by majority
29 vote, that the complaint is frivolous, the commission may impose on
30 the complainant a fine not to exceed \$500. The standard for
31 determining whether a complaint is frivolous shall be the same as that
32 provided in subsection b. of section 1 of P.L.1988, c.46
33 (C.2A:15-59.1).

34 f. Notwithstanding the provisions of subsections c. and d. of this
35 section, the commission shall be authorized to determine and impose
36 the appropriate sanction including reprimand, censure, suspension or
37 removal of any school official found to have violated this act who is
38 an officer or employee of the New Jersey School Boards Association.
39 Any action of the commission regarding a violation of P.L.1991, c.393
40 (C.18A:12-21 et seq.) or the sanction to be imposed in the event that
41 the school official involved is an officer or employee of the New Jersey
42 School Boards Association shall be considered final agency action and
43 an appeal of that action shall be directly to the Appellate Division of
44 the Superior Court.

45 (cf: P.L.1995, c.14, s.4)

- 1 5. (New section) A school board member shall abide by the
2 following Code of Ethics for School Board Members:
- 3 a. I will uphold and enforce all laws, rules and regulations of the
4 State Board of Education, and court orders pertaining to schools.
5 Desired changes shall be brought about only through legal and ethical
6 procedures.
- 7 b. I will make decisions in terms of the educational welfare of
8 children and will seek to develop and maintain public schools that meet
9 the individual needs of all children regardless of their ability, race,
10 creed, sex, or social standing.
- 11 c. I will confine my board action to policy making, planning, and
12 appraisal, and I will help to frame policies and plans only after the
13 board has consulted those who will be affected by them.
- 14 d. I will carry out my responsibility, not to administer the schools,
15 but, together with my fellow board members, to see that they are well
16 run.
- 17 e. I will recognize that authority rests with the board of education
18 and will make no personal promises nor take any private action that
19 may compromise the board.
- 20 f. I will refuse to surrender my independent judgment to special
21 interest or partisan political groups or to use the schools for personal
22 gain or for the gain of friends.
- 23 g. I will hold confidential all matters pertaining to the schools
24 which, if disclosed, would needlessly injure individuals or the schools.
25 In all other matters, I will provide accurate information and, in concert
26 with my fellow board members, interpret to the staff the aspirations of
27 the community for its school.
- 28 h. I will vote to appoint the best qualified personnel available after
29 consideration of the recommendation of the chief administrative
30 officer.
- 31 i. I will support and protect school personnel in proper
32 performance of their duties.
- 33 j. I will refer all complaints to the chief administrative officer and
34 will act on the complaints at public meetings only after failure of an
35 administrative solution.
- 36
- 37 6. This act shall take effect immediately and shall also apply to any
38 claim for reimbursement, defrayal or indemnity made in writing to a
39 board in the two years preceding the effective date.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1755

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2000

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1755 (1R).

Assembly Bill No.1755 (1R) expands the indemnification presently provided under the statutes to school board members and school board employees and establishes the Code of Ethics for School Board Members.

Currently, school board members and employees are "indemnified," or repaid the costs of their defense and held harmless from any financial loss, in civil actions and in criminal proceedings if the criminal proceeding results in a final disposition in favor of the board member or employee.

This bill expands indemnification to administrative and "quasi-criminal" (petty disorderly) actions and other legal proceedings if the proceeding results in a final disposition in favor of the board member or employee; provided, that indemnification of school board employees does not extend to disciplinary proceedings instituted against an employee by the board. Similarly, an employee is not entitled to indemnification in any criminal or quasi-criminal complaint filed against the employee by the board of education.

The bill further provides that indemnification for exemplary or punitive damages is not mandated and shall be governed by the standards and procedures set forth at N.J.S.59:10-4, which provides for indemnification of exemplary or punitive damages at the discretion of the local public entity only if the actions on which the damages were based did not constitute actual fraud, actual malice, willful misconduct or an intentional error.

The bill establishes the Code of Ethics for School Board Members and provides that complaints regarding alleged violations of the code will be processed in the same manner as other complaints filed with the School Ethics Commission. The decision of the commission concerning an alleged violation of the code will be rendered within 90 days of receipt of the complaint. The burden of proof is on the accusing party to establish factually a violation of the code of ethics.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note. No information is available to estimate the fiscal impact on school boards of indemnifying their members and employees in administrative and quasi-criminal actions, or to estimate the cost of the bill's retroactive provisions (the bill applies to any claim for reimbursement, defrayal or indemnity made in writing to a board in the two years preceding the effective date of the bill).

SENATE EDUCATION COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1755

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2001

The Senate Education Committee reports favorably Assembly Bill No. 1755 (1R).

This bill expands the indemnification presently provided under the statutes to school board members and school board employees and establishes a Code of Ethics for School Board Members.

Currently, school board members and employees are "indemnified," or repaid the costs of their defense and held harmless from any financial loss, in civil actions and in criminal proceedings, if the criminal proceeding results in a final disposition in favor of the board member or employee.

This bill expands indemnification to administrative and "quasi-criminal" (petty disorderly) actions and other legal proceedings if the proceeding results in a final disposition in favor of the board member or employee; provided that indemnification of school board employees does not extend to disciplinary proceedings instituted against an employee by the board. Similarly, an employee is not entitled to indemnification in any criminal or quasi-criminal complaint filed against the employee by the board of education.

The bill further specifies that indemnification for exemplary or punitive damages is not mandated and shall be governed by the standards and procedures set forth at N.J.S.59:10-4, which provides for indemnification of exemplary or punitive damages at the discretion of the local public entity only if the actions on which the damages were based did not constitute actual fraud, actual malice, willful misconduct or an intentional error.

The bill establishes the Code of Ethics for School Board Members and provides that complaints regarding alleged violations of the code would be processed in the same manner as other complaints filed with the School Ethics Commission. The burden of proof would be on the accusing party to establish factually a violation of the code of ethics, and a decision of the commission concerning an alleged violation of the code would be rendered within 90 days of receipt of the complaint.

P.L. 2001, CHAPTER 178, *approved July 26, 2001*
Assembly, No. 1755 (*First Reprint*)

1 **AN ACT** concerning school board members and employees, amending
2 N.J.S.18A:12-20, N.J.S.18A:16-6, and N.J.S.18A:16-6.1 and
3 amending and supplementing P.L.1991, c.393.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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9 18A:12-20. Whenever a civil ~~or a~~ administrative, criminal ~~or~~
10 quasi-criminal action ~~or other legal proceeding~~ has been or shall be
11 brought against any person for any act or omission arising out of and
12 in the course of the performance of his duties as a member of a board
13 of education, and in the case of a criminal ~~or quasi-criminal~~ action
14 such action results in final disposition in favor of such person, the
15 board of education shall defray all costs of defending such action,
16 including reasonable counsel fees and expenses, together with costs of
17 appeal, if any, and shall save harmless and protect such person from
18 any financial loss resulting therefrom. Indemnification for exemplary
19 or punitive damages shall not be mandated and shall be governed by
20 the standards and procedures set forth in N.J.S.59:10-4. Any board
21 of education may arrange for and maintain appropriate insurance to
22 cover all such damages, losses and expenses.

23 (cf: P.L.1973, c.336, s.1)

24

25 2. N.J.S.18A:16-6 is amended to read as follows:

26 18A:16-6. Whenever any civil or administrative action ~~or other~~
27 legal proceeding has been or shall be brought against any person
28 holding any office, position or employment under the jurisdiction of
29 any board of education, including any student teacher or person
30 assigned to other professional pre-teaching field experience, for any
31 act or omission arising out of and in the course of the performance of
32 the duties of such office, position, employment or student teaching or
33 other assignment to professional field experience, the board shall
34 defray all costs of defending such action, including reasonable counsel
35 fees and expenses, together with costs of appeal, if any, and shall save
36 harmless and protect such person from any financial loss resulting
37 therefrom; ~~and said~~ provided that

38 a. no employee shall be entitled to be held harmless or have his

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AED committee amendments adopted October 16, 2000.

1 defense costs defrayed in a disciplinary proceeding instituted against
2 him by the board or when the employee is appealing an action taken by
3 the board; and

4 b. indemnification for exemplary or punitive damages shall not be
5 mandated and shall be governed by the standards and procedures set
6 forth in N.J.S.59:10-4.

7 Any board of education may arrange for and maintain appropriate
8 insurance to cover all such damages, losses and expenses.

9 (cf: P.L.1977, c.216, s.1)

10

11 3. N.J.S.18A:16-6.1 is amended to read as follows:

12 18A:16-6.1. Should any criminal or quasi-criminal action be
13 instituted against any such person for any such act or omission and
14 should such proceeding be dismissed or result in a final disposition in
15 favor of such person, the board of education shall reimburse him for
16 the cost of defending such proceeding, including reasonable counsel
17 fees and expenses of the original hearing or trial and all appeals. No
18 employee shall be entitled to be held harmless or have his defense
19 costs defrayed as a result of a criminal or quasi-criminal complaint
20 filed against the employee by or on behalf of the board of education.

21 Any board of education may arrange for and maintain appropriate
22 insurance to cover all such damages, losses and expenses.

23 (cf: N.J.S.18A:16-6.1)

24

25 4. Section 9 of P.L.1991, c.393 (C.18A:12-29) is amended to read
26 as follows:

27 9. a. Any person, including a member of the commission, may file
28 a complaint alleging a violation of the provisions of this act or the
29 Code of Ethics for School Board Members as set forth in section 5 of
30 P.L. , c. (C.)(now pending before the Legislature as this
31 bill), by submitting it, on a form prescribed by the commission, to the
32 commission. No complaint shall be accepted by the commission unless
33 it has been signed under oath by the complainant. If a member of the
34 commission submits the complaint, the member shall not participate in
35 any subsequent proceedings on that complaint in the capacity of a
36 commission member. If a commission member serves on the school
37 board of, or is employed by, the school district which employs or on
38 whose board the school official named in the complaint serves, the
39 commission member shall not participate in any subsequent
40 proceedings on that complaint.

41 b. Upon receipt of a complaint, the commission shall serve a copy
42 of the complaint on each school official named therein and shall
43 provide each named school official with the opportunity to submit a
44 written statement under oath. The commission shall thereafter decide
45 by majority vote whether probable cause exists to credit the allegations
46 in the complaint. If the commission decides that probable cause does

1 not exist, it shall dismiss the complaint and shall so notify the
2 complainant and any school official named in the complaint. The
3 dismissal shall constitute final agency action. If the commission
4 determines that probable cause exists, it shall refer the matter to the
5 Office of Administrative Law for a hearing to be conducted in
6 accordance with the "Administrative Procedure Act," P.L.1968, c.410
7 (C.52:14B-1 et seq.), and shall so notify the complainant and each
8 school official named in the complaint.

9 In making a determination regarding an alleged violation of the
10 Code of Ethics for School Board Members, the burden of proof shall
11 be on the accusing party to establish factually a violation of the code.
12 A decision regarding a complaint alleging violations of the code shall
13 be rendered by the commission within ¹[60] ¹90¹ days of the receipt of
14 the complaint by the commission.

15 c. Upon completion of the hearing, the commission, by majority
16 vote, shall determine whether the conduct complained of constitutes
17 a violation of this act ¹,or in the case of a board member, this act or
18 the code of ethics,¹ or whether the complaint should be dismissed. If
19 a violation is found, the commission shall, by majority vote,
20 recommend to the commissioner the reprimand, censure, suspension,
21 or removal of the school official found to have violated this act ¹,or in
22 the case of a board member, this act or the code of ethics¹. The
23 commission shall state in writing its findings of fact and conclusions
24 of law. The commissioner shall then act on the commission's
25 recommendation regarding the sanction.

26 d. Any appeal of the commission's determination regarding a
27 violation of this act ¹,or in the case of a board member, this act or the
28 code of ethics,¹ and of the commissioner's decision regarding the
29 sanction shall be to the State Board of Education in accordance with
30 Title 18A of the New Jersey Statutes.

31 e. If prior to the hearing the commission determines, by majority
32 vote, that the complaint is frivolous, the commission may impose on
33 the complainant a fine not to exceed \$500. The standard for
34 determining whether a complaint is frivolous shall be the same as that
35 provided in subsection b. of section 1 of P.L.1988, c.46
36 (C.2A:15-59.1).

37 f. Notwithstanding the provisions of subsections c. and d. of this
38 section, the commission shall be authorized to determine and impose
39 the appropriate sanction including reprimand, censure, suspension or
40 removal of any school official found to have violated this act who is
41 an officer or employee of the New Jersey School Boards Association.
42 Any action of the commission regarding a violation of P.L.1991, c.393
43 (C.18A:12-21 et seq.) or the sanction to be imposed in the event that
44 the school official involved is an officer or employee of the New Jersey
45 School Boards Association shall be considered final agency action and
46 an appeal of that action shall be directly to the Appellate Division of

1 the Superior Court.
2 (cf: P.L.1995, c.14, s.4)

3
4 5. (New section) A school board member shall abide by the
5 following Code of Ethics for School Board Members:

6 a. I will uphold and enforce all laws, rules and regulations of the
7 State Board of Education, and court orders pertaining to schools.
8 Desired changes shall be brought about only through legal and ethical
9 procedures.

10 b. I will make decisions in terms of the educational welfare of
11 children and will seek to develop and maintain public schools that meet
12 the individual needs of all children regardless of their ability, race,
13 creed, sex, or social standing.

14 c. I will confine my board action to policy making, planning, and
15 appraisal, and I will help to frame policies and plans only after the
16 board has consulted those who will be affected by them.

17 d. I will carry out my responsibility, not to administer the schools,
18 but, together with my fellow board members, to see that they are well
19 run.

20 e. I will recognize that authority rests with the board of education
21 and will make no personal promises nor take any private action that
22 may compromise the board.

23 f. I will refuse to surrender my independent judgment to special
24 interest or partisan political groups or to use the schools for personal
25 gain or for the gain of friends.

26 g. I will hold confidential all matters pertaining to the schools
27 which, if disclosed, would needlessly injure individuals or the schools.
28 In all other matters, I will provide accurate information and, in concert
29 with my fellow board members, interpret to the staff the aspirations of
30 the community for its school.

31 h. I will vote to appoint the best qualified personnel available after
32 consideration of the recommendation of the chief administrative
33 officer.

34 i. I will support and protect school personnel in proper
35 performance of their duties.

36 j. I will refer all complaints to the chief administrative officer and
37 will act on the complaints at public meetings only after failure of an
38 administrative solution.

39
40 6. This act shall take effect immediately and shall also apply to any
41 claim for reimbursement, defrayal or indemnity made in writing to a
42 board in the two years preceding the effective date.

43

44

45

46 Expands indemnification for school board members and employees and
47 establishes a code of ethics for school board members.

CHAPTER 178

AN ACT concerning school board members and employees, amending N.J.S.18A:12-20, N.J.S.18A:16-6, and N.J.S.18A:16-6.1 and amending and supplementing P.L.1991, c.393.

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

1. N.J.S.18A:12-20 is amended to read as follows:

Indemnity of members of boards of education against cost of defense.

18A:12-20. Whenever a civil, administrative, criminal or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education, and in the case of a criminal or quasi-criminal action such action results in final disposition in favor of such person, the board of education shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom. Indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S.59:10-4. Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

2. N.J.S.18A:16-6 is amended to read as follows:

Indemnity of officers and employees against action, proceeding; exceptions.

18A:16-6. Whenever any civil or administrative action or other legal proceeding has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education, including any student teacher or person assigned to other professional pre-teaching field experience, for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment or student teaching or other assignment to professional field experience, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; provided that

a. no employee shall be entitled to be held harmless or have his defense costs defrayed in a disciplinary proceeding instituted against him by the board or when the employee is appealing an action taken by the board; and

b. indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S.59:10-4.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

3. N.J.S.18A:16-6.1 is amended to read as follows:

Indemnity of officers and employees in certain criminal, quasi-criminal actions.

18A:16-6.1. Should any criminal or quasi-criminal action be instituted against any such person for any such act or omission and should such proceeding be dismissed or result in a final disposition in favor of such person, the board of education shall reimburse him for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals. No employee shall be entitled to be held harmless or have his defense costs defrayed as a result of a criminal or quasi-criminal complaint filed against the employee by or on behalf of the board of education.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

4. Section 9 of P.L.1991, c.393 (C.18A:12-29) is amended to read as follows:

C.18A:12-29 Complaint procedures.

9. a. Any person, including a member of the commission, may file a complaint alleging a violation of the provisions of this act or the Code of Ethics for School Board Members as set

forth in section 5 of P.L.2001, c.178 (C.18A:12-24.1), by submitting it, on a form prescribed by the commission, to the commission. No complaint shall be accepted by the commission unless it has been signed under oath by the complainant. If a member of the commission submits the complaint, the member shall not participate in any subsequent proceedings on that complaint in the capacity of a commission member. If a commission member serves on the school board of, or is employed by, the school district which employs or on whose board the school official named in the complaint serves, the commission member shall not participate in any subsequent proceedings on that complaint.

b. Upon receipt of a complaint, the commission shall serve a copy of the complaint on each school official named therein and shall provide each named school official with the opportunity to submit a written statement under oath. The commission shall thereafter decide by majority vote whether probable cause exists to credit the allegations in the complaint. If the commission decides that probable cause does not exist, it shall dismiss the complaint and shall so notify the complainant and any school official named in the complaint. The dismissal shall constitute final agency action. If the commission determines that probable cause exists, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and shall so notify the complainant and each school official named in the complaint.

In making a determination regarding an alleged violation of the Code of Ethics for School Board Members, the burden of proof shall be on the accusing party to establish factually a violation of the code. A decision regarding a complaint alleging violations of the code shall be rendered by the commission within 90 days of the receipt of the complaint by the commission.

c. Upon completion of the hearing, the commission, by majority vote, shall determine whether the conduct complained of constitutes a violation of this act, or in the case of a board member, this act or the code of ethics, or whether the complaint should be dismissed. If a violation is found, the commission shall, by majority vote, recommend to the commissioner the reprimand, censure, suspension, or removal of the school official found to have violated this act, or in the case of a board member, this act or the code of ethics. The commission shall state in writing its findings of fact and conclusions of law. The commissioner shall then act on the commission's recommendation regarding the sanction.

d. Any appeal of the commission's determination regarding a violation of this act, or in the case of a board member, this act or the code of ethics, and of the commissioner's decision regarding the sanction shall be to the State Board of Education in accordance with Title 18A of the New Jersey Statutes.

e. If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the complainant a fine not to exceed \$500. The standard for determining whether a complaint is frivolous shall be the same as that provided in subsection b. of section 1 of P.L.1988, c.46 (C.2A:15-59.1).

f. Notwithstanding the provisions of subsections c. and d. of this section, the commission shall be authorized to determine and impose the appropriate sanction including reprimand, censure, suspension or removal of any school official found to have violated this act who is an officer or employee of the New Jersey School Boards Association. Any action of the commission regarding a violation of P.L.1991, c.393 (C.18A:12-21 et seq.) or the sanction to be imposed in the event that the school official involved is an officer or employee of the New Jersey School Boards Association shall be considered final agency action and an appeal of that action shall be directly to the Appellate Division of the Superior Court.

C.18A:12-24.1 Code of Ethics for School Board Members.

5. A school board member shall abide by the following Code of Ethics for School Board Members:

a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of

their ability, race, creed, sex, or social standing.

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

i. I will support and protect school personnel in proper performance of their duties.

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

6. This act shall take effect immediately and shall also apply to any claim for reimbursement, defrayal or indemnity made in writing to a board in the two years preceding the effective date.

Approved July 26, 2001.

Office of the Governor

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TRENTON, NJ 08625

NEWS RELEASE

CONTACT: Rae Hutton
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RELEASE: July 27 , 2001

Acting Governor Donald T. DiFrancesco signed the following legislation:

A-2478, sponsored by Senate Majority Leader, John Bennett (R-Monmouth) and Assemblymen Jack Gibson (R-Cape May/Atlantic/Cumberland) and John Kelly (R-Bergen/Essex/Passaic), provides that any relevant municipal ordinance would not apply to property for which any person is conducting actions related to historic pesticide contamination under the oversight of the Department of Environmental Protection, provided that such person, as a condition of any development approval by the municipality, obtains a full-site no further action letter from the department.

A-1755, sponsored by Assembly members David Wolfe (R-Monmouth/Ocean) and Joel Weingarten (R-Essex/Union), expands indemnification for school board members and employees and establishes a code of ethics for school board members.

S-78, sponsored by Senator Raymond Zane (R-Salem/Cumberland/Gloucester) and Assemblymen George Geist (R-Camden/Gloucester) and Kip Bateman (R-Morris/ Somerset), prohibits insurers from requiring filing of municipal court complaint as precondition to payment of certain claims.

A-1332, sponsored by Senators Peter Inverso (R-Mercer/Middlesex) and Robert Singer (R-Burlington/Monmouth/Ocean) and the late Assemblyman Alan Augustine (R-Middlesex/Morris/Somerset/Union), allows stalking victims protected by temporary restraining orders to register to vote without disclosing their street address.

AJR-49, sponsored by Senator Raymond Lesniak (D-Union) and Assemblymen Kip Bateman (R-Morris/Somerset) and Richard Bagger (R-Middlesex/Morris/Somerset/ Union), designates the third Thursday of October of each year as "New Jersey Credit Union Day."

S-1978, sponsored by Senators Gerald Cardinale (R-Bergen) and Anthony Bucco (R-Morris) and Assemblymen Kip Bateman (R-Morris/Somerset) and Peter Biondi (R- Morris/Somerset), provides that records of dispositive or final judgments in bankruptcies, records regarding collateral and the perfection of security interests and records of transfers by a financial institution of collateral that is real property shall be retained for six years as opposed to the current 20-year period.