ASSEMBLY, No. 3527



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED MARCH 8, 2022

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

SYNOPSIS

Clarifies prohibition of nepotism by school officials; requires school officials to disclose information concerning certain employment; allocates School Ethics Commission in but not of DOE and authorizes appointment of certain staff.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning nepotism and school ethics, and amending P.L.1991, c.393 and P.L.2008, c.36.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1991, c.393 (C.18A:12-23) is amended to read as follows:

3. For the purposes of **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq.), unless the context clearly requires a different meaning:

“Administrator” means any officer, other than a board member, or employee of a local school district who (i) holds a position which requires a certificate that authorizes the holder to serve as school administrator, principal, or school business administrator; or (ii) holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or (iii) holds a position which requires a certificate that authorizes the holder to serve as supervisor and who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district;

“Board member” means any person holding membership, whether by election or appointment, on any board of education other than the State Board of Education;

“Business” means any corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, union, political organization, or other legal entity but shall not include a local school district or any other public entity;

“Commission” means the School Ethics Commission established pursuant to section 7 of **[**this act**]** P.L.1991, c.393 (C.18A:12-27);

**[**“Commissioner” means the Commissioner of Education;**]**

“Interest” means the ownership or control of more than 10% of the profits, assets, or stock of a business but shall not include the control of assets in a labor union;

“Local school district” means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes and any jointure commission, county vocational school, county special services district, educational services commission, educational research and demonstration center, environmental education center, and educational information and resource center;

“Member of immediate family” means the spouse or dependent child of a school official residing in the same household;

“Political organization” means a “political committee” or a “continuing political committee” as those terms are defined in “The New Jersey Campaign Contributions and Expenditures Reporting Act,” P.L.1973, c.83 (C.19:44A-1 et seq.);

“Relative” means **[**the spouse, natural or adopted child, parent, or sibling of a school official**]** a school official’s spouse, civil union partner pursuant to section 92 of P.L.2006, c.103 (C.37:1-33), domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or of the individual’s spouse, civil union partner, or domestic partner, whether the relative is related to the school official or the school official’s spouse, civil union partner, or domestic partner by blood, marriage, or adoption;

“School official” means a board member, an employee or officer of the New Jersey School Boards Association, but not including any member of the secretarial, clerical or maintenance staff of the association, or an administrator; and

“Spouse” means the person to whom a school official is legally married under New Jersey law.

(cf: P.L.1995, c.14, s.1).

2. Section 4 of P.L.1991, c.393 (C.18A:12-24) is amended to read as follows:

4. a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

b. No school official shall engage in nepotism or otherwise use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, relatives, members of his immediate family or others;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

h. No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;

i. No elected member shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the member or a member of his immediate family, whether directly or indirectly, in return therefor;

j. Nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests; and

k. Employees of the New Jersey School Boards Association shall not be precluded from providing assistance, in the normal course of their duties, to boards of education in the negotiation of a collective bargaining agreement regardless of whether a member of their immediate family is a member of, or covered by, a collective bargaining agreement negotiated by a Statewide union with which a board of education is negotiating.

(cf: P.L.1999, c.256, s.1)

3. Section 5 of P.L.1991, c.393 (C.18A:12-25) is amended to read as follows:

5. a. On a form to be prescribed by the commission and to be filed annually with the commission, each school official shall state:

(1) whether any relative of the school official or any other person related to the school official by marriage is employed by the school district with which the school official holds office or employment or, for officers or employees of the New Jersey School Boards Association, any school district, and, if so, the name and position of each such relative, and the date each such relative began employment;

(2) whether the school official or a relative is a party to a contract with the school district with which the school official holds office or employment or, for officers or employees of the New Jersey School Boards Association, any school district, and, if so, the nature of the contract; and

(3) whether the school official or a relative is employed by, receives compensation from, or has an interest in any business which is a party to a contract with the school district with which the school official holds office or employment or, for officers or employees of the New Jersey School Boards Association, any school district, and, if so, the name of each such business.

b. Each statement shall be signed by the school official filing it, and the school official’s signature shall constitute a representation of the accuracy of the contents of the statement.

c. A school official who fails to file a statement or who files a statement containing information which the school official knows to be false shall be subject to reprimand, censure, suspension, or removal pursuant to the procedures established in section 9 of P.L.1991, c.393 (C.18A:12-29). Nothing in this subsection shall be construed to prevent or limit criminal prosecution.

d. All statements filed pursuant to this section shall be retained by the commission as public records.

(cf: P.L.1995, c.14, s.3)

4. Section 7 of P.L.1991, c.393 (C.18A:12-27) is amended to read as follows:

7. a. There is hereby established **[**in the State Department of Education**]** a commission to be known as the “School Ethics Commission.” For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated in, but not of, the Department of Education, but notwithstanding this allocation, the commission shall be independent of any supervision and control by the department or by any board or office thereof. The commission shall consist of nine members, not more than five of whom shall be from the same political party: two shall be board members; two shall be school administrators; and five shall be persons who are not school officials. All members shall be appointed by the Governor and shall serve at the pleasure of the Governor.

b. Members of the commission shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties under **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq.).

c. No member of the commission shall serve on or campaign for any office of a political organization during membership on the commission.

d. All members shall serve for a term of three years, except that for the members initially appointed, one board member, one administrator, and one public member shall be appointed for a term of three years; one board member and two public members shall be appointed for a term of two years; and one administrator and two public members shall be appointed for a term of one year.

e. Each member shall serve until the member’s successor has been appointed and qualified. If a school official appointed to the commission ceases to be a school official, the person’s appointment to the commission shall expire on the next succeeding July 1, or when the person’s successor has been appointed and qualified, whichever occurs earlier. However, the membership of a school official who has been removed from office for official misconduct shall immediately cease upon such removal.

f. Any vacancy occurring in the membership of the commission shall be filled in the same manner as the original appointment for the unexpired term.

g. The members of the commission shall, by majority vote, select from among themselves one member to serve as chairperson for a term not to exceed one year.

(cf: P.L.1991, c.393, s.7)

5. Section 8 of P.L.1991, c.393 (C.18A:12-28) is amended to read as follows:

8. a. The commission **[**may appoint professional employees and clerical staff and may incur expenses which are necessary to carry out the provisions of this act within the limits of funds appropriated or otherwise made available to it for that purpose**]** shall, within the limits of funds appropriated or otherwise made available to it, choose and appoint an executive director and such other professional, technical, clerical or other assistants, except for legal counsel, and incur such expenses as it deems necessary for the performance of its duties. The staff chosen and appointed by the commission shall be persons qualified by training and experience to assist the commission in the performance of its duties and responsibilities. All appointments shall be made in accordance with the provisions of Title 11A of the New Jersey Statutes, and the commission shall be permitted to request salary adjustments and title changes as authorized by Title 11A of the New Jersey Statutes.

b. In order to carry out the provisions of **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq.), the commission shall have the power to issue advisory opinions, receive complaints filed pursuant to section 9 of **[**this act**]** P.L.1991, c.393 (C.18A:12-29), receive and retain disclosure statements filed pursuant to sections 5 and 6 of **[**this act**]** P.L.1991, c.393 (C.18A:12-25 and C.18A:12-26), conduct investigations, hold hearings, and compel the attendance of witnesses and the production of documents as it may deem necessary and relevant to such matter under investigation. The members of the commission and persons appointed by it for this purpose are empowered to administer oaths and examine witnesses under oath.

c. A person shall not be excused from testifying or producing evidence on the ground that the testimony or evidence might tend to incriminate the person, but an answer shall not be used or admitted in any proceeding against the person, except in a prosecution for perjury. The foregoing use immunity shall not be granted without prior written approval of the Attorney General. If use immunity is not granted, the person may be excused from testifying or producing evidence on the ground that the testimony or evidence might tend to incriminate the person.

d. The commission shall promptly report to the Attorney General any information which indicates the possible violation of any criminal law.

e. The Attorney General shall, upon request, act as legal adviser and counsel to, and on behalf of, the commission.

(cf: P.L.1991, c.393, s.8)

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

9. a. Any person, including a member of the commission, may file a complaint alleging a violation of the provisions of **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq.) 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**]** P.L.1991, c.393 (C.18A:12-21 et seq.), or in the case of a board member, **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq. 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**]** determine and impose the reprimand, censure, suspension, or removal of the school official found to have violated **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq.), or in the case of a board member, **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq.) 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**]** P.L.1991, c.393 (C.18A:12-21 et seq.), or in the case of a board member, **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq.) or the code of ethics, and of the **[**commissioner’s**]** commission’s decision regarding the sanction shall be in accordance with the provisions of P.L.2008, c.36 (C.18A:6-9.1 et al.).

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**]** P.L.1991, c.393 (C.18A:12-21 et seq.) 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.

(cf: P.L.2008, c.36, s.5)

7. Section 3 of P.L.2008, c.36 (C.18A:12-29.1) is amended to read as follows:

3. Notwithstanding the provisions of any law or regulation to the contrary, any **[**appeal of a**]** determination of the School Ethics Commission **[**shall be to the Commissioner of Education whose determination**]** regarding a violation of P.L.1991, c.393 (C.18A:12-21 et seq.) or any sanction to be imposed shall be a final agency action under the “Administrative Procedure Act,” P.L. 1968, c.410 (C.52:14B-1et seq.), and any appeal of that action shall be directly to the Appellate Division of the Superior Court.

(cf: P.L.2008, c.36, s.3)

8. Section 14 of P.L.1991, c.393 (C.18A:12-34) is amended to read as follows:

14. The **[**State Board of Education**]** commission may promulgate regulations pursuant to the **[**“Administrative Procedures Act,”**]** “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of **[**this act**]** P.L.1991, c.393 (C.18A:12-21 et seq.).

(cf: P.L.1991, c.393, s.14)

9. This act shall take effect immediately.

STATEMENT

This bill revises various provisions of the “School Ethics Act.” The bill broadens the definition of “relative” to align it with the definition of “relative” under the “New Jersey Conflicts of Interest Law.” Under the bill, “relative “ means a school official’s spouse, civil union partner, domestic partner, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or of the individual’s spouse, civil union partner, or domestic partner, whether the relative is related to the school official or the school official’s spouse, civil union partner, or domestic partner by blood, marriage, or adoption.

The bill also clarifies that school officials are expressly prohibited from engaging in nepotism and from using or attempting to use their positions to secure unwarranted privileges, advantages, or employment for relatives. The bill requires that school officials disclose the date that a relative began employment within the same district that employs the school official.

Additionally, the bill specifies that the School Ethics Commission, which was established by the “School Ethics Act,” and is currently under the authority of the Department of Education, will be allocated in, but not of, the department. The bill revises various provisions of the “School Ethics Act” to reflect this new allocation. The bill also authorizes the School Ethics Commission to choose and appoint certain staff members, including an executive director, who are qualified by training and experience to assist the commission in performing its duties and responsibilities. The commission would further be authorized to request salary adjustments and title changes pursuant to State civil service statutes. The bill provides that the Attorney General will, upon request of the commission, act as legal adviser and counsel to, and on behalf of, the commission.