

CHAPTER

815



8095

1975-1976 Regular Sessions

IN ASSEMBLY

April 24, 1975

Introduced by COMMITTEE ON RULES—(at request of Mrs. Connelly)—read once and referred to the Committee on Education

AN ACT

Notes

to amend the education law, in relation to liability of members of the board of education, members of community school boards and their officers and employees in a city having a population of one million or more inhabitants

Compared by

Malloy, Condy

APPROVED

AUG 9 1975

Approved

1975

ASSEMBLY

JUN 18 1975
PAGE 99

Date _____

The Assembly bill
by Mr. RULES
Entitled: "

Assembly No. 8095
Sen. Rept. No. _____

AN ACT TO AMEND THE EDUCATION LAW, IN RELATION TO LIABILITY OF MEMBERS OF THE BOARD OF EDUCATION, MEMBERS OF COMMUNITY SCHOOL BOARDS AND THEIR OFFICERS AND EMPLOYEES IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE INHABITANTS

" was read the third time

DEBATE WAS HAD THEREON

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	47	Mr. Anderson			22	Mr. Lewis	
	49	Mr. Auer			50	Mr. Lombardi	
	45	Mr. Barclay	EXCUSED		24	Mr. Marchi	
	23	Mr. Beatty	EXCUSED		5	Mr. Marino	
	25	Ms. Bellamy			48	Mr. Mason	
	33	Mr. Bernstein			28	Mr. McCall	
	19	Mr. Bloom			59	Mr. McFarland	EXCUSED
	12	Mr. Bronston			16	Mr. Meyerson	
	9	Ms. Burstein			14	Mr. Moore	
	7	Mr. Cagminere			42	Mr. Nolan	
	34	Mr. Calandra			27	Mr. Ohrenstein	EXCUSED
	21	Mr. Conklin			17	Mr. Owens	
	46	Mr. Donovan			11	Mr. Padavan	EXCUSED
	6	Mr. Dunne			60	Mr. Paterson	
	54	Mr. Eckert			53	Mr. Perry	
	35	Mr. Flynn			36	Mr. Pisani	EXCUSED
	32	Mr. Galther			57	Mr. Present	
	30	Mr. Garcia			39	Mr. Rolison	
	1	Mr. Guiffreda			31	Mr. Ruiz	
	13	Mr. Gold			10	Mr. Santucci	
	26	Mr. Goodman			40	Mr. Schermerhorn	
	37	Mr. Gordon	EXCUSED		2	Mr. Smith, B. C.	
	56	Mr. Griffin			51	Mr. Smith, W. T.	EXCUSED
	20	Mr. Halperin			43	Mr. Stafford	
	41	Mr. Hudson			18	Mr. Straub	
	44	Mr. Isabella			55	Mr. Tauriello	
	4	Mr. Johnson			3	Mr. Trunzo	
	15	Mr. Knott			58	Mr. Volker	
	29	Mr. Leichter			52	Mr. Warder	
	8	Mr. Levy			38	Ms. Winikow	

AYES 52
NAYS 0

Ordered, that the Secretary return said bill to the Assembly with a message that the Senate has concurred in the passage of the same.

(Republicans in Italics)

8095
6/12 1975 Rules (Mrs. Connelly)

Those Who Voted In the Affirmative	Those Who Voted In the Negative	Those Who Voted In the Affirmative	Those Who Voted In the Negative	Those Who Voted In the Affirmative	Those Who Voted In the Negative
Mr. Abramson		Mr. Grannis		Mr. Montano	
Miss Amatucci		Mr. Greco		Mr. Murphy (G. A.)	
Mr. Barbaro		Mr. Griffin		Mr. Murphy (M. J.)	
Mr. Betros		Mr. Griffith		Mr. Murphy (T. J.)	
Mr. Bianchi		Miss Gunning		Mr. Nicolosi	
Mr. Blumenthal		Mr. Haley		Mr. Nine	
Mr. Brewer		Mr. Hamilton		Mr. O'Neil	
Mr. Brown		Mr. Hanna		Mr. Orazio	
Mr. Burns		Mr. Harenberg		Mr. Passannante	
Mr. Burrows		Mr. Harris		Mr. Pesce	
Mr. Calogero		Mr. Hawley		Mr. Posner (H. A.)	
Mr. Caputo		Mr. Healey		Mr. Posner (S.)	
Mr. Cincotta		Mr. Hecht		Mr. Rappleyea	
Mr. Cochrane		Mr. Henderson		Mr. Reilly	
Mrs. Connelly		Mr. Herbst		Mr. Ruffalo	
Mr. Connor		Mr. Hevesi		Mr. Robach	
Mr. Cook (G. D.)		Mr. Hinchey		Mr. Roosa	
Mr. Cook (D. J.)		Mr. Hochberg		Mr. Ross	
Mr. Cooperman		Mr. Hochbrueckner		Mrs. Runyon	
Mr. Culhane		Mr. Hoyt		Mr. Ryan	
Mr. Daly		Mr. Hurley		Mr. Schmidt	
Mr. D'Amato		Mr. IZard		Mr. Schumer	
Mr. D'Andrea		Mr. Jonas		Mr. Sears	
Mr. Dearie		Mr. Kelleher		Mr. Serrano	
Mr. DelliBovi		Mr. Kidder		Mr. Sharoff	
Mr. Del Toro		Mr. Koppell		Mr. Siegel	
Mr. DeSalvio		Mr. Kremer		Mr. Silverman	
Mr. DiCarlo		Mr. Landes		Mr. Solomon	
Mr. DiFalco		Mr. Lane		Mr. Stavisky	
Mrs. Diggs		Mr. Lasher		Mr. Stein	
Mr. Dokuchits		Mr. Lee		Mr. Stephens	
Mr. Duryea		Mr. Lehner		Mr. Stott	
Mr. Dwyer		Mr. Lentol		Mr. Strelzin	
Mr. Emery		Mr. Levy		Mr. Suchin	
Mr. Esposito		Mr. Lewis		Mr. Sullivan	
Mr. Eve		Mr. Lill		Mr. Tallon	
Mr. Farrell		Mr. Lisa		Mr. Taylor	
Mr. Ferris		Mr. Lopresto		Mr. Thorp	
Mr. Field		Mr. Mannix		Mr. Tills	
Mr. Fink		Mr. Marchiselli		Mr. Vann	
Mr. Flack		Mr. Mangione		Mr. Vento	
Mr. Flanagan		Mr. Marshall		Mr. Virgilio	
Mr. Fortune		Mr. McCabe		Mr. Walsh	
Mr. Fremming		Mr. Mays		Mr. Wansel	
Mr. Frey		Mr. Miller (G. W.)		Mr. Weprin	
Mr. Gazzara		Mr. Miller (H. J.)		Mr. Wicks	
Mrs. Goodhue		Mr. Miller (H. M.)		Mr. Yevoli	
Mr. Gorski		Mr. Miller (M. H.)		Mr. Zagame	
Mr. Gottfried		Mr. Mirto		Mr. Zimmer	
Mr. Graber		Mr. Molinari		Mr. Zwick	

AYES 135

NOES 0

A 8095

10-DAY BILL
BUDGET REPORT ON BILLS

Session Year: 19 75

B-28

JB

SENATE

Introduced by:

ASSEMBLY

No.

Committee on Rules

No. 8095

Law: Education

Sections: 2560

JUL 9 1975

Division of the Budget recommendation on the above bill:

Approve: _____ Veto: _____ No Objection: _____ No Recommendation: X
(see recommendation)

1&2. Subject, Purpose and Summary: To save harmless from liability incurred as a result of actions against the members of the school board of New York City, members of the community school boards within the City, and employees of the community boards. The damages sustained by those bringing the action are to have been incurred while the above members or employees were discharging their duties and responsibilities.

3. Legislative history: This appears to be new legislation.

4. Arguments in support of bill: This bill would make the liability save-harmless provisions for board members and employees in New York City more in line with those applicable across the rest of the State as granted in §3811 of the Education Law.

5. Possible objections: (a) This bill could save harmless board members whose "discharge of duties" may actually be quite far removed from regular educational matters and quite illegal.

(b) We are concerned about the deletion of references to damages resulting from negligence which result in personal injury or property damage (pg. 2 of the bill) and the substitution of being saved harmless for "any act" of the board members, etc. We are not knowledgeable of the legal ramifications of such a change and defer to Counsel's office in this matter.

6. Other State agencies interested: The Education Department has indicated that they are recommending approval of this bill.

7. Other interested groups: Unknown.

8. Budget implications: This bill has no State fiscal implications.

9. Recommendation: Because of the legal ramifications of the types of acts for which the board members are being saved harmless in this bill and our lack of expertise in this area, we are offering no recommendation on this bill and defer to Counsel's recommendation.

OK
Daniel McClumpha
David McClumpha
Samuel Kawola
SR

Date: June 26, 1975
Examiner: David McClumpha
Section Head: Samuel Kawola
Disposition: Chapter No. Veto No.

A 8095

STATE EDUCATION DEPARTMENT

July 7, 1975

TO: Counsel to the Governor

FROM: Robert D. Stone

JUL 9 1975

SUBJECT: A. 8095

RECOMMENDATION: Approval

REASONS FOR RECOMMENDATION:

This bill would amend section 2560 of the Education Law to broaden the liability of the New York City Board of Education for conduct of a board member, employee or authorized volunteer. The section is brought up to date to include community school board members. The liability of the central board is expanded to include any act of these persons when acting within the scope of their duties and responsibilities, rather than extending only to acts of negligence as is currently the standard for liability.

The section is also amended to provide that written notice be given to the central board of commencement of any such action. This requirement corresponds to a provision of section 3811 of the Education Law, which provides similar protection to individual members of boards of education in school districts other than in the New York City school district.



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

Re: Assembly 8095

JUL 2 1975

This bill amends § 2560 of the Education Law by adding to the list of persons the Board of Education is already required to save harmless (teachers, supervisors, officers and employees) the following: the Board members themselves, the members of the 31 community school boards and the teachers, staff and personnel of such community school boards.

The bill changes the obligation of the city school board from an obligation to indemnify any of these persons for acts of negligence only to an obligation to save harmless by reason of acts (negligent or not) done in the performance of their duties and within the scope of their employment.

Thus, if a teacher sues a principal for libel because of an unsatisfactory rating, the principal would be indemnified by the Board of Education. Up to now, he would not be, since libel is not a negligent tort.

The bill adds the requirement that any of the above persons must notify the Board of Education of the institution of any action within ten days; additionally, if the person sued is a member of a community school board or an employee thereof, he is to notify the community school board.

I must point out to Your Excellency that previously enacted statutes requiring indemnification of officers and employees out of public funds primarily limited the duty to

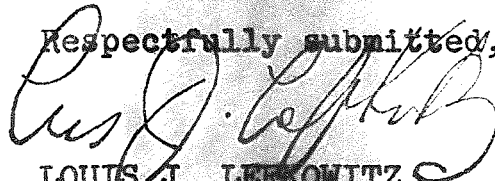
Memorandum for the Governor
Assembly 8095
Page 2

indemnify to negligent acts and most expressly exclude acts
that are wilful and wrongful or grossly negligent.

I find no legal objection to this bill.

Dated: July 2, 1975

Respectfully submitted,



LOUIS J. LEFKOWITZ
Attorney General

J.B

A 8095

MEMORANDUM

STATE OF NEW YORK — DEPARTMENT OF STATE

DATE: July 9, 1975

TO: Hon. Judah Gribetz
FROM: Mario M. Cuomo
SUBJECT: A. 8095 (Committee on Rules)

OFFICE: Counsel to the Governor

OFFICE: Secretary of State

AN ACT to amend the education law, in relation to liability of members of the board of education, members of community school boards and their officers and employees in a city having a population of one million or more inhabitants

Because this bill affects program areas outside of the experience and expertise of the Division of Community Affairs, the Division has no comment.

Cc. Mr. Schwartz
Mr. Dugan

JDC:jr

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

A 8095

JAMES F. REGAN, PRESIDENT
ISAIAH E. ROBINSON, JR., VICE PRESIDENT
STEPHEN R. AIELLO
AMELIA ASHE
JOSEPH G. BARKAN
ROBERT J. CHRISTEN
JOSEPH MONSERRAT
IRVING ANKER, CHANCELLOR
HAROLD SIEGEL, SECRETARY

June 24, 1975

JUN 25 1975

MEMORANDUM IN SUPPORT

A 8095 Mrs. Connelly

AN ACT to amend the education law, in relation to liability of members of the board of education, members of community school boards and their officers and employees in a city having a population of one million or more inhabitants

Dear Governor Carey:

The above bill is before you for executive action.

This is a New York City Board of Education program bill.

The purpose of this bill is to amend Section 2560 of the Education Law which protects and holds harmless members of the teaching or supervising staff, officers, employees and authorized school volunteers in the City School District of the City of New York for negligent acts resulting in personal injury or property damage so as to:

1. Broaden the protection to embrace any act performed in the discharge of designated duties and responsibilities or within the scope of employment; and
2. Include the members of the Community School Boards.

The limited protection contained in Section 2560 exposes board members, officers, employees and authorized volunteers to personal damage suits for acts not negligent in nature but within designated duties and responsibilities or within the scope of employment. The need for broader coverage is evident from a recent Supreme Court decision (*Wood v. Strickland*, 43 U.S. Law Week 4293, February 25, 1975) which held:

"Therefore, in the specific context of school discipline, we hold that a school board member is not immune from liability for damages under Sec. 1983 (42 USC) if he knew

or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student."


The protection sought in this bill already exists in Section 3811 of the Education Law for school districts other than the City School District of the City of New York.

For all of the foregoing reasons, the Board of Education urges you to APPROVE this bill.

Respectfully submitted,

James F. Regan
President

by


Peter A. Piscitelli
Legislative Representative

The Honorable Hugh L. Carey
Governor of the State of New York
The Capitol
Albany, New York 12224

JUN 20 1975

AN ACT to amend the education law, in relation to liability of members of the board of education, members of community school boards and their officers and employees in a city having a population of one million or more inhabitants

The purpose of this bill is to amend Section 2560 of the Education Law which protects and holds harmless members of the teaching or supervising staff, officers, employees and authorized school volunteers in the City School District of the City of New York for negligent acts resulting in personal injury or property damage so as to:

1. Broaden the protection to embrace any act performed in the discharge of designated duties and responsibilities or within the scope of employment; and
2. Include the members of the Community School Boards.

The limited protection contained in Section 2560 exposes board members, officers, employees and authorized volunteers to personal damage suits for acts not negligent in nature but within designated duties and responsibilities or within the scope of employment. The need for broader coverage is evident from a recent Supreme Court decision (Wood v. Strickland, 43 U.S. Law Week 4293, February 25, 1975) which held:

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The protection sought in this bill already exists in Section 3811 of the Education Law for school districts other than the City School District of the City of New York.



PETER A. PISCITELLI
LEGISLATIVE REPRESENTATIVE

BOARD OF EDUCATION
OF THE CITY OF NEW YORK

308 STATE STREET
ALBANY, NEW YORK 12210
(518) 449-8893

110 LIVINGSTON STREET
BROOKLYN, NEW YORK 11201
(212) 596-6984

5-5459
1315

MEMORANDUM IN SUPPORT

A 8095
S 5459

Mrs. Connelly
Mr. Giuffreda

Passed Assembly
Senate Calendar No. 1315

AN ACT to amend the education law, in relation to liability of members of the board of education, members of community school boards and their officers and employees in a city having a population of one million or more inhabitants

This is a New York City Board of Education program bill.

The purpose of this bill is to amend Section 2560 of the Education Law which protects and holds harmless members of the teaching or supervising staff, officers, employees and authorized school volunteers in the City School District of the City of New York for negligent acts resulting in personal injury or property damage so as to:

1. Broaden the protection to embrace any act performed in the discharge of designated duties and responsibilities or within the scope of employment; and
2. Include the members of the Community School Boards.

The limited protection contained in Section 2560 exposes board members, officers, employees and authorized volunteers to personal damage suits for acts not negligent in nature but within designated duties and responsibilities or within the scope of employment. The need for broader coverage is evident from a recent Supreme Court decision (*Wood v. Strickland*, 43 U.S. Law Week 4293, February 25, 1975) which held:

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The protection sought in this bill already exists in Section 3811 of the Education Law for school districts other than the City School District of the City of New York.

For all of the foregoing reasons, the Board of Education urges that this bill be reported out of committee and enacted into law.

Respectfully submitted,

Peter A. Piscitelli
Legislative Representative

6/13/75

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

A 8095

JUN 26 1975

COMMITTEE ON STATE LEGISLATION

GEORGE L. GRAFF
CHAIRMAN
25 BROADWAY
NEW YORK 10004
~~212 344-5434~~

June 24, 1975

ELLEN R. NADLER
SECRETARY
919 THIRD AVENUE
NEW YORK 10022
212 688-1100

212-952-9485

- A. 3526
- A. 8448
- A. 2180
- A. 8095
- A. 4671

Dear Mr. Gribetz:

We have received your request for our views on the above Assembly bills.

Please be advised that we have decided not to submit any report on these bills.

Very truly yours,


Chairman

Hon. Judah Gribetz
Executive Chamber
State Capitol
Albany, New York 12224

GLG: hef

COMMUNITY SERVICE SOCIETY



JUN 30 1975

DEPARTMENT OF PUBLIC AFFAIRS
ARTHUR SCHIFF
Director
FLORENCE FLAST
Staff Associate for Education

COMMITTEE ON EDUCATION

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Chairman
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Vice Chairman
- MRS. ALYCE P. HILL WRIGHT
Vice Chairman
- MRS. FLOYD ABRAMS
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- MRS. ISAURA SANTIAGO
- MRS. MICHAEL SHER
- PETER J. STRAUSS
- JOSE A. VASQUEZ
- *on leave

June 26, 1975

Hon. Judah Gribetz
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: Assembly 8095 - To amend the education law, in relation to liability of members of the board of education, members of community school boards and their officers and employees in a city having a population of one million or more inhabitants.

OFFICERS OF THE SOCIETY

- MRS. ANDREW HEISKELL
Chairman of the Board
- ROBERT W. SWEET
President
- MRS. WILLIAM A. M. BURDEN
CROCKER NEVIN
Vice Chairmen of the Board
- HERBERT P. PATTERSON
Treasurer
- DAVID L. HOPKINS, JR.
Secretary and Asst. Treasurer
- ALVIN L. SCHORR
General Director

Dear Mr. Gribetz,

We have received your request for comment on the above bill. We regret that we cannot respond to your request because we have not reviewed this bill.

Sincerely yours,

Garvey E. Clarke
Chairman
Subcommittee on Legislation

GEC:rc



ALBANY OFFICE

SUITE 203 — 111 WASHINGTON AVENUE, ALBANY, N. Y. 12210

Telephone: Area Code 518-462-5611

LEONARD E. YOSWEIN, *Legislative Representative*

June 25, 1975

148095
JUN 26 1975

M E M O R A N D U M

TO: JUDAH GRIBETZ, Counsel to the Governor

FROM: LEONARD E. YOSWEIN, Legislative Representative

RE: A.8095 - Rules Committee
AN ACT to amend the education law, in relation to liability of members of the board of education, members of community school boards and their officers and employees in a city having a population of one million or more inhabitants

You have requested the comments and recommendation of the Mayor concerning the above bill which is before the Governor for executive action.

Please be advised that the Mayor has no recommendation with respect to said legislation.

Leonard E. Yoswein
LEONARD E. YOSWEIN
Legislative Representative