S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 11, 2010

Introduced by M. of A. WEISENBERG -- read once and referred to the Committee on Governmental Employees

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The retirement and social security law is amended by adding a new article 22 to read as follows:

ARTICLE 22

PROFESSIONAL SERVICES PROVIDERS

SECTION 1200. DEFINITIONS.
1201. CHARGING FOR PROFESSIONAL SERVICES.
1202. ENFORCEMENT.
1203. REPORTS REGARDING PROFESSIONAL SERVICES PROVIDERS.
1204. NON-EXCLUSIVITY OF RIGHTS OR REMEDIES.

S 1200. DEFINITIONS. 1. AS USED IN THIS ARTICLE, THE TERM "EMPLOYER" SHALL MEAN THE STATE, A PARTICIPATING EMPLOYER, AND ANY OTHER UNIT OF GOVERNMENT OR ORGANIZATION OBLIGATED OR AGREEING TO MAKE CONTRIBUTIONS TO THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM ON BEHALF OF ITS EMPLOYEES.

2. THE TERM "EMPLOYEE" SHALL MEAN AN INDIVIDUAL PERFORMING SERVICES FOR THE EMPLOYER FOR WHICH THE EMPLOYER HAS THE RIGHT TO CONTROL THE MEANS AND METHODS OF WHAT WORK WILL BE DONE AND HOW THE WORK WILL BE DONE.

3. THE TERM "PROFESSIONAL SERVICES PROVIDER" SHALL MEAN ANYONE WHOSE SERVICE HAS BEEN ENGAGED BY AN EMPLOYER IN THE CAPACITY OF ATTORNEY, PHYSICIAN, ENGINEER, ARCHITECT, ACCOUNTANT OR AUDITOR AND WHO IS ALSO A PARTNER, ASSOCIATE, INCLUDING AN ATTORNEY OF AN "OF COUNSEL" RELATIONSHIP, OR EMPLOYEE OF ANOTHER ORGANIZATION OR ENTITY THAT HAS A CONTRACT, RETAINER OR OTHER AGREEMENT TO PROVIDE PROFESSIONAL SERVICES TO THE PARTICIPATING EMPLOYER.

S 1201. CHARGING FOR PROFESSIONAL SERVICES. 1. A PROFESSIONAL SERVICES PROVIDER SHALL NOT SIMULTANEOUSLY BE AN INDEPENDENT CONTRACTOR AND AN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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EMPLOYEE OF AN EMPLOYER FOR THE PURPOSE OF PROVIDING PROFESSIONAL SERVICES TO SUCH EMPLOYER.

2. A PROFESSIONAL SERVICES PROVIDER WHO IS NOT AN EMPLOYEE OF AN EMPLOYER SHALL NOT SEEK TO BE OR BE CONSIDERED, TREATED, OR OTHERWISE REPORTED BY THE EMPLOYER AS AN EMPLOYEE THEREOF FOR PURPOSES OF COMPENSATION, REMUNERATION, HEALTH INSURANCE, PENSION AND ALL EMPLOYMENT-RELATED BENEFITS AND EMOLUMENTS ASSOCIATED THEREWITH.

S 1202. ENFORCEMENT. 1. ANY PROFESSIONAL SERVICES PROVIDER WHO VIOLATES SECTION TWELVE HUNDRED ONE OF THIS ARTICLE SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED THREE TIMES THE CHARGES AND FEES FOR CONTRACTED SERVICES OR SALARY RECEIVED BY THE PROFESSIONAL SERVICES PROVIDER AND PAID BY SUCH EMPLOYER, AND IN ADDITION, MAY BE ENJOINED FROM CONTINUING SUCH VIOLATION. CIVIL PENALTIES AND INJUNCTIVE RELIEF PROVIDED IN THIS SECTION SHALL BE RECOVERABLE IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL.

2. ANY PERSON WHO SHALL KNOWINGLY:

(A) VIOLATE SUBDIVISION TWO OF SECTION TWELVE HUNDRED ONE OF THIS ARTICLE;

(B) MAKE A FALSE STATEMENT OF MATERIAL FACT; OR

(C) FALSIFY OR PERMIT TO BE FALSIFIED ANY RECORD OR RECORDS OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM IN AN ATTEMPT TO DEFRAUD SUCH RETIREMENT SYSTEM AS A RESULT OF SUCH ACT FOR THE PURPOSE OF OBTAINING A CREDIT TOWARD PENSION BENEFITS, OR A BENEFIT OR PAYMENT IN EXCESS OF ONE THOUSAND DOLLARS FROM SUCH RETIREMENT SYSTEM FOR A PROFESSIONAL SERVICES PROVIDER TO WHICH SUCH PROFESSIONAL SERVICES PROVIDER WOULD NOT BE ENTITLED, SHALL BE GUILTY OF A CLASS E FELONY.

S 1203. REPORTS REGARDING PROFESSIONAL SERVICES PROVIDERS. EVERY EMPLOYER SHALL, ON OR BEFORE THE FORTY-FIFTH DAY AFTER THE COMMENCEMENT OF ITS FISCAL YEAR, FILE WITH THE COMPTROLLER AND THE ATTORNEY GENERAL A REPORT SPECIFYING:

1. ALL PROFESSIONAL SERVICES PROVIDERS WHO PROVIDE PROFESSIONAL SERVICES TO SUCH EMPLOYER;

2. WHETHER SUCH EMPLOYER HIRED SUCH PROFESSIONAL SERVICES PROVIDERS AS EMPLOYEES; AND

3. ALL REMUNERATION AND COMPENSATION PAID FOR PROFESSIONAL SERVICES.

S 1204. NON-EXCLUSIVITY OF RIGHTS OR REMEDIES. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT, IN ANY MATTER, ANY RIGHTS OR REMEDIES OTHERWISE AVAILABLE UNDER LAW AGAINST ANY PARTY OR TO ANY PERSON OR ENTITY, INCLUDING, BUT NOT LIMITED TO, THE ATTORNEY GENERAL OR THE COMPTROLLER OF THE STATE OF NEW YORK.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would require the state of New York and the participating employers in the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System to annually file a report to the Comptroller and the Attorney General specifying all who provided professional services to such employer, whether they were hired as employees, and all remuneration and compensation paid for such professional services.

If this bill is enacted, we anticipate that there would be a small annual administrative cost to the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

This estimate, dated January 4, 2010, and intended for use only during the 2010 Legislative Session, is Fiscal Note No. 2010-3, prepared by the Actuary for the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.