

STATE OF NEW YORK

150--A

Cal. No. 421

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. GIANARIS, HOYLMAN-SIGAL, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Ethics and Internal Governance -- recommitted to the Committee on Ethics and Internal Governance in accordance with Senate Rule 6, sec. 8 -- committee discharged and said bill committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public officers law, in relation to prohibiting reimbursement of campaign and political committees and legal defense funds for defense costs incurred on behalf of state employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 19 of the public officers law, as
2 amended by chapter 769 of the laws of 1985, is amended to read as
3 follows:
4 2. (a) Upon compliance by the employee with the provisions of subdivi-
5 sion three of this section, and subject to the restrictions set forth in
6 paragraph (b) of this subdivision and the conditions set forth in para-
7 graph [~~(b)~~] (c) of this subdivision, it shall be the duty of the state
8 to pay reasonable attorneys' fees and litigation expenses incurred by or
9 on behalf of an employee in [~~his or her~~] such employee's defense of a
10 criminal proceeding in a state or federal court arising out of any act
11 which occurred while such employee was acting within the scope of [~~his~~]
12 such employee's public employment or duties upon [~~his~~] such employee's
13 acquittal or upon the dismissal of the criminal charges against [~~him~~]
14 the employee or reasonable attorneys' fees incurred in connection with
15 an appearance before a grand jury which returns no true bill against the
16 employee where such appearance was required as a result of any act which
17 occurred while such employee was acting within the scope of [~~his~~] the

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

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1 employee's public employment or duties unless such appearance occurs in
2 the normal course of the public employment or duties of such employee.

3 (b) No reimbursement shall be paid pursuant to this section to any
4 campaign or political committee or legal defense fund that pays all or
5 any portion of an employee's reasonable attorneys' fees and/or liti-
6 gation expenses. Reimbursements received pursuant to this section by the
7 employee or their legal counsel shall not be paid by such employee or
8 legal counsel to a campaign or political committee or legal defense
9 fund. Furthermore, an employee on whose behalf a legal defense fund or
10 legal defense funds have been established shall not be eligible for
11 reimbursement pursuant to this section until all moneys in such fund or
12 funds have been expended for the employee's reasonable attorneys' fees
13 and/or litigation expenses. Prior to reimbursement being issued, an
14 employee and their legal counsel shall certify to both the attorney
15 general and the comptroller that there are no funds remaining in any
16 legal defense fund established on behalf of the employee and that no
17 monies requested pursuant to this section will be used to reimburse a
18 campaign or political committee or legal defense fund.

19 (c) Upon the application for reimbursement for reasonable attorneys'
20 fees or litigation expenses or both made by or on behalf of an employee
21 as provided in subdivision three of this section, the attorney general
22 shall determine, based upon [his] their investigation and [his] their
23 review of the facts and circumstances, whether such reimbursement shall
24 be paid. The attorney general shall notify the employee in writing of
25 such determination. Upon determining that such reimbursement should be
26 provided, the attorney general shall so certify to the comptroller. Upon
27 such certification, reimbursement shall be made for such fees or
28 expenses or both upon the audit and warrant of the comptroller. On or
29 before January fifteenth the comptroller, in consultation with the
30 department of law and other agencies as may be appropriate, shall submit
31 to the governor and the legislature an annual accounting of judgments,
32 settlements, fees, and litigation expenses paid pursuant to this section
33 during the preceding and current fiscal years. Such accounting shall
34 include, but not be limited to the number, type and amount of claims so
35 paid, as well as an estimate of claims to be paid during the remainder
36 of the current fiscal year and during the following fiscal year. Any
37 dispute with regard to entitlement to reimbursement or the amount of
38 litigation expenses or the reasonableness of attorneys' fees shall be
39 resolved by a court of competent jurisdiction upon appropriate motion or
40 by way of a special proceeding.

41 § 2. Subdivision 2 of section 17 of the public officers law, as added
42 by chapter 466 of the laws of 1978 and paragraph (a) as amended by chap-
43 ter 768 of the laws of 1985, is amended to read as follows:

44 2. (a) Upon compliance by the employee with the provisions of subdivi-
45 sion four of this section, the state shall provide for the defense of
46 the employee in any civil action or proceeding in any state or federal
47 court arising out of any alleged act or omission which occurred or is
48 alleged in the complaint to have occurred while the employee was acting
49 within the scope of [his] the employee's public employment or duties; or
50 which is brought to enforce a provision of section nineteen hundred
51 eighty-one or nineteen hundred eighty-three of title forty-two of the
52 United States code and the act or omission underlying the action
53 occurred or is alleged in the complaint to have occurred while the
54 employee was acting within the scope of [his] the employee's public
55 employment or duties. This duty to provide for a defense shall not

1 arise where such civil action or proceeding is brought by or on behalf
2 of the state.

3 (b) Subject to the conditions set forth in paragraph (a) of this
4 subdivision, the employee shall be entitled to be represented by the
5 attorney general, provided, however, that the employee shall be entitled
6 to representation by private counsel of ~~[his]~~ the employee's choice in
7 any civil judicial proceeding whenever the attorney general determines
8 based upon ~~[his]~~ their investigation and review of the facts and circum-
9 stances of the case that representation by the attorney general would be
10 inappropriate, or whenever a court of competent jurisdiction, upon
11 appropriate motion or by a special proceeding, determines that a
12 conflict of interest exists and that the employee is entitled to be
13 represented by private counsel of ~~[his]~~ the employee's choice. The
14 attorney general shall notify the employee in writing of such determi-
15 nation that the employee is entitled to be represented by private coun-
16 sel. The attorney general may require, as a condition to payment of the
17 fees and expenses of such representation, that appropriate groups of
18 such employees be represented by the same counsel. If the employee or
19 group of employees is entitled to representation by private counsel
20 under the provisions of this section, the attorney general shall so
21 certify to the comptroller. Reasonable attorneys' fees and litigation
22 expenses shall be paid by the state to such private counsel from time to
23 time during the pendency of the civil action or proceeding subject to
24 certification that the employee is entitled to representation under the
25 terms and conditions of this section by the head of the department,
26 commission, division, office or agency in which such employee is
27 employed ~~[and]~~ upon the audit and warrant of the comptroller, and
28 subject to the restrictions set forth in paragraph (c) of this subdivi-
29 sion. Any dispute with respect to representation of multiple employees
30 by a single counsel or the amount of litigation expenses or the reason-
31 ableness of attorneys' fees shall be resolved by the court upon motion
32 or by way of a special proceeding.

33 (c) No funds shall be paid pursuant to this section to any campaign or
34 political committee or legal defense fund. Funds received pursuant to
35 this section by the employee or their legal counsel shall not be paid by
36 such employee or legal counsel to a campaign or political committee or
37 legal defense fund. Furthermore, an employee on whose behalf a legal
38 defense fund or legal defense funds have been established, shall not be
39 eligible for payment pursuant to this section until all moneys in such
40 fund or funds have been expended for the employee's reasonable attor-
41 neys' fees and/or litigation expenses. Prior to payment being issued, an
42 employee and their legal counsel shall certify to both the attorney
43 general and the comptroller that there are no funds remaining in any
44 legal defense fund established on behalf of the employee and that no
45 monies requested pursuant to this section will be used to reimburse a
46 campaign or political committee or legal defense fund.

47 (d) Where the employee delivers process and a request for a defense to
48 the attorney general as required by subdivision four of this section,
49 the attorney general shall take the necessary steps including the
50 retention of private counsel under the terms and conditions provided in
51 paragraph (b) of subdivision two of this section on behalf of the
52 employee to avoid entry of a default judgment pending resolution of any
53 question pertaining to the obligation to provide for a defense.

54 § 3. This act shall take effect immediately and shall apply to any
55 pending claim not paid by the state before such effective date, and to
56 any new claim submitted to the state on or after such effective date.