

4660

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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Introduced by Sen. FOLEY -- read twice and ordered printed, and when  
printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to the writing of  
responses to audit findings and recommendations

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

1     Section 1. Paragraph (a) of subdivision 2 of section 35 of the general  
2     municipal law, as amended by chapter 692 of the laws of 1989, is amended  
3     to read as follows:  
4     (a) Within ten days after the filing of a report of examination  
5     performed by the office of the state comptroller, a report of an  
6     external audit performed by an independent public accountant or any  
7     management letter prepared in conjunction with such an external audit  
8     with the clerk of the municipal corporation, industrial development  
9     agency, district, agency or activity, or with the secretary if there is  
10    no clerk, he OR SHE shall give public notice thereof in substantially  
11    the following form: "Notice is hereby given that the fiscal affairs of  
12    (name of municipal corporation, industrial development agency, district,  
13    agency or activity) for the period beginning on..... and  
14    ending on....., have been examined by (the office of the state  
15    comptroller or an independent public accountant), and that the (report  
16    of examination performed by the office of the state comptroller or  
17    report of, or management letter prepared in conjunction with, the  
18    external audit by the independent public accountant) has been filed in  
19    my office where it is available as a public record for inspection by all  
20    interested persons. Pursuant to section thirty-five of the general  
21    municipal law, the governing board of (name of municipal corporation,  
22    district, agency or activity) [may, in its discretion,] IS REQUIRED TO  
23    prepare a written response to ANY FINDINGS, INCLUDING ANY ADVERSE OPIN-  
24    ION ON THE FAIR PRESENTATION OF FINANCIAL STATEMENTS, AND ANY RECOMMEN-  
25    DATIONS IN the (report of examination performed by the office of the

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

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1 state comptroller or the report of external audit or management letter  
2 by THE independent public accountant) and file [any] such response in my  
3 office as a public record for inspection by all interested persons not  
4 later than (last date on which response may be filed)."

5 S 2. Paragraph (b) of subdivision 4 of section 35 of the general  
6 municipal law, as amended by chapter 692 of the laws of 1989, is amended  
7 to read as follows:

8 (b) (1) Not later than ninety days after presentation to the governing  
9 board of a report of examination performed by the office of the state  
10 comptroller, or receipt by the governing board of any report of an  
11 external audit performed by an independent public accountant or any  
12 management letter in conjunction with such an audit, the governing board  
13 [may, in its discretion,] SHALL provide to the comptroller, and file in  
14 the office of the clerk, or with the secretary if there is no clerk, of  
15 the municipal corporation, industrial development agency, district,  
16 agency or activity, a written response to [the] ANY findings, INCLUDING  
17 ANY ADVERSE OPINION ON THE FAIR PRESENTATION OF THE FINANCIAL STATE-  
18 MENTS, and ANY recommendations[, if any,] in the report or letter. In  
19 the case of municipal corporations, [industrial development agency,]  
20 districts, agencies or activities subject to examination by the commis-  
21 sioner of education, [any] THE written response shall also be provided  
22 to such commissioner. IN THE CASE OF INDUSTRIAL DEVELOPMENT AGENCIES,  
23 THE WRITTEN RESPONSE SHALL ALSO BE PROVIDED TO THE COMMISSIONER OF THE  
24 DEPARTMENT OF ECONOMIC DEVELOPMENT.

25 (2) [A] THE written response prepared pursuant to subparagraph one of  
26 this paragraph shall be in such form as may be prescribed by the comp-  
27 troller and shall include, with respect to each finding or recommenda-  
28 tion, a statement of the corrective actions taken or proposed to be  
29 taken, or if corrective action is not taken or proposed, an explanation  
30 of the reasons therefor. [Any such] THE written response shall also  
31 include a statement on the status of corrective actions taken on find-  
32 ings or recommendations contained in any previous report of examination,  
33 or report of an external audit, or any management letter prepared in  
34 conjunction therewith, by an independent public accountant for which a  
35 written response was required. All officers and employees of the municip-  
36 al corporation, industrial development agency, district, agency or  
37 activity shall fully cooperate with the governing board in the prepara-  
38 tion of the response by the governing board.

39 S 3. Paragraph (c) of subdivision 4 of section 35 of the general  
40 municipal law is relettered paragraph (d) and a new paragraph (c) is  
41 added to read as follows:

42 (C) IF A WRITTEN RESPONSE IS NOT PROVIDED AS REQUIRED BY THIS SECTION,  
43 THE COMPTROLLER MAY PROVIDE TO THE GOVERNING BOARD OF THE MUNICIPAL  
44 CORPORATION, INDUSTRIAL DEVELOPMENT AGENCY, DISTRICT, AGENCY OR ACTIVITY  
45 NOTIFICATION OF THE FAILURE TO PROVIDE A WRITTEN RESPONSE WHICH SHALL BE  
46 MADE A PART OF AND SET FORTH IN THE OFFICIAL RECORD OF THE PROCEEDINGS  
47 OF THE NEXT MEETING OF THE GOVERNING BOARD. THE COMPTROLLER, IN ACCORD-  
48 ANCE WITH EITHER SECTION THIRTY-FOUR OF THIS ARTICLE OR SECTION NINE OF  
49 THE STATE FINANCE LAW, ALSO MAY ADMINISTER AN OATH TO, AND COMPEL THE  
50 APPEARANCE AND ATTENDANCE OF, ANY OFFICER OR EMPLOYEE OF THE MUNICIPAL  
51 CORPORATION, INDUSTRIAL DEVELOPMENT AGENCY, DISTRICT, AGENCY OR ACTIVITY  
52 FOR THE PURPOSE OF ASCERTAINING THE REASONS FOR THE FAILURE TO PROVIDE A  
53 WRITTEN RESPONSE AND THE STATUS OF ANY CORRECTIVE ACTION TAKEN OR  
54 PROPOSED TO BE TAKEN.

55 S 4. This act shall take effect on the first of January next succeed-  
56 ing the date on which it shall have become a law and shall apply to

1 reports of examination, reports of external audits and management  
2 letters filed, after the effective date, with the clerk or, if there is  
3 no clerk, the secretary of the municipal corporation, industrial devel-  
4 opment agency, district, agency or activity.