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2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. SWEENEY, JOHN, FIELDS, KAVANAGH -- Multi-Sponsored by -- M. of A. ALESSI, CAHILL, GALEF, GUNTHER, HOOPER, JAFFEE, PHEFFER, WEISENBERG -- read once and referred to the Committee on Local Governments

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 ASSEMBLY, 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-

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

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1 ION ON THE FAIR PRESENTATION OF FINANCIAL STATEMENTS, AND ANY RECOMMEN-
2 DATIONS IN the (report of examination performed by the office of the
3 state comptroller or the report of external audit or management letter
4 by THE independent public accountant) and file [any] such response in my
5 office as a public record for inspection by all interested persons not
6 later than (last date on which response may be filed)."

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

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

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

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

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

1 S 4. This act shall take effect on the first of January next succeed-
2 ing the date on which it shall have become a law and shall apply to
3 reports of examination, reports of external audits and management
4 letters filed, after the effective date, with the clerk or, if there is
5 no clerk, the secretary of the municipal corporation, industrial devel-
6 opment agency, district, agency or activity.