

4684

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. EDDINGTON, FIELDS, SWEENEY, BRODSKY, ALESSI,  
JAFFEE, CLARK -- Multi-Sponsored by -- M. of A. GABRYSZAK, LUPARDO,  
PHEFFER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crime of  
defrauding a public pension plan and to amend the education law, in  
relation to requiring disclosure and reporting of certain contracts

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

1 Section 1. The penal law is amended by adding a new section 190.71 to  
2 read as follows:  
3 S 190.71 DEFRAUDING A PUBLIC PENSION PLAN.  
4 A PERSON IS GUILTY OF DEFRAUDING A PUBLIC PENSION PLAN WHEN HE OR SHE:  
5 1. ENGAGES IN A COURSE OF CONDUCT WITH THE INTENT OF OBTAINING A BENE-  
6 FIT OR ASSET FROM A PUBLIC PENSION PLAN RELATING TO EMPLOYMENT FOR THE  
7 STATE WHILE DOING BUSINESS OR PROVIDING A PROFESSIONAL SERVICE AS AN  
8 INDEPENDENT CONTRACTOR OR PRIVATE ENTITY WHEN SUCH PERSON IS RECEIVING  
9 COMPENSATION FOR SUCH SERVICE AS AN INDEPENDENT CONTRACTOR OR PRIVATE  
10 ENTITY AND SUCH SERVICE IS NOT SUBSTANTIALLY DIFFERENT FROM THE COURSE  
11 OF CONDUCT RELATING TO EMPLOYMENT FOR THE STATE; OR  
12 2. ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF  
13 CONDUCT WITH INTENT OF OBTAINING A BENEFIT OR ASSET, OR ASSISTING A  
14 THIRD PARTY TO OBTAIN A BENEFIT OR ASSET, FROM A PUBLIC PENSION PLAN TO  
15 WHICH HE OR SHE OR THE THIRD PARTY IS NOT OTHERWISE ENTITLED.  
16 DEFRAUDING A PUBLIC PENSION PLAN IS A CLASS E FELONY.  
17 S 2. Subdivision 4 of section 1608 of the education law, as amended by  
18 chapter 640 of the laws of 2008, is amended to read as follows:  
19 4. Commencing with the proposed budget for the nineteen hundred nine-  
20 ty-eight--ninety-nine school year, such proposed budget shall be  
21 presented in three components: a program component, a capital component  
22 and an administrative component which shall be separately delineated in  
23 accordance with regulations of the commissioner after consultation with

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

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1 local school district officials. The administrative component shall  
2 include, but need not be limited to, office and central administrative  
3 expenses, traveling expenses and all compensation, salaries [and], bene-  
4 fits AND ASSETS of all school administrators [and], EMPLOYEES, TEACHERS  
5 UNDER EXISTING EMPLOYMENT CONTRACTS, supervisors, including business  
6 administrators, superintendents of schools and deputy, assistant, asso-  
7 ciate or other superintendents under all existing employment contracts  
8 or collective bargaining agreements, any and all expenditures associated  
9 with the operation of the office of trustee or board of trustees, the  
10 office of the superintendent of schools, general administration, the  
11 school business office, consulting costs not directly related to direct  
12 student services and programs, planning and all other administrative  
13 activities. The program component shall include, but need not be limited  
14 to, all program expenditures of the school district, including the sala-  
15 ries and benefits of teachers and any school administrators or supervi-  
16 sors who spend a majority of their time performing teaching duties, and  
17 all transportation operating expenses. The capital component shall  
18 include, but need not be limited to, all transportation capital, debt  
19 service, and lease expenditures; costs resulting from judgments in tax  
20 certiorari proceedings or the payment of awards from court judgments,  
21 administrative orders or settled or compromised claims; and all facili-  
22 ties costs of the school district, including facilities lease expendi-  
23 tures, the annual debt service and total debt for all facilities  
24 financed by bonds and notes of the school district, and the costs of  
25 construction, acquisition, reconstruction, rehabilitation or improvement  
26 of school buildings, provided that such budget shall include a rental,  
27 operations and maintenance section that includes base rent costs, total  
28 rent costs, operation and maintenance charges, cost per square foot for  
29 each facility leased by the school district, and any and all expendi-  
30 tures associated with custodial salaries and benefits, service  
31 contracts, supplies, utilities, and maintenance and repairs of school  
32 facilities. For the purposes of the development of a budget for the  
33 nineteen hundred ninety-eight--ninety-nine school year, the trustee or  
34 board of trustees shall separate the district's program, capital and  
35 administrative costs for the nineteen hundred ninety-seven--ninety-eight  
36 school year in the manner as if the budget for such year had been  
37 presented in three components.

38 S 3. Subdivision 4 of section 1716 of the education law, as amended  
39 by chapter 640 of the laws of 2008, is amended to read as follows:

40 4. Commencing with the proposed budget for the nineteen hundred nine-  
41 ty-eight--ninety-nine school year, such proposed budget shall be  
42 presented in three components: a program component, a capital component  
43 and an administrative component which shall be separately delineated in  
44 accordance with regulations of the commissioner after consultation with  
45 local school district officials. The administrative component shall  
46 include, but need not be limited to, office and central administrative  
47 expenses, traveling expenses and all compensation, salaries [and], bene-  
48 fits AND ASSETS of all school administrators [and], EMPLOYEES, TEACHERS  
49 UNDER EXISTING EMPLOYMENT CONTRACTS, supervisors, including business  
50 administrators, superintendents of schools and deputy, assistant, asso-  
51 ciate or other superintendents under all existing employment contracts  
52 or collective bargaining agreements, any and all expenditures associated  
53 with the operation of the board of education, the office of the super-  
54 intendent of schools, general administration, the school business  
55 office, consulting costs not directly related to direct student services  
56 and programs, planning and all other administrative activities. The

1 program component shall include, but need not be limited to, all program  
2 expenditures of the school district, including the salaries and benefits  
3 of teachers and any school administrators or supervisors who spend a  
4 majority of their time performing teaching duties, and all transporta-  
5 tion operating expenses. The capital component shall include, but need  
6 not be limited to, all transportation capital, debt service, and lease  
7 expenditures; costs resulting from judgments in tax certiorari  
8 proceedings or the payment of awards from court judgments, administra-  
9 tive orders or settled or compromised claims; and all facilities costs  
10 of the school district, including facilities lease expenditures, the  
11 annual debt service and total debt for all facilities financed by bonds  
12 and notes of the school district, and the costs of construction, acqui-  
13 sition, reconstruction, rehabilitation or improvement of school build-  
14 ings, provided that such budget shall include a rental, operations and  
15 maintenance section that includes base rent costs, total rent costs,  
16 operation and maintenance charges, cost per square foot for each facili-  
17 ty leased by the school district, and any and all expenditures associ-  
18 ated with custodial salaries and benefits, service contracts, supplies,  
19 utilities, and maintenance and repairs of school facilities. For the  
20 purposes of the development of a budget for the nineteen hundred nine-  
21 ty-eight--ninety-nine school year, the board of education shall separate  
22 the district's program, capital and administrative costs for the nine-  
23 teen hundred ninety-seven--ninety-eight school year in the manner as if  
24 the budget for such year had been presented in three components.

25 S 4. The education law is amended by adding a new section 2116-e to  
26 read as follows:

27 S 2116-E. REPORTING COMMITTEES. 1. EVERY SCHOOL DISTRICT, EXCEPT THOSE  
28 EMPLOYING FEWER THAN EIGHT TEACHERS, SHALL ESTABLISH BY A RESOLUTION OF  
29 THE TRUSTEES OR BOARD OF EDUCATION A LOCAL SCHOOL DISTRICT REPORTING  
30 COMMITTEE TO OVERSEE ALL PROPOSED CONTRACTS OF THE SCHOOL DISTRICT  
31 EMPLOYEES, BARGAINING UNITS, ADMINISTRATORS AND SUPERINTENDENTS AND MAKE  
32 A REPORT TO THE TRUSTEES OR BOARD ON SUCH CONTRACTS. SUCH REPORT SHALL  
33 INCLUDE THE DETAILS OF THE CONTRACT INCLUDING BUT NOT LIMITED TO ALL  
34 COMPENSATION, SALARIES, BENEFITS AND ASSETS OF ALL SCHOOL ADMINISTRA-  
35 TORS, SUPERINTENDENTS, EMPLOYEES AND TEACHERS UNDER EMPLOYMENT  
36 CONTRACTS.

37 2. THE REPORTING COMMITTEE SHALL BE ESTABLISHED NO LATER THAN JANUARY  
38 FIRST, TWO THOUSAND TEN AS A COMMITTEE OF THE TRUSTEES OR BOARD, AS AN  
39 ADVISORY COMMITTEE, OR AS A COMMITTEE OF THE WHOLE.

40 3. THE REPORTING COMMITTEE SHALL CONSIST OF AT LEAST THREE MEMBERS, AT  
41 LEAST TWO OF WHOM SHALL NOT BE A TRUSTEE OR BOARD MEMBER. THE REPORTING  
42 COMMITTEE MEMBERS SHALL SERVE WITHOUT COMPENSATION. EMPLOYEES OF THE  
43 SCHOOL DISTRICT ARE PROHIBITED FROM SERVING ON THE REPORTING COMMITTEE.  
44 A MEMBER OF A REPORTING COMMITTEE SHALL BE DEEMED A SCHOOL DISTRICT  
45 OFFICER FOR THE PURPOSES OF SECTIONS THIRTY-EIGHT HUNDRED ELEVEN THROUGH  
46 THIRTY-EIGHT HUNDRED THIRTEEN OF THIS CHAPTER, BUT SHALL NOT BE REQUIRED  
47 TO BE A RESIDENT OF THE SCHOOL DISTRICT.

48 4. THE ROLE OF A REPORTING COMMITTEE SHALL BE ADVISORY AND ANY RECOM-  
49 MENDATIONS IT PROVIDES TO THE TRUSTEES OR BOARD UNDER SUBDIVISION FIVE  
50 OF THIS SECTION SHALL NOT SUBSTITUTE FOR ANY REQUIRED REVIEW AND ACTION  
51 BY THE TRUSTEES OR BOARD OF EDUCATION.

52 5. IT SHALL BE THE RESPONSIBILITY OF THE REPORTING COMMITTEE TO:

53 (A) REVIEW EVERY CONTRACT BETWEEN THE DISTRICT AND ANY EMPLOYEES,  
54 BARGAINING UNITS, ADMINISTRATORS AND SUPERINTENDENTS NEGOTIATED AFTER  
55 JANUARY FIRST, TWO THOUSAND TEN;

1 (B) RECEIVE AND REVIEW PROPOSED CONTRACTS BETWEEN THE DISTRICT AND ANY  
2 EMPLOYEES, BARGAINING UNITS, ADMINISTRATORS AND SUPERINTENDENTS PRIOR TO  
3 SUCH CONTRACTS' APPROVAL; AND

4 (C) PROVIDE RECOMMENDATIONS TO THE TRUSTEES OR BOARD REGARDING THE  
5 SALARY, FRINGE BENEFITS AND OTHER FORMS OF COMPENSATION GIVEN AND  
6 PROPOSED TO BE GIVEN TO ALL SCHOOL DISTRICT EMPLOYEES, ADMINISTRATORS  
7 AND SUPERINTENDENTS.

8 6. NOTWITHSTANDING ANY PROVISION OF ARTICLE SEVEN OF THE PUBLIC OFFI-  
9 CERS LAW OR ANY OTHER LAW TO THE CONTRARY, A SCHOOL DISTRICT REPORTING  
10 COMMITTEE MAY CONDUCT AN EXECUTIVE SESSION PURSUANT TO SECTION ONE  
11 HUNDRED FIVE OF THE PUBLIC OFFICERS LAW PERTAINING TO ANY MATTER SET  
12 FORTH IN PARAGRAPHS (A) AND (B) OF SUBDIVISION FIVE OF THIS SECTION.

13 7. THE COMMISSIONER IS AUTHORIZED TO PROMULGATE REGULATIONS WITH  
14 RESPECT TO REPORTING COMMITTEES AS ARE NECESSARY FOR THE PROPER PERFORM-  
15 ANCE OF THEIR DUTIES.

16 S 5. The education law is amended by adding a new section 2009-a to  
17 read as follows:

18 S 2009-A. ADDITIONAL REQUIREMENTS OF NOTICE PRIOR TO AUTHORIZATION OF  
19 SCHOOL DISTRICT EMPLOYMENT CONTRACTS. 1. WHERE ANY EMPLOYMENT CONTRACT,  
20 COLLECTIVE BARGAINING AGREEMENT, OR AMENDMENTS TO SUCH CONTRACT OR  
21 AGREEMENT IS TO BE SUBMITTED TO A DISTRICT MEETING FOR A VOTE, THE  
22 SCHOOL DISTRICT BOARD OR TRUSTEES SHALL GIVE NOTICE, AT LEAST FOUR WEEKS  
23 PRIOR TO SUCH MEETING, THROUGH A DISTRICT-WIDE MAILING, OF THE AVAIL-  
24 ABILITY OF THE CONTRACT, AGREEMENT, OR AMENDMENT AT PUBLIC LIBRARIES  
25 WITHIN THE DISTRICT, AT THE SCHOOL DISTRICT OFFICES AND ON THE SCHOOL  
26 DISTRICT'S INTERNET WEBSITE, IF ONE EXISTS.

27 2. PRIOR TO ANY EMPLOYMENT CONTRACT, COLLECTIVE BARGAINING AGREEMENT,  
28 OR AMENDMENTS TO SUCH CONTRACT OR AGREEMENT BEING SUBMITTED TO A  
29 DISTRICT MEETING FOR A VOTE, THE SCHOOL DISTRICT BOARD OR TRUSTEES SHALL  
30 GIVE NOTICE, AT LEAST FOUR WEEKS PRIOR TO SUCH MEETING, THROUGH A  
31 DISTRICT-WIDE MAILING, OF THE AVAILABILITY OF THE RECOMMENDATIONS MADE  
32 BY THE REPORTING COMMITTEE, PURSUANT TO SECTION TWENTY-ONE HUNDRED  
33 SIXTEEN-E OF THIS CHAPTER, AT PUBLIC LIBRARIES WITHIN THE DISTRICT, AT  
34 THE SCHOOL DISTRICT OFFICES AND ON THE SCHOOL DISTRICT'S INTERNET  
35 WEBSITE, IF ONE EXISTS.

36 S 6. This act shall take effect on the ninetieth day after it shall  
37 have become a law.