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

(PREFILED)

January 6, 2010

Introduced by M. of A. GABRYSZAK, FIELDS, SWEENEY, BRODSKY, ALESSI, JAFFEE, CLARK -- Multi-Sponsored by -- M. of A. 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding a new section 190.71 to read as follows:

S 190.71 DEFRAUDING A PUBLIC PENSION PLAN.

A PERSON IS GUILTY OF DEFRAUDING A PUBLIC PENSION PLAN WHEN HE OR SHE:

1. ENGAGES IN A COURSE OF CONDUCT WITH THE INTENT OF OBTAINING A BENEFIT OR ASSET FROM A PUBLIC PENSION PLAN RELATING TO EMPLOYMENT FOR THE STATE WHILE DOING BUSINESS OR PROVIDING A PROFESSIONAL SERVICE AS AN INDEPENDENT CONTRACTOR OR PRIVATE ENTITY WHEN SUCH PERSON IS RECEIVING COMPENSATION FOR SUCH SERVICE AS AN INDEPENDENT CONTRACTOR OR PRIVATE ENTITY AND SUCH SERVICE IS NOT SUBSTANTIALLY DIFFERENT FROM THE COURSE OF CONDUCT RELATING TO EMPLOYMENT FOR THE STATE; OR

2. ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT OF OBTAINING A BENEFIT OR ASSET, OR ASSISTING A THIRD PARTY TO OBTAIN A BENEFIT OR ASSET, FROM A PUBLIC PENSION PLAN TO WHICH HE OR SHE OR THE THIRD PARTY IS NOT OTHERWISE ENTITLED.

DEFRAUDING A PUBLIC PENSION PLAN IS A CLASS E FELONY.

S 2. Subdivision 4 of section 1608 of the education law, as amended by chapter 640 of the laws of 2008, is amended to read as follows:

4. Commencing with the proposed budget for the nineteen hundred ninety-eight--ninety-nine school year, such proposed budget shall be presented in three components: a program component, a capital component and an administrative component which shall be separately delineated in accordance with regulations of the commissioner after consultation with local school district officials. The administrative component shall include, but need not be limited to, office and central administrative

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

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expenses, traveling expenses and all compensation, salaries [and], benefits AND ASSETS of all school administrators [and], EMPLOYEES, TEACHERS UNDER EXISTING EMPLOYMENT CONTRACTS, supervisors, including business administrators, superintendents of schools and deputy, assistant, associate or other superintendents under all existing employment contracts or collective bargaining agreements, any and all expenditures associated with the operation of the office of trustee or board of trustees, the office of the superintendent of schools, general administration, the school business office, consulting costs not directly related to direct student services and programs, planning and all other administrative activities. The program component shall include, but need not be limited to, all program expenditures of the school district, including the salaries and benefits of teachers and any school administrators or supervisors who spend a majority of their time performing teaching duties, and all transportation operating expenses. The capital component shall include, but need not be limited to, all transportation capital, debt service, and lease expenditures; costs resulting from judgments in tax certiorari proceedings or the payment of awards from court judgments, administrative orders or settled or compromised claims; and all facilities costs of the school district, including facilities lease expenditures, the annual debt service and total debt for all facilities financed by bonds and notes of the school district, and the costs of construction, acquisition, reconstruction, rehabilitation or improvement of school buildings, provided that such budget shall include a rental, operations and maintenance section that includes base rent costs, total rent costs, operation and maintenance charges, cost per square foot for each facility leased by the school district, and any and all expenditures associated with custodial salaries and benefits, service contracts, supplies, utilities, and maintenance and repairs of school facilities. For the purposes of the development of a budget for the nineteen hundred ninety-eight--ninety-nine school year, the trustee or board of trustees shall separate the district's program, capital and administrative costs for the nineteen hundred ninety-seven--ninety-eight school year in the manner as if the budget for such year had been presented in three components.

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

4. Commencing with the proposed budget for the nineteen hundred ninety-eight--ninety-nine school year, such proposed budget shall be presented in three components: a program component, a capital component and an administrative component which shall be separately delineated in accordance with regulations of the commissioner after consultation with local school district officials. The administrative component shall include, but need not be limited to, office and central administrative expenses, traveling expenses and all compensation, salaries [and], benefits AND ASSETS of all school administrators [and], EMPLOYEES, TEACHERS UNDER EXISTING EMPLOYMENT CONTRACTS, supervisors, including business administrators, superintendents of schools and deputy, assistant, associate or other superintendents under all existing employment contracts or collective bargaining agreements, any and all expenditures associated with the operation of the board of education, the office of the superintendent of schools, general administration, the school business office, consulting costs not directly related to direct student services and programs, planning and all other administrative activities. The program component shall include, but need not be limited to, all program expenditures of the school district, including the salaries and benefits

of teachers and any school administrators or supervisors who spend a majority of their time performing teaching duties, and all transportation operating expenses. The capital component shall include, but need not be limited to, all transportation capital, debt service, and lease expenditures; costs resulting from judgments in tax certiorari proceedings or the payment of awards from court judgments, administrative orders or settled or compromised claims; and all facilities costs of the school district, including facilities lease expenditures, the annual debt service and total debt for all facilities financed by bonds and notes of the school district, and the costs of construction, acquisition, reconstruction, rehabilitation or improvement of school buildings, provided that such budget shall include a rental, operations and maintenance section that includes base rent costs, total rent costs, operation and maintenance charges, cost per square foot for each facility leased by the school district, and any and all expenditures associated with custodial salaries and benefits, service contracts, supplies, utilities, and maintenance and repairs of school facilities. For the purposes of the development of a budget for the nineteen hundred ninety-eight--ninety-nine school year, the board of education shall separate the district's program, capital and administrative costs for the nineteen hundred ninety-seven--ninety-eight school year in the manner as if the budget for such year had been presented in three components.

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

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

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

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

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

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

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

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

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

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

7. THE COMMISSIONER IS AUTHORIZED TO PROMULGATE REGULATIONS WITH RESPECT TO REPORTING COMMITTEES AS ARE NECESSARY FOR THE PROPER PERFORMANCE OF THEIR DUTIES.

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

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

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

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