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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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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