

4084

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. GABRYSZAK, SWEENEY, JAFFEE, CLARK, CORWIN --
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 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-d to
26 read as follows:

27 S 2116-D. 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 THIRTEEN AS A COMMITTEE OF THE TRUSTEES OR BOARD, AS
39 AN 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 ELEVEN;

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-D 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.