S T A T E O F N E W Y O R K

S. 1802 A. 1939

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

January 12, 2011

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Education

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Education

AN ACT to amend the education law, the executive law, the general municipal law, the labor law, the penal law and the retirement and social security law, in relation to enacting the "New York state school taxpayers' protection act"

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

Section 1. Short title. This act shall be known and may be cited as the "New York state school taxpayers' protection act".

S 2. Legislative findings and intent. Public school districts in New York state have recently experienced numerous instances of financial scandals. These scandals have been unprecedented in both the number and diversity of financial malfeasance. Furthermore, such scandals result in the diversion of hard-earned property taxpayers' money from their proper use in school instruction to improper and illegal purposes that do not further the school districts' essential mission of educating New York children. Therefore, the legislature finds that it is necessary to establish a new, independent state agency charged with the function of investigating allegations of corruption, financial improprieties, unethical conduct, misconduct or other criminal conduct within public school districts outside of New York city. In addition, the legislature further finds that the current laws must be amended to incorporate school district financial safeguards and establish sanctions for violations of school district finance laws.

S 3. The education law is amended by adding a new section 2116-d to read as follows:

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

LBD03816-01-1

S 2116-D. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF SUSPECTED CORRUPTION, OTHER CRIMINAL ACTIVITY OR CONFLICT OF INTEREST OCCURRING WITHIN THE OPERATIONS OF A SCHOOL DISTRICT. 1. THE FOLLOWING PERSONS AND OFFICIALS ARE REQUIRED TO REPORT OR CAUSE A REPORT TO BE MADE IN ACCORDANCE WITH THIS SECTION WHEN THEY DISCOVER INFORMATION CONCERNING CONDUCT WHICH IS KNOWN OR SHOULD REASONABLY BE KNOWN TO INVOLVE CORRUPTION OR OTHER CRIMINAL ACTIVITY OR CONFLICT OF INTEREST BY EITHER A PUBLIC SCHOOL DISTRICT EMPLOYEE THAT RELATES TO THEIR EMPLOYMENT OR BY A PERSON, PERSONS OR ENTITIES DOING BUSINESS WITH A PUBLIC SCHOOL DISTRICT WITH RESPECT TO THEIR TRANSACTIONS WITH THE SCHOOL DISTRICT, ANY SCHOOL DISTRICT OFFICER, AND ANY SCHOOL DISTRICT EMPLOYEE.

2. ANY PERSON OR OFFICIAL MANDATED TO REPORT CASES OF SUSPECTED CORRUPTION, OTHER CRIMINAL ACTIVITY OR CONFLICT OF INTEREST PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL IMMEDIATELY REPORT THE INFORMATION THEY HAVE TO THE NEW YORK STATE INSPECTOR GENERAL FOR EDUCATION, AS ESTABLISHED IN ARTICLE FOUR-B OF THE EXECUTIVE LAW.

3. ANY SCHOOL DISTRICT WHICH EMPLOYS PERSONS MANDATED TO REPORT SUSPECTED INCIDENTS OF CORRUPTION, OTHER CRIMINAL ACTIVITY OR CONFLICT OF INTEREST PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL PROVIDE SUCH CURRENT AND NEW EMPLOYEES WITH WRITTEN INFORMATION EXPLAINING THE REPORTING REQUIREMENTS SET OUT IN SUBDIVISION ONE OF THIS SECTION.

4. ANY PERSON OR OFFICIAL REQUIRED BY THIS SECTION TO REPORT CERTAIN INFORMATION AS SPECIFIED IN THIS SECTION WHO WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

5. ANY PERSON OR OFFICIAL REQUIRED BY THIS SECTION TO REPORT CERTAIN INFORMATION AS SPECIFIED IN THIS SECTION WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO SHALL BE CIVILLY LIABLE FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH FAILURE.

6. ANY PERSON OR OFFICIAL PARTICIPATING IN GOOD FAITH IN THE MAKING OF A REPORT UNDER THIS SECTION SHALL HAVE IMMUNITY FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS. FOR THE PURPOSE OF ANY PROCEEDING, CIVIL OR CRIMINAL, THE GOOD FAITH OF ANY SUCH PERSON OR OFFICIAL REQUIRED TO REPORT UNDER THIS SECTION SHALL BE PRESUMED, PROVIDED SUCH PERSON OR OFFICIAL WAS ACTING IN DISCHARGE OF THEIR DUTIES AND WITHIN THE SCOPE OF THEIR EMPLOYMENT, AND THAT SUCH LIABILITY DID NOT RESULT FROM THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF SUCH PERSON OR OFFICIAL.

S 4. Subdivision 6 of section 2122 of the education law is amended to read as follows:

6. Such treasurer shall[, whenever required by such trustees,] report to [them] SUCH TRUSTEES a detailed [statement] ANNUAL REPORT of the moneys received by him OR HER and of his OR HER disbursements, and at the annual meeting of such district he OR SHE shall render a full account of all moneys received by him OR HER and from what source, and when received, and all disbursements made by him OR HER and to whom and the dates of such disbursements respectively, and the balance of moneys remaining in his OR HER hands. THE TREASURER SHALL CERTIFY IN SUCH ANNUAL REPORT THAT HE OR SHE HAS: REVIEWED THE ANNUAL REPORT; THAT BASED ON THE TREASURER'S KNOWLEDGE, THE REPORT DOES NOT CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH SUCH STATEMENTS WERE MADE, NOT MISLEADING; AND BASED ON SUCH TREASURER'S KNOWLEDGE, THE FINANCIAL STATEMENTS, AND OTHER FINANCIAL INFORMATION INCLUDED IN THE REPORT, FAIRLY PRESENT IN ALL MATERIAL RESPECTS THE FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE SCHOOL DISTRICT AS OF, AND FOR, THE PERIODS PRESENTED IN THE REPORT.

S 5. Section 1720 of the education law is amended by adding a new subdivision 3 to read as follows:

3. THE TREASURER OF THE DISTRICT SHALL ISSUE AN ANNUAL REPORT WITH A FULL AND DETAILED ACCOUNT OF ALL MONEYS RECEIVED BY THE BOARD OR SUCH TREASURER, FOR ITS ACCOUNT AND USE, AND OF ALL THE MONEYS EXPENDED THEREFOR, GIVING THE ITEMS OF EXPENDITURE IN FULL. THE TREASURER SHALL CERTIFY IN SUCH ANNUAL REPORT THAT HE OR SHE HAS: REVIEWED THE ANNUAL REPORT; THAT BASED ON THE TREASURER'S KNOWLEDGE, THE REPORT DOES NOT CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH SUCH STATEMENTS WERE MADE, NOT MISLEADING; AND BASED ON SUCH TREASURER'S KNOWLEDGE, THE FINANCIAL STATEMENTS, AND OTHER FINANCIAL INFORMATION INCLUDED IN THE REPORT, FAIRLY PRESENT IN ALL MATERIAL RESPECTS THE FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE SCHOOL DISTRICT AS OF, AND FOR, THE PERIODS PRESENTED IN THE REPORT.

S 6. Section 2215 of the education law is amended by adding a new subdivision 17 to read as follows:

17. TO CERTIFY IN THE ANNUAL REPORT ISSUED PURSUANT TO EITHER SECTION SEVENTEEN HUNDRED TWENTY OF THIS CHAPTER OR SECTION TWENTY-ONE HUNDRED TWENTY-TWO OF THIS CHAPTER THAT HE OR SHE HAS: REVIEWED THE ANNUAL REPORT; THAT BASED ON THE SUPERINTENDENT'S KNOWLEDGE, THE REPORT DOES NOT CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH SUCH STATEMENTS WERE MADE, NOT MISLEADING; AND BASED ON SUCH SUPERINTENDENT'S KNOWLEDGE, THE FINANCIAL STATEMENTS, AND OTHER FINANCIAL INFORMATION INCLUDED IN THE REPORT, FAIRLY PRESENT IN ALL MATERIAL RESPECTS THE FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE SCHOOL DISTRICT AS OF, AND FOR, THE PERIODS PRESENTED IN THE REPORT.

S 7. The education law is amended by adding a new section 2116-e to read as follows:

S 2116-E. COMPENSATION 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 COMPENSATION COMMITTEE TO OVERSEE AND REPORT TO THE TRUSTEES OR BOARD ON THE PROPOSED CONTRACTS OF ALL SCHOOL DISTRICT BARGAINING UNITS, ADMINISTRATORS AND SUPERINTENDENTS.

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

3. THE COMPENSATION COMMITTEE SHALL CONSIST OF AT LEAST THREE MEMBERS, AT LEAST TWO OF WHOM SHALL NOT BE A TRUSTEE OR BOARD MEMBER. THE COMPENSATION COMMITTEE MEMBERS SHALL SERVE WITHOUT COMPENSATION. EMPLOYEES OF THE SCHOOL DISTRICT ARE PROHIBITED FROM SERVING ON THE COMPENSATION COMMITTEE. A MEMBER OF A COMPENSATION 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 COMPENSATION 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 COMPENSATION COMMITTEE TO:

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

(B) RECEIVE AND REVIEW PROPOSED CONTRACTS BETWEEN THE DISTRICT AND ANY BARGAINING UNITS, EMPLOYEES, 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 COMPENSATION 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 COMPENSATION COMMITTEES AS ARE NECESSARY FOR THE PROPER PERFORMANCE OF THEIR DUTIES.

8. AS LONG AS THE CHANCELLOR OF A SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE INHABITANTS SHALL ANNUALLY CERTIFY TO THE COMMISSIONER THAT SUCH DISTRICT HAS A PROCESS FOR REVIEW BY A COMPENSATION COMMITTEE OF THE DISTRICT'S CONTRACTS WITH ANY BARGAINING UNITS, EMPLOYEES, ADMINISTRATORS AND SUPERINTENDENTS, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO SUCH SCHOOL DISTRICT.

S 8. 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. WHERE ANY COLLECTIVE BARGAINING AGREEMENT, EMPLOYMENT CONTRACT OR AMENDMENTS TO SUCH AGREEMENT OR CONTRACT IS TO BE SUBMITTED TO A DISTRICT MEETING FOR A VOTE, THE SCHOOL DISTRICT BOARD OR TRUSTEES SHALL GIVE NOTICE, AT LEAST FIVE WEEKS PRIOR TO SUCH MEETING, THROUGH A DISTRICT-WIDE MAILING OF THE AVAILABILITY OF THE AGREEMENT, CONTRACT OR AMENDMENT AT PUBLIC LIBRARIES WITHIN THE DISTRICT, AT THE SCHOOL DISTRICT OFFICES AND ON THE SCHOOL DISTRICT'S INTERNET WEBSITE, IF ONE EXISTS.

S 9. 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 expenses, traveling expenses and all compensation, salaries and benefits of all school administrators and supervisors, including business administrators, superintendents of schools and deputy, assistant, associate or other superintendents under all existing employment contracts or collective bargaining agreements, AND TEACHERS UNDER EXISTING EMPLOYMENT CONTRACTS, 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 10. 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 of all school administrators and supervisors, including business administrators, superintendents of schools and deputy, assistant, associate or other superintendents under all existing employment contracts or collective bargaining agreements, AND TEACHERS UNDER EXISTING EMPLOYMENT CONTRACTS, 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 11. Subdivision 2 of section 1608 of the education law, as amended by chapter 640 of the laws of 2008, is amended to read as follows:

2. Such statement shall be completed at least seven days before the budget hearing at which it is to be presented and copies thereof shall be prepared and made available[, upon request and] at the school district offices, at any public library or free association library within the district and on the school district's internet website, if one exists, to residents within the district during the period of [fourteen] THIRTY days immediately preceding the annual meeting and election or special district meeting at which the budget vote will occur and at such meeting or hearing. The board shall also as a part of the notice required by section two thousand three of this chapter give notice of the date, time and place of the budget hearing and that a copy of such statement may be obtained by any resident in the district at each schoolhouse in the district in which school is maintained during certain designated hours on each day other than a Saturday, Sunday or holiday during the [fourteen] THIRTY days immediately preceding such meeting. The board shall include notice of the availability of such statement at least once during the school year in any district-wide mailing distributed.

S 12. Subdivision 2 of section 1716 of the education law, as amended by chapter 640 of the laws of 2008, is amended to read as follows:

2. Such statement shall be completed at least seven days before the budget hearing at which it is to be presented and copies thereof shall be prepared and made available[, upon request and] at the school district offices, at any public library or free association library within the district and on the school district's internet website, if one exists, to residents within the district during the period of [fourteen] THIRTY days immediately preceding the annual meeting and election or special district meeting at which the budget vote will occur and at such meeting or hearing. The board shall also as a part of the notice required by section two thousand four of this chapter give notice of the date, time and place of the budget hearing and that a copy of such statement may be obtained by any resident in the district at each schoolhouse in the district in which school is maintained during certain designated hours on each day other than a Saturday, Sunday or holiday during the [fourteen] THIRTY days immediately preceding such meeting. The board shall include notice of the availability of such statement at least once during the school year in any district-wide mailing distributed.

S 13. Paragraph (c) of subdivision 3 of section 2116-a of the education law, as added by chapter 263 of the laws of 2005, is amended to read as follows:

(c) Notwithstanding the provisions of subparagraph one of paragraph (b) of subdivision four of section thirty-five of the general municipal law, each school district shall (i) prepare a corrective action plan in response to any findings contained in the annual external audit report

or management letter, or any final audit report issued by the state comptroller, within ninety days of receipt of such report or letter, and (ii) to the extent practicable, begin implementation of such corrective action plan no later than the end of the next fiscal year. EACH SCHOOL DISTRICT SHALL NOTIFY THE DISTRICT RESIDENTS OF THE AVAILABILITY OF THE CORRECTIVE ACTION PLAN AT PUBLIC LIBRARIES WITHIN THE DISTRICT, AT THE SCHOOL DISTRICT OFFICES AND ON THE SCHOOL DISTRICT'S INTERNET WEBSITE, IF ONE EXISTS. ANY SCHOOL DISTRICT WHICH FAILS TO COMPLY WITH THE REQUIRED NOTIFICATION OF AVAILABILITY OF THE CORRECTIVE ACTION PLAN SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS UPON AN ADMINISTRATIVE DETERMINATION BY THE COMMISSIONER.

S 14. The education law is amended by adding a new section 1527-a to read as follows:

S 1527-A. FUNDING OF MANDATES IMPOSED ON SCHOOL DISTRICTS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT SHALL OTHERWISE REQUIRE:

(A) "MANDATE" SHALL MEAN:

(I) ANY STATE LAW, RULE OR REGULATION WHICH CREATES A NEW PROGRAM OR REQUIRES A HIGHER LEVEL OF SERVICE FOR AN EXISTING PROGRAM WHICH A SCHOOL DISTRICT ORGANIZED EITHER BY SPECIAL LAWS OR PURSUANT TO THE PROVISIONS OF A GENERAL LAW, IS REQUIRED TO PROVIDE; OR

(II) ANY GENERAL LAW WHICH GRANTS A NEW PROPERTY TAX EXEMPTION OR INCREASES AN EXISTING PROPERTY TAX EXEMPTION WHICH ANY SUCH SCHOOL DISTRICT IS REQUIRED TO PROVIDE.

(B) "UNFUNDED MANDATE" SHALL MEAN:

(I) ANY STATE LAW, RULE OR REGULATION WHICH CREATES A NEW PROGRAM OR REQUIRES A HIGHER LEVEL OF SERVICE FOR AN EXISTING PROGRAM WHICH ANY SUCH SCHOOL DISTRICT IS REQUIRED TO PROVIDE AND WHICH RESULTS IN A NET ADDITIONAL COST TO SUCH SCHOOL DISTRICT;

(II) ANY ALTERATION IN FUNDING PROVIDED TO ANY SUCH SCHOOL DISTRICT FOR THE PURPOSE OF DEFRAYING THE COSTS OF A PROGRAM WHICH IT IS REQUIRED TO PROVIDE, THEREBY RESULTING IN A NET ADDITIONAL COST TO SUCH SCHOOL DISTRICT; OR

(III) ANY GENERAL LAW WHICH GRANTS A NEW PROPERTY TAX EXEMPTION OR INCREASES AN EXISTING PROPERTY TAX EXEMPTION WHICH ANY SUCH SCHOOL DISTRICT IS REQUIRED TO PROVIDE, THEREBY RESULTING IN A NET ADDITIONAL COST TO SUCH SCHOOL DISTRICT.

(C) "NET ADDITIONAL COST" MEANS THE COST OR COSTS INCURRED OR ANTICIPATED TO BE INCURRED WITHIN A ONE YEAR PERIOD BY A SCHOOL DISTRICT IN PERFORMING OR ADMINISTERING A MANDATE AFTER SUBTRACTING THEREFROM ANY REVENUES RECEIVED OR RECEIVABLE BY THE SCHOOL DISTRICT ON ACCOUNT OF THE MANDATED PROGRAM OR SERVICE, INCLUDING BUT NOT LIMITED TO:

(I) FEES CHARGED TO THE RECIPIENTS OF THE MANDATED PROGRAM OR SERVICE;

(II) STATE OR FEDERAL AID PAID SPECIFICALLY OR CATEGORICALLY IN CONNECTION WITH THE PROGRAM OR SERVICE; AND

(III) AN OFFSETTING SAVINGS RESULTING FROM THE DIMINUTION OR ELIMINATION OF ANY OTHER PROGRAM OR SERVICE DIRECTLY ATTRIBUTABLE TO THE PERFORMANCE OR ADMINISTRATION OF THE MANDATED PROGRAM.

2. FUNDING OF SCHOOL DISTRICT MANDATES. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO UNFUNDED MANDATE SHALL BE ENACTED WHICH CREATES AN ANNUAL NET ADDITIONAL COST TO ANY SCHOOL DISTRICT IN EXCESS OF FIVE THOUSAND DOLLARS OR AN AGGREGATE ANNUAL NET ADDITIONAL COST TO ALL SCHOOL DISTRICTS IN EXCESS OF FIVE HUNDRED THOUSAND DOLLARS.

3. EXEMPTIONS TO THE FUNDING OF SCHOOL DISTRICT MANDATES REQUIREMENT. (A) THE STATE SHALL NOT BE REQUIRED TO FUND ANY NEW OR EXPANDED PROGRAMS FOR SCHOOL DISTRICTS IF: (I) THE MANDATE IS REQUIRED BY A COURT ORDER

OR JUDGMENT; (II) THE MANDATE IS PROVIDED AT THE OPTION OF THE SCHOOL DISTRICT UNDER A LAW, REGULATION, RULE, OR ORDER THAT IS PERMISSIVE RATHER THAN MANDATORY; (III) THE MANDATE RESULTS FROM THE PASSAGE OF A HOME RULE MESSAGE WHEREBY A SCHOOL DISTRICT REQUESTS AUTHORITY TO IMPLEMENT THE PROGRAM OR SERVICE SPECIFIED IN THE STATUTE, AND THE STATUTE IMPOSES COSTS ONLY UPON THAT SCHOOL DISTRICT WHICH REQUESTS THE AUTHORITY TO IMPOSE THE PROGRAM OR SERVICE; (IV) THE MANDATE IS REQUIRED BY, OR ARISES FROM, AN EXECUTIVE ORDER OF THE GOVERNOR EXERCISING HIS OR HER EMERGENCY POWERS; OR (V) THE MANDATE IS REQUIRED BY STATUTE OR EXECUTIVE ORDER THAT IMPLEMENTS A FEDERAL LAW OR REGULATION AND RESULTS FROM COSTS MANDATED BY THE FEDERAL GOVERNMENT TO BE BORNE AT THE LOCAL LEVEL, UNLESS THE STATUTE OR EXECUTIVE ORDER RESULTS IN COSTS WHICH EXCEED THE COSTS MANDATED BY THE FEDERAL GOVERNMENT.

(B) EACH ACT ESTABLISHING A MANDATE SHALL PROVIDE THAT THE EFFECTIVE DATE OF ANY SUCH MANDATE IMPOSED ON SCHOOL DISTRICTS SHALL BE CONSISTENT WITH THE NEEDS OF THE STATE AND SCHOOL DISTRICTS TO PLAN IMPLEMENTATION THEREOF, AND ALSO CONSISTENT WITH THE AVAILABILITY OF REQUIRED FUNDS.

S 15. The executive law is amended by adding a new article 4-B to read as follows:

ARTICLE 4-B

OFFICE OF THE STATE INSPECTOR GENERAL FOR EDUCATION

SECTION 57. ESTABLISHMENT AND ORGANIZATION.
58. FUNCTIONS AND DUTIES.
59. POWERS.

S 57. ESTABLISHMENT AND ORGANIZATION. 1. THERE IS HEREBY ESTABLISHED THE OFFICE OF THE STATE INSPECTOR GENERAL FOR EDUCATION. THE HEAD OF THE OFFICE SHALL BE THE EDUCATION INSPECTOR GENERAL, WHO SHALL BE APPOINTED BY THE BOARD OF THE OFFICE OF THE STATE INSPECTOR GENERAL FOR EDUCATION. SUCH OFFICE SHALL BE INDEPENDENT OF THE DEPARTMENT OF EDUCATION AND OF ANY OTHER OFFICE, AGENCY, BOARD OR COMMISSION OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

2. THE EDUCATION INSPECTOR GENERAL MAY EMPLOY AND AT THEIR PLEASURE REMOVE SUCH PERSONNEL AS THEY DEEM NECESSARY FOR THE PERFORMANCE OF THE OFFICE, AND MAY FIX THEIR COMPENSATION WITH AMOUNTS AVAILABLE THEREFOR.

3. THERE IS HEREBY ESTABLISHED THE BOARD OF THE OFFICE OF THE STATE INSPECTOR GENERAL FOR EDUCATION WHICH SHALL CONSIST OF ELEVEN MEMBERS, AND SHALL HAVE AND EXERCISE THE POWERS AND DUTIES OF THE OFFICE OF THE STATE INSPECTOR GENERAL FOR EDUCATION.

4. THE BOARD MEMBERS SHALL BE APPOINTED AS FOLLOWS:

(A) THREE MEMBERS SHALL BE APPOINTED BY THE GOVERNOR, ONE OF WHOM SHALL BE DESIGNATED BY THE GOVERNOR AS THE CHAIR OF THE BOARD;

(B) THREE MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE;

(C) THREE MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY;

(D) ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY; AND

(E) ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE.

5. THE BOARD MEMBERS SHALL SERVE FOR TERMS OF FIVE YEARS.

6. THE CHAIR OF THE BOARD OR ANY FIVE MEMBERS THEREOF MAY CALL A MEETING OF THE BOARD.

7. ANY VACANCY OCCURRING ON THE BOARD SHALL BE FILLED WITHIN SIXTY DAYS OF ITS OCCURRENCE, IN THE SAME MANNER AS THE MEMBER WHOSE VACANCY IS BEING FILLED WAS APPOINTED. A PERSON APPOINTED TO FILL A VACANCY

OCCURRING OTHER THAN BY EXPIRATION OF A TERM OF OFFICE SHALL BE APPOINTED FOR THE UNEXPIRED TERM OF THE MEMBER HE OR SHE SUCCEEDS.

8. SIX MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM AND THE BOARD SHALL HAVE THE POWER TO ACT BY MAJORITY VOTE OF THE TOTAL NUMBER OF MEMBERS OF THE BOARD WITHOUT VACANCY.

9. THE BOARD MEMBERS SHALL NOT RECEIVE COMPENSATION BUT SHALL BE REIMBURSED FOR REASONABLE EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

10. THE BOARD SHALL APPOINT AN EDUCATION INSPECTOR GENERAL WHO SHALL PERFORM THE POWERS AND DUTIES SET FORTH IN SECTIONS FIFTY-EIGHT AND FIFTY-NINE OF THIS ARTICLE, AND WHO SHALL SERVE FOR A TERM OF FIVE YEARS AND MAY ONLY BE DISMISSED FOR CAUSE OR BY A THREE-QUARTERS VOTE OF THE BOARD. THE BOARD MAY FIX THE COMPENSATION OF THE EDUCATION INSPECTOR GENERAL.

11. NO BOARD MEMBER, NOR THE EDUCATION INSPECTOR GENERAL, SHALL HOLD ANY ELECTED PUBLIC OFFICE OR OFFICE IN ANY POLITICAL PARTY, NOR SHALL ANY MEMBER BE AN EMPLOYEE OF OR UNDER THE SUPERVISION OF ANY PERSON WHO HOLDS SUCH ELECTED PUBLIC OFFICE OR OFFICE OF A POLITICAL PARTY. NO MEMBER OF THE BOARD SHALL SERVE IN ANY PUBLIC OR POLITICAL OFFICE WITHIN FIVE YEARS OF THE MEMBER'S PERIOD OF SERVICE.

12. THE EDUCATION INSPECTOR GENERAL SHALL, PRIOR TO THEIR APPOINTMENT, HAVE HAD AT LEAST TEN YEARS EXPERIENCE IN AUDITING OR LAW ENFORCEMENT OR INVESTIGATION, OR IN PROSECUTING OR AIDING IN THE PROSECUTION OF FRAUD.

13. MEMBERS OF THE BOARD SHALL, PRIOR TO THEIR APPOINTMENT, HAVE HAD AT LEAST THREE YEARS EXPERIENCE IN AUDITING OR INVESTIGATION OF GOVERNMENTAL OR SCHOOL DISTRICT OPERATIONS, OR IN THE PRACTICE OF LAW, LAW ENFORCEMENT OR IN SERVICES RELATED TO DEVELOPMENT AND MANAGEMENT OF INFORMATION TECHNOLOGY OR DATABASE CREATION AND MAINTENANCE.

S 58. FUNCTIONS AND DUTIES. THE EDUCATION INSPECTOR GENERAL SHALL HAVE THE FOLLOWING DUTIES AND RESPONSIBILITIES:

1. TO RECEIVE AND INVESTIGATE COMPLAINTS FROM ANY SOURCE, OR UPON HIS OR HER OWN INITIATIVE, CONCERNING ALLEGATIONS OF CORRUPTION, FINANCIAL IMPROPRIETIES, UNETHICAL CONDUCT, MISCONDUCT OR OTHER CRIMINAL CONDUCT WITHIN PUBLIC SCHOOL DISTRICTS OUTSIDE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE;

2. TO INVESTIGATE AND REPORT ON CORRUPTION AND OTHER CRIMINAL ACTIVITY, SCHOOL BOARD ELECTION FRAUD, BIDDING IRREGULARITIES AND CONFLICTS OF INTEREST BY PUBLIC SCHOOL DISTRICT EMPLOYEES WHOSE ACTIONS RELATE TO THEIR EMPLOYMENT, PERSONS OR ENTITIES DOING BUSINESS WITH A PUBLIC SCHOOL DISTRICT CONCERNING THEIR TRANSACTIONS WITH THE SCHOOL DISTRICT, AND SCHOOL BOARD MEMBERS WHOSE ACTIONS RELATE TO THEIR OFFICE;

3. TO DETERMINE WITH RESPECT TO SUCH ALLEGATIONS WHETHER DISCIPLINARY ACTION, CIVIL OR CRIMINAL PROSECUTION, OR FURTHER INVESTIGATION BY AN APPROPRIATE FEDERAL, STATE OR LOCAL AGENCY IS WARRANTED, AND TO ASSIST IN SUCH INVESTIGATIONS;

4. TO REVIEW AND EXAMINE PERIODICALLY THE POLICIES AND PROCEDURES OF PUBLIC SCHOOL DISTRICTS WITH REGARD TO THE PREVENTION AND DETECTION OF CORRUPTION, FINANCIAL IMPROPRIETIES, UNETHICAL CONDUCT, MISCONDUCT, OTHER CRIMINAL CONDUCT, SCHOOL BOARD ELECTION FRAUD, BIDDING IRREGULARITIES AND CONFLICTS OF INTEREST OR ABUSE;

5. TO RECOMMEND REMEDIAL ACTION TO PREVENT OR ELIMINATE CORRUPTION, FINANCIAL IMPROPRIETIES, UNETHICAL CONDUCT, MISCONDUCT, OTHER CRIMINAL CONDUCT, SCHOOL BOARD ELECTION FRAUD, BIDDING IRREGULARITIES, CONFLICTS OF INTEREST OR ABUSE BY PUBLIC SCHOOL DISTRICT OFFICIALS AND EMPLOYEES;

6. TO ESTABLISH PROGRAMS FOR TRAINING PUBLIC SCHOOL OFFICIALS AND EMPLOYEES REGARDING THE PREVENTION AND ELIMINATION OF CORRUPTION, FINAN-

CIAL IMPROPRIETIES, UNETHICAL CONDUCT, MISCONDUCT, OTHER CRIMINAL CONDUCT, SCHOOL BOARD ELECTION FRAUD, BIDDING IRREGULARITIES AND CONFLICTS OF INTEREST OR ABUSE;

7. TO PREPARE AN ANNUAL REPORT THAT PROVIDES THE RESULTS OF THE EDUCATION INSPECTOR GENERAL'S FINDINGS WITH RESPECT TO ALL INVESTIGATIONS AND DETAILED ANALYSIS OF THE CURRENT FINANCIAL STATUS OF THOSE SCHOOL DISTRICTS THAT HAVE BEEN REVIEWED;

8. TO INCLUDE IN SUCH REPORT ANY FINDINGS REGARDING THE FINANCIAL PRACTICES OF THE SCHOOL DISTRICT THAT THE EDUCATION INSPECTOR GENERAL BELIEVES VIOLATED, OR COULD POTENTIALLY VIOLATE, EXISTING STATE RULES OR REGULATIONS OR MAY BE OF CONCERN IN THAT INCOMPETENCE OR LACK OF TRAINING MAY RESULT IN FINANCIAL PRACTICES THAT VIOLATE STATE RULES AND REGULATIONS;

9. TO ISSUE THE REPORT TO THE LEGISLATURE, THE COMPTROLLER AND THE DEPARTMENT OF EDUCATION WITH EACH ANNUAL REPORT POSTED ON A PUBLIC INTERNET WEBSITE FOR AT LEAST FIVE YEARS FROM THE DATE OF ISSUANCE.

S 59. POWERS. THE EDUCATION INSPECTOR GENERAL SHALL HAVE THE POWER TO:

1. SUBPOENA AND ENFORCE THE ATTENDANCE OF WITNESSES, INCLUDING THE POWER TO SUBPOENA DOCUMENTS AND RECORDS NECESSARY TO ANY INVESTIGATION FROM ANY PUBLIC SCHOOL DISTRICT OUTSIDE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE AND FROM VENDORS WHO DO BUSINESS WITH SUCH PUBLIC SCHOOL DISTRICTS;

2. ADMINISTER OATHS OR AFFIRMATIONS AND EXAMINE WITNESSES UNDER OATH;

3. REQUIRE THE PRODUCTION OF ANY BOOKS AND PAPERS DEEMED RELEVANT OR MATERIAL TO ANY INVESTIGATION, EXAMINATION OR REVIEW;

4. NOTWITHSTANDING ANY LAW TO THE CONTRARY, EXAMINE AND COPY OR REMOVE DOCUMENTS OR RECORDS OF ANY KIND PREPARED, MAINTAINED OR HELD BY ANY PUBLIC SCHOOL DISTRICT COVERED BY THIS ARTICLE;

5. REQUIRE ANY PUBLIC SCHOOL DISTRICT EMPLOYEE TO ANSWER QUESTIONS CONCERNING ANY MATTER RELATED TO THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES. NO STATEMENT OR OTHER EVIDENCE DERIVED THEREFROM MAY BE USED AGAINST SUCH OFFICER OR EMPLOYEE IN ANY SUBSEQUENT CRIMINAL PROSECUTION OTHER THAN FOR PERJURY OR CONTEMPT ARISING FROM SUCH TESTIMONY. THE REFUSAL OF ANY OFFICER OR EMPLOYEE TO ANSWER QUESTIONS SHALL BE CAUSE FOR REMOVAL FROM OFFICE OR EMPLOYMENT OR OTHER APPROPRIATE PENALTY;

6. MONITOR THE IMPLEMENTATION BY PUBLIC SCHOOL DISTRICTS OF ANY RECOMMENDATIONS MADE BY THE EDUCATION INSPECTOR GENERAL;

7. PERFORM ANY OTHER FUNCTIONS THAT ARE NECESSARY OR APPROPRIATE TO FULFILL THE DUTIES AND RESPONSIBILITIES OF THE OFFICE.

S 16. Subparagraphs 2 and 3 of paragraph b of subdivision 2 of section 33 of the general municipal law, as added by chapter 267 of the laws of 2005, are amended and a new subparagraph 4 is added to read as follows:

(2) assessing the current financial practices of school districts, BOCES and charter schools to ensure that they are consistent with established standards, [and]

(3) determining that school districts, BOCES, and charter schools provide for adequate protections against any fraud, theft, or professional misconduct[.], AND

(4) AUDITING FEDERAL AND STATE GRANT PROGRAM EXPENDITURES IN ALL SCHOOL DISTRICTS, BOCES AND CHARTER SCHOOLS.

S 17. Paragraph d of subdivision 2 of section 33 of the general municipal law, as added by chapter 267 of the laws of 2005, is amended to read as follows:

d. The office of the state comptroller shall upon making a finding of misconduct refer any findings of fraud, abuse or other conduct consti-

tuting a crime that are uncovered during the course of an audit, as appropriate, to the commissioner of education, THE NEW YORK STATE INSPECTOR GENERAL FOR EDUCATION, the charter entity, the attorney general, United States attorney or district attorney having jurisdiction for appropriate action, together with any documents supporting the auditors' findings.

S 18. The labor law is amended by adding a new section 742 to read as follows:

S 742. PROHIBITION; PUBLIC SCHOOL DISTRICT EMPLOYER WHO PENALIZES EMPLOYEES BECAUSE OF COMPLAINTS OF EMPLOYER MALFEASANCE. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS SERVICES FOR AND UNDER THE CONTROL AND DIRECTION OF ANY PUBLIC SCHOOL DISTRICT OUTSIDE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE FOR WAGES OR OTHER REMUNERATION.

(B) "EMPLOYER" MEANS ANY PUBLIC SCHOOL DISTRICT OUTSIDE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE.

(C) "AGENT" MEANS ANY INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORATION, OR GROUP OF PERSONS ACTING ON BEHALF OF AN EMPLOYER.

(D) "PUBLIC BODY" MEANS:

(1) THE UNITED STATES CONGRESS, ANY STATE LEGISLATURE, OR ANY ELECTED LOCAL GOVERNMENTAL BODY, OR ANY MEMBER OR EMPLOYEE THEREOF;

(2) THE NEW YORK STATE INSPECTOR GENERAL FOR EDUCATION;

(3) THE STATE COMPTROLLER;

(4) THE ATTORNEY GENERAL;

(5) ANY FEDERAL, STATE OR LOCAL REGULATORY, ADMINISTRATIVE OR PUBLIC AGENCY OR AUTHORITY, OR INSTRUMENTALITY THEREOF;

(6) ANY FEDERAL, STATE OR LOCAL LAW ENFORCEMENT AGENCY, PROSECUTORIAL OFFICE, OR POLICE OR PEACE OFFICER;

(7) ANY FEDERAL, STATE OR LOCAL DEPARTMENT OF AN EXECUTIVE BRANCH OF GOVERNMENT; OR

(8) ANY DIVISION, BOARD, BUREAU, OFFICE, COMMITTEE OR COMMISSION OF ANY OF THE PUBLIC BODIES DESCRIBED IN SUBPARAGRAPH ONE, TWO, THREE, FOUR, FIVE, SIX OR SEVEN OF THIS PARAGRAPH.

(E) "RETALIATORY ACTION" MEANS THE DISCHARGE, SUSPENSION, DEMOTION, PENALIZATION OR DISCRIMINATION AGAINST AN EMPLOYEE, OR OTHER ADVERSE EMPLOYMENT ACTION TAKEN AGAINST AN EMPLOYEE IN THE TERMS AND CONDITIONS OF EMPLOYMENT.

(F) "SUPERVISOR" MEANS ANY PERSON WITHIN AN EMPLOYER'S ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE WORK PERFORMANCE OF AN EMPLOYEE, OR WHO HAS THE AUTHORITY TO TAKE CORRECTIVE ACTION REGARDING FRAUD, CRIMINAL ACTIVITY OR OTHER MALFEASANCE TO WHICH AN EMPLOYEE SUBMITS A COMPLAINT.

2. RETALIATORY ACTION PROHIBITED. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO EMPLOYER SHALL TAKE RETALIATORY ACTION AGAINST ANY EMPLOYEE BECAUSE THE EMPLOYEE DOES ANY OF THE FOLLOWING:

(A) DISCLOSES OR THREATENS TO DISCLOSE TO A SUPERVISOR, OR TO A PUBLIC BODY AN ACTIVITY, POLICY OR PRACTICE OF THE EMPLOYER OR AGENT THAT THE EMPLOYEE, IN GOOD FAITH, REASONABLY BELIEVES CONSTITUTES FRAUD, CRIMINAL ACTIVITY OR OTHER MALFEASANCE; OR

(B) OBJECTS TO, OR REFUSES TO PARTICIPATE IN ANY ACTIVITY, POLICY OR PRACTICE OF THE EMPLOYER OR AGENT THAT THE EMPLOYEE, IN GOOD FAITH, REASONABLY BELIEVES CONSTITUTES FRAUD, CRIMINAL ACTIVITY OR OTHER MALFEASANCE.

3. ENFORCEMENT. AN EMPLOYEE MAY SEEK ENFORCEMENT OF THIS SECTION PURSUANT TO PARAGRAPH (E) OF SUBDIVISION FOUR OF SECTION SEVEN HUNDRED FORTY OF THIS ARTICLE.

4. RELIEF. IN ANY COURT ACTION BROUGHT PURSUANT TO THIS SECTION IT SHALL BE A DEFENSE THAT THE PERSONNEL ACTION WAS PREDICATED UPON GROUNDS OTHER THAN THE EMPLOYEE'S EXERCISE OF ANY RIGHTS PROTECTED BY THIS SECTION.

S 19. Subdivision 4 of section 740 of the labor law is amended by adding a new paragraph (e) to read as follows:

(E) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A) AND (C) OF THIS SUBDIVISION, AN EMPLOYEE WHO HAS BEEN THE SUBJECT OF A RETALIATORY ACTION BY AN EMPLOYER IN VIOLATION OF SECTION SEVEN HUNDRED FORTY-TWO OF THIS ARTICLE MAY INSTITUTE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR RELIEF AS SET FORTH IN SUBDIVISION FIVE OF THIS SECTION WITHIN TWO YEARS AFTER THE ALLEGED RETALIATORY PERSONNEL ACTION WAS TAKEN. IN ADDITION TO THE RELIEF SET FORTH IN SUCH SUBDIVISION FIVE, THE COURT, IN ITS DISCRETION, BASED UPON A FINDING THAT THE EMPLOYER ACTED IN BAD FAITH IN THE RETALIATORY ACTION, MAY ORDER THE EMPLOYER TO TERMINATE THE SUPERVISOR WHO RETALIATED AGAINST THE EMPLOYEE.

S 20. The penal law is amended by adding a new section 190.72 to read as follows:

S 190.72 DEFRAUDING A PUBLIC PENSION PLAN.

A PERSON IS GUILTY OF DEFRAUDING A PUBLIC PENSION PLAN WHEN HE OR SHE ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO OBTAIN A BENEFIT OR ASSET, OR ASSIST 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 TO PURSUANT TO THE RESTRICTION OF SECTION TWO HUNDRED ELEVEN OF THE RETIREMENT AND SOCIAL SECURITY LAW.

DEFRAUDING A PUBLIC PENSION PLAN IS A CLASS E FELONY.

S 21. Section 211 of the retirement and social security law is amended by adding a new subdivision 9 to read as follows:

9. A RETIRED PERSON RECEIVING A RETIREMENT ALLOWANCE WHO IS EMPLOYED AND EARNING COMPENSATION IN A PUBLIC SERVICE POSITION OR POSITIONS WITH THE TOTAL COMPENSATION EXCEEDING THE LIMITATIONS SET FORTH IN SECTION TWO HUNDRED TWELVE OF THIS ARTICLE AND SUCH PERSON HAS NOT OBTAINED THE REQUISITE WAIVER SET FORTH IN THIS SECTION, AS WELL AS ANY PERSON WHO KNOWINGLY ASSISTS ANOTHER PERSON IN RECEIVING A RETIREMENT ALLOWANCE WHILE RECEIVING TOTAL COMPENSATION IN A PUBLIC SERVICE POSITION OR POSITIONS EXCEEDING THE LIMITS OF SECTION TWO HUNDRED TWELVE OF THIS ARTICLE AND NOT HAVING OBTAINED THE REQUISITE WAIVER, IS GUILTY OF LARCENY AND PUNISHABLE AS PROVIDED IN THE PENAL LAW.

S 22. This act shall take effect January 1, 2012.