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

5049

2013-2014 Regular Sessions

I N A S S E M B L Y

February 14, 2013

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

AN ACT to amend the education law, in relation to creating a school board empowerment act which allows local school districts to declare a fiscal emergency under designated conditions and fiscally restructure so as to minimize adverse impacts on student education; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. The education law is amended by adding a new title 5-a to read as follows:

TITLE V-A

SCHOOL BOARD EMPOWERMENT

ARTICLE 78. SCHOOL BOARD EMPOWERMENT (SS 3850-3853)

ARTICLE 78

SCHOOL BOARD EMPOWERMENT

SECTION 3850. DECLARATION OF FISCAL EMERGENCY.
3851. TEMPORARY FREEZE OF EXPENDITURE INCREASES.
3852. RESTRUCTURING OPERATIONS.
3853. RESTRUCTURING PLAN.

S 3850. DECLARATION OF FISCAL EMERGENCY. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW TO THE CONTRARY, UPON A MAJORITY VOTE OF THE SCHOOL BOARD A FISCAL EMERGENCY MAY BE DECLARED ALLOWING THE SCHOOL BOARD TO TAKE REASONABLE STEPS TO AMELIORATE THE FISCAL EMERGENCY PURSUANT TO THE PROVISIONS OF THIS ARTICLE. TO DECLARE A FISCAL EMERGENCY THE BOARD MUST BE ABLE TO DEMONSTRATE:

1. PROJECTED EXPENSES EXCEED ALL AVAILABLE REVENUE; AND

2. THE SCHOOL BUDGET WAS REJECTED BY VOTERS OR FAILED TO RECEIVE THE VOTES NECESSARY TO EXCEED ANY ENACTED PROPERTY TAX CAP. SUCH SCHOOL BOARD VOTE SHALL BE MADE FOLLOWING A PUBLIC HEARING AT WHICH THE SCHOOL BOARD SHALL PROVIDE EVIDENCE THAT PROJECTED EXPENSES EXCEED ALL AVAIL-

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

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ABLE REVENUE. EVIDENCE PROFFERED BY THE SCHOOL BOARD SHALL INCLUDE A SHOWING OF PROJECTED INCREASES IN CONTRACTUALLY MANDATED COSTS, PENSION COSTS, HEALTH CARE COSTS, UTILITY COSTS, AND OTHER EXPENDITURES, EXCEED REVENUES FROM STATE AID AND OTHER REVENUES. SUCH PUBLIC HEARING SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW.

S 3851. TEMPORARY FREEZE OF EXPENDITURE INCREASES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON THE DECLARATION OF A FISCAL EMERGENCY PURSUANT TO SECTION THIRTY-EIGHT HUNDRED FIFTY OF THIS ARTICLE THE SCHOOL BOARD SHALL HAVE THE AUTHORITY TO FREEZE ANY INCREASES IN EXPENDITURES IN A MANNER THAT MINIMIZES ANY ADVERSE IMPACT ON STUDENT EDUCATION. EXPENDITURE FREEZES MAY INCLUDE FREEZING EMPLOYEE SALARIES AND ANY CONTRACTUALLY NEGOTIATED INCREASES TO EMPLOYEE SALARIES PROVIDED THAT BEFORE IMPLEMENTING A SALARY FREEZE THE SCHOOL BOARD DETERMINES BY A MAJORITY VOTE THAT:

A. THE SCHOOL BOARD HAS CONSIDERED ALL OTHER REASONABLE ALTERNATIVES PRIOR TO IMPAIRING ANY EXISTING EMPLOYEE CONTRACTS;

B. NO OTHER REASONABLE COURSE OF ACTION WOULD SERVE ITS PURPOSE; AND

C. ITS ACTIONS ARE REASONABLE IN LIGHT OF THE SURROUNDING CIRCUMSTANCES.

2. ALL EXPENDITURE FREEZES APPROVED BY THE SCHOOL BOARD SHALL BE DISCLOSED AT A PUBLIC HEARING CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW.

S 3852. RESTRUCTURING OPERATIONS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW TO THE CONTRARY SHOULD A SCHOOL BOARD VOTE AFFIRMATIVELY TO ADOPT AN EMPLOYEE SALARY FREEZE THE SCHOOL BOARD SHALL BE REQUIRED TO COMPLY WITH ALL THE PROVISIONS OF THIS SECTION.

2. THE SCHOOL BOARD SHALL ENTER INTO A NINETY-DAY PERIOD OF NEGOTIATIONS WITH ITS EMPLOYEES AND/OR THEIR DULY APPOINTED REPRESENTATIVES. AT THE REQUEST OF EITHER PARTY, A PUBLIC EMPLOYMENT RELATIONS BOARD MEDIATOR SHALL BE ASSIGNED TO OVERSEE AND ASSIST SUCH NEGOTIATIONS.

3. UPON EXPIRATION OF SUCH NINETY-DAY PERIOD THE SCHOOL BOARD SHALL HAVE THE POWER TO RESTRUCTURE OPERATIONS INCLUDING CHANGING THE TERMS AND CONDITIONS OF ANY CURRENT EMPLOYMENT CONTRACTS, ADJUSTING PAY LEVELS AND MANDATORY STAFFING REQUIREMENTS, WORK RULES, AND HEALTH INSURANCE BENEFITS AND CONTRIBUTIONS. TO IMPLEMENT ANY MEASURE THAT IMPAIRS ANY EMPLOYEES' RIGHTS UNDER A CURRENT CONTRACT THE SCHOOL BOARD SHALL BE REQUIRED TO SHOW:

A. THAT PERFORMANCE UNDER THE CURRENT CONTRACT TERMS WOULD HAVE AN ADVERSE IMPACT ON STUDENT EDUCATION DUE TO FISCAL CONSTRAINTS;

B. THAT THE SCHOOL BOARD HAS CONSIDERED ALL OTHER REASONABLE ALTERNATIVES PRIOR TO IMPAIRING ANY EXISTING EMPLOYEE CONTRACTS AND NO OTHER COURSE OF ACTION WOULD BETTER SERVE ITS PURPOSE; AND

C. THE SCHOOL BOARD'S ACTIONS ARE REASONABLE IN LIGHT OF THE SURROUNDING CIRCUMSTANCES.

4. ANY REVISED CONTRACTS SHALL REMAIN IN EFFECT UNTIL A NEW COLLECTIVE BARGAINING AGREEMENT IS NEGOTIATED.

5. THE PROVISIONS OF SECTIONS FIFTEEN HUNDRED FIVE-A, EIGHTEEN HUNDRED FOUR, NINETEEN HUNDRED SEVENTEEN, NINETEEN HUNDRED SEVENTEEN-A, TWENTY-FIVE HUNDRED TEN, TWENTY-FIVE HUNDRED EIGHTY-EIGHT, THREE THOUSAND THIRTEEN, THREE THOUSAND FOURTEEN-A, THREE THOUSAND FOURTEEN-B, THREE THOUSAND FOURTEEN-C, AND THREE THOUSAND FOURTEEN-D OF THIS CHAPTER PERTAINING TO SENIORITY BASE EMPLOYEE RETENTION SHALL NOT APPLY WHEN A SCHOOL BOARD HAS DECLARED A FISCAL EMERGENCY PURSUANT TO SECTION THIRTY-EIGHT HUNDRED FIFTY OF THIS ARTICLE AND IS IN THE PROCESS OF RESTRUCTURING OPERATIONS UNDER THE PROVISIONS OF THIS SECTION. DECISIONS ON THE

RETENTION OF TEACHERS, SHOULD POSITIONS BE ABOLISHED, SHALL BE BASED ON A NUMBER OF FACTORS INCLUDING, BUT NOT LIMITED TO: THE SCHOOLS' NEEDS FOR PARTICULAR LICENSE AREAS; THE ANNUAL PROFESSIONAL PERFORMANCE REVIEW CONDUCTED PURSUANT TO SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER, AVAILABLE STUDENT PERFORMANCE DATA; ATTENDANCE; AN ASSESSMENT OF THE TEACHER'S PERFORMANCE BY THE TEACHER'S BUILDING PRINCIPAL OR OTHER BUILDING ADMINISTRATOR IN CHARGE OF THE SCHOOL OR PROGRAM; THE EDUCATIONAL QUALIFICATIONS OF THE TEACHER INCLUDING CURRICULUM SPECIALIZED EDUCATION, DEGREES, LICENSES, OR AREAS OF EXPERTISE; THE LENGTH OF SATISFACTORY SERVICE; AND OTHER FACTORS RELATED TO THE TEACHER'S EXPERIENCE AND DEMONSTRATED ABILITY. THE TEACHER'S SALARY SHALL NOT BE A FACTOR IN MAKING A LAYOFF RECOMMENDATION. THE BOARD OF EDUCATION SHALL EXERCISE ITS DISCRETION AND SHALL APPROVE OR REJECT THE RECOMMENDATIONS OF THE SUPERINTENDENT SO AS TO MINIMIZE THE ADVERSE IMPACT ON STUDENT EDUCATION.

6. SCHOOL BOARDS SHALL HAVE THE AUTHORITY TO ENTER INTO NEW COLLECTIVE BARGAINING AGREEMENTS THAT ALTER EMPLOYEE CONTRIBUTION REQUIREMENTS AND/OR THE AMOUNT OF EMPLOYEE SALARIES CONSIDERED BY THE RETIREMENT SYSTEM FOR PENSION PURPOSES.

7. THE SCHOOL BOARD SHALL INCLUDE ANALYSIS OF OTHER PLAUSIBLE MEANS OF RAISING REVENUE, AND UPON A MAJORITY VOTE IMPLEMENT SUCH MEASURES BEFORE REDUCING EMPLOYEE SALARIES OR BENEFITS OR UTILIZE SUCH REVENUE TO OFFSET REDUCTIONS IN EMPLOYEE SALARIES OR BENEFITS.

S 3853. RESTRUCTURING PLAN. THE SCHOOL BOARD SHALL BE REQUIRED TO SUBMIT A RESTRUCTURING PLAN TO THE DEPARTMENT. SUCH RESTRUCTURING PLAN SHALL PROVIDE DETAILED ANALYSIS OF THE BOARD'S COMPLIANCE WITH SECTION THIRTY-EIGHT HUNDRED FIFTY-TWO OF THIS ARTICLE.

S 2. This act shall take effect immediately and shall expire December 31, 2016, when upon such date the provisions of this act shall be deemed repealed.