

4134--A

2009-2010 Regular Sessions

I N   S E N A T E

April 14, 2009

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Introduced by Sens. OPPENHEIMER, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to authorize the lease of lands located at the state university of New York at Purchase

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

1     Section 1. Legislative findings. The legislature finds that the  
2     provision of a senior learning community upon the grounds of the state  
3     university of New York at Purchase is appropriate to further the objec-  
4     tives and purposes of the state university of New York. The legislature  
5     further finds that granting the trustees of the state university of New  
6     York the authority and power to lease and otherwise contract to make  
7     available grounds and facilities of the campus of the state university  
8     of New York at Purchase will ensure the availability of such senior  
9     learning community, and also promote the effective use of such grounds  
10    and facilities.

11    S 2. The trustees of the state university of New York are hereby  
12    authorized to lease without any public bidding a portion of the lands of  
13    the state university of New York at Purchase generally described in this  
14    act to the Purchase college advancement corporation, a not-for-profit  
15    corporation, upon such terms and conditions as the trustees deem advis-  
16    able, for an initial term not to exceed thirty-five years or for such  
17    time as may be necessary to complete repayment of any debt related to  
18    the projects described in this act, whichever is shorter. In the event  
19    that the real property which is the subject of such lease or contract  
20    shall cease to be used for the purposes described in this act, said  
21    lease shall immediately terminate and the real property and any improve-  
22    ments thereon shall revert to the state university of New York. Any

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

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1 contract or lease entered into pursuant to this act shall provide that  
2 the real property which is the subject of such lease or contract and any  
3 improvements thereon shall revert to the state university of New York  
4 upon the expiration of such lease. The description of the parcels to be  
5 leased pursuant to such section are not meant to be legal descriptions,  
6 but are intended only to identify the parcels and improvements to be  
7 leased for purposes consistent with the mission of the state university  
8 of New York at Purchase.

9 S 3. For the purposes of this act: (a) "project" shall mean work at  
10 the property authorized by this act to be leased to the Purchase college  
11 advancement corporation as described in section fourteen of this act  
12 that involves the design, construction, reconstruction, demolition,  
13 excavating, rehabilitation, repair, renovation, alteration or improve-  
14 ment of a senior learning community.

15 (b) "project labor agreement" shall mean a pre-hire collective  
16 bargaining agreement between a contractor and a labor organization,  
17 establishing the labor organization as the collective bargaining repre-  
18 sentative for all persons who will perform work on the project, and  
19 which provides that only contractors and subcontractors who sign a pre-  
20 negotiated agreement with the labor organization can perform project  
21 work.

22 S 4. Notwithstanding the provisions of any general, special, or local  
23 law or judicial decision to the contrary:

24 (a) The Purchase college advancement corporation may require a  
25 contractor awarded a contract, subcontract, lease, grant, bond, covenant  
26 or other agreement for a project to enter into a project labor agreement  
27 during and for the work involved with such project when such requirement  
28 is part of the Purchase college advancement corporation's request for  
29 proposals for the project and when the Purchase college advancement  
30 corporation determines that the record supporting the decision to enter  
31 into such an agreement establishes that the interests underlying the  
32 competitive bidding laws are best met by requiring a project labor  
33 agreement including: obtaining the best work at the lowest possible  
34 price; preventing favoritism, fraud and corruption; the impact of delay;  
35 the possibility of cost savings; and any local history of labor unrest.

36 (b) If the Purchase college advancement corporation does not require a  
37 project labor agreement, then any contractor, subcontractor, lease,  
38 grant, bond, covenant or other agreements for a project shall be awarded  
39 pursuant to section 135 of the state finance law.

40 (c) Any contract to which the Purchase college advancement corporation  
41 is a party, and any contract entered into by a third party acting in  
42 place of, on behalf of and for the benefit of the Purchase college  
43 advancement corporation pursuant to any lease, permit or other agreement  
44 between such third party and the Purchase college advancement corpo-  
45 ration, for a project deemed a public works project for the purposes of  
46 article 8 of the labor law, and shall be subject to all of the  
47 provisions of article 8 of the labor law, including the enforcement of  
48 prevailing wage requirements by the fiscal officer as defined in para-  
49 graph e of subdivision 5 of section 220 of the labor law to the same  
50 extent as a contract of the state.

51 (d) Every contract entered into by the Purchase college advancement  
52 corporation for a project shall contain a provision that the contractor  
53 shall furnish a labor and material bond guaranteeing prompt payment of  
54 moneys that are due to all persons furnishing labor and materials pursu-  
55 ant to the requirements of any contracts for a project undertaken pursu-  
56 ant to this section and a performance bond for the faithful performance

1 of the project, which shall conform to the provisions of section 103-f  
2 of the general municipal law, and that a copy of such performance and  
3 payment bonds shall be kept by the Purchase college advancement corpo-  
4 ration and shall be open to public inspection.

5 (e) For the purposes of article 15-A of the executive law, any indi-  
6 vidual, public corporation or authority, private corporation, limited  
7 liability company or partnership or other entity entering into a  
8 contract, subcontract, lease, grant, bond, covenant or other agreement  
9 for a project authorized pursuant to this section shall be deemed a  
10 state agency as that term is defined in such article and such contracts  
11 shall be deemed state contracts within the meaning of that term as set  
12 forth in such article.

13 (f) Whenever the Purchase college advancement corporation enters into  
14 a contract, subcontract, lease, grant, bond, covenant or other agreement  
15 for a project undertaken pursuant to this act, the Purchase college  
16 advancement corporation shall consider the financial and organizational  
17 capacity of contractors and subcontractors in relation to the magnitude  
18 of work they may perform, the record of performance of contractors and  
19 subcontractors on previous work, the record of contractors and subcon-  
20 tractors in complying with existing labor standards and maintaining  
21 harmonious labor relations, and the commitment of contractors to work  
22 with minority and women owned business enterprises pursuant to article  
23 15-A of the executive law through joint ventures or subcontractor  
24 relationships.

25 S 5. The Purchase college advancement corporation shall require that  
26 whenever work is performed under this section, the contractors and  
27 subcontractors shall have apprenticeship programs appropriate for the  
28 type and scope of work to be performed, that have been registered with  
29 and approved by the commissioner of labor pursuant to article 23 of the  
30 labor law. Additionally, it must be demonstrated that the apprenticeship  
31 program has made significant efforts to attract and retain minority  
32 apprentices, as determined by affirmative action goals established for  
33 such programs by the department of labor.

34 S 6. Whenever the Purchase college advancement corporation enters into  
35 a contract under which employees are employed to perform building  
36 service work, as that term is defined in section 230 of the labor law,  
37 such work shall be subject to article 9 of the labor law to the same  
38 extent as building services work performed pursuant to a contract with a  
39 public agency.

40 S 7. Whenever employees perform work at the senior learning community  
41 other than work performed under sections four and six of this act, such  
42 employees shall be paid by their employer no less than the median hourly  
43 wage for "all occupations" in the metropolitan statistical area closest  
44 to the project location, published by the United States bureau of labor  
45 statistics, for the duration of the lease term. All of the provisions  
46 of article 9 of the labor law shall apply. Employers shall be subject to  
47 the requirements of contractors under article 9 of the labor law.

48 S 8. All developers must have entered into an agreement with the labor  
49 organization or organizations that is/are actively engaged in represent-  
50 ing and attempting to represent food and beverage, housekeeping, or  
51 other service employees in the state university of New York at Purchase  
52 area that is valid and enforceable under 29 U.S.C. section 185(a) and  
53 that prohibits any strikes, picketing or other economic interference  
54 with such food and beverage, housekeeping, or other service operations  
55 and ensures that any such operations that are conducted by contractors,  
56 subcontractors, licensees, assignees, tenants or subtenants, shall be

1 done under contracts enforceable under 29 U.S.C. section 185(a) contain-  
2 ing the same provisions as specified above.

3 S 9. Notwithstanding any other provision of this act, an employer and  
4 employee organization of the senior learning community may enter into an  
5 agreement which shall: (1) confer jurisdiction of the New York state  
6 employment relations board; (2) provide for participation in an agree-  
7 ment for the designation of collective bargaining under subdivision 1 of  
8 section 705 of the labor law, commonly known as card check; and (3)  
9 impose no strike provisions as set forth in subdivision two of this  
10 section. Upon execution of such an agreement by both parties containing  
11 all of the provisions set forth in this subdivision, the agreement shall  
12 be binding and enforceable against both parties.

13 S 10. Nothing in this act shall be deemed to waive or impair any  
14 rights or benefits of employees of the state university of New York that  
15 otherwise would be available to them pursuant to the terms of agreements  
16 between the certified representatives of such employees and the state of  
17 New York pursuant to article 14 of the civil service law; all work  
18 performed on such property that would ordinarily be performed by employ-  
19 ees subject to article 14 of the civil service law shall continue to be  
20 performed by such employees.

21 S 11. Without limiting the determination of such terms and conditions  
22 by said trustees, such terms and conditions may provide for leasing,  
23 construction, reconstruction, rehabilitation, improvement, operation and  
24 management of and provision of services and assistance and granting of  
25 licenses, easements and other arrangements with regard to such grounds  
26 and facilities by the Purchase college advancement corporation and  
27 parties contracting with the Purchase college advancement corporation  
28 and, in connection with such activities, the obtaining of financing,  
29 whether public or private or secured (including but not limited to,  
30 secured by leasehold mortgages and assignments of rents and leases), by  
31 the Purchase college advancement corporation and parties contracting  
32 with the Purchase college advancement corporation, for the purposes of  
33 completing the projects described in this act.

34 Parcel C shall be leased for the development of not more than 385  
35 units of a senior learning community.

36 S 12. Any contracts entered into pursuant to this act between the  
37 Purchase college advancement corporation and parties contracting with  
38 the Purchase college advancement corporation shall be awarded by a  
39 competitive process.

40 S 13. Any contracts or leases entered into by the state university of  
41 New York or the Purchase college advancement corporation pursuant to  
42 this act shall be subject to approval of the attorney general as to form  
43 as well as by the director of the budget and the state comptroller. Any  
44 and all proceeds relating to the leases authorized by this act shall be  
45 allocated by the board of trustees for Purchase College, SUNY, in the  
46 following manner: seventy-five percent to student financial aid for  
47 students who are eligible to receive a tuition assistance program award  
48 or a supplemental tuition assistance program award pursuant to section  
49 six hundred sixty-seven or six hundred sixty-seven-a of the education  
50 law, and twenty-five percent to support additional full-time faculty  
51 positions.

52 S 14. The property authorized by this act to be leased to the Purchase  
53 college advancement corporation is generally described as a parcel of  
54 real property with improvements thereon, consisting of approximately  
55 40.5 acres, situated on the campus of the state university of New York  
56 at Purchase. The description in this section of the land to be leased is

1 not a legal description, but is intended only to identify the premises  
2 to be leased for purposes consistent with the mission of the state  
3 university of New York at Purchase:

4 Parcel C

5 ALL that plot, piece or parcel of land situate and being in the Town of  
6 Harrison, County of Westchester and State of New York, bounded and  
7 described as follows:

8 BEGINNING at a point at the southeasterly corner of the herein described  
9 Lease Parcel C, said point being located, N 80° 51' 39" W 163.33 feet, N  
10 81° 12' 39" W 4.91 feet, N 02° 00' 00" W 407.31 feet and N 00° 19' 17" E  
11 62.93 feet from the point of beginning of Parcel #1 as shown on a map  
12 entitled, "Department of Education, State University of New York, State  
13 University College at Westchester, Map #1, Parcels 1, 2 and 3", dated  
14 and filed in the office of the Department of Public Works, May 27, 1966;  
15 thence through Parcel #1 along the northerly and easterly side of West  
16 Road, N 79° 50' 00" W 285.54 feet, northwesterly on a curve to the right  
17 of radius 743.00 feet, an arc length of 988.36 feet, having a chord  
18 bearing N 41° 43' 30" W 917.09 feet, N 03° 37' 00" W 178.77 feet, N 06°  
19 55' 00" E 1326.17 feet and northwesterly on a curve to the left of radi-  
20 us 592.00 feet, an arc length of 172.61 feet, having a chord bearing N  
21 01° 26' 11" W 172.00 feet to a point; thence leaving the easterly side  
22 of West Road and continuing through Parcel #1, N 77° 18' 00" E 130.00  
23 feet, N 82° 12' 00" E 140.00 feet, S 09° 47' 00" E 364.83 feet, S 69°  
24 00' 00" E 463.42 feet, S 00° 02' 00" E 369.54 feet, S 27° 40' 00" W  
25 194.81 feet, S 79° 51' 00" E 154.52 feet, S 10° 39' 00" W 325.93 feet, S  
26 03° 48' 00" E 310.96 feet, S 04° 45' 00" W 271.62 feet, S 01° 38' 00" E  
27 142.45 feet and S 03° 04' 00" W 311.20 feet to the point or place of  
28 beginning.

29 CONTAINING 40.05 ACRES OF LAND

30 S 15. The state university of New York shall not lease lands described  
31 in this act unless contract is executed by the Purchase college Advance-  
32 ment Corporation or lessee for a project pursuant to this act within  
33 five years of the effective date of this act.

34 S 16. Any lease or other agreement executed pursuant to this act shall  
35 include an indemnity provision whereby the lessee or sublessee promises  
36 to indemnify, hold harmless, and defend the lessor against all claims,  
37 suits, actions, and liability to all persons on the leased premises,  
38 including tenant, tenant's agents, contractors, subcontractors, employ-  
39 ees, customers, guests, licensees, invitees, and members of the public,  
40 for damage to any such person's property, whether real or personal, or  
41 for personal injuries arising out of tenant's use or occupation of the  
42 demised premises.

43 S 17. Insofar as the provisions of this act are inconsistent with the  
44 provisions of any law, general, special or local, the provisions of this  
45 act shall be controlling; provided, however, that all leases, contracts,  
46 financing, granting of licenses, easements, and other arrangements with  
47 regard to a project pursuant to this act shall be subject to the  
48 provisions of article 8 of the environmental conservation law.

49 S 18. The state university trustees are hereby authorized and directed  
50 to designate and maintain a minimum of 80 acres of real property located  
51 within the boundaries of the campus of the state university of New York  
52 at Purchase for permanent preservation as open space lands.

53 S 19. All real property included in section eighteen of this act shall  
54 be maintained for one or more of the following purposes:

1 (a) open space lands and natural areas for maintaining plants, animals  
2 and natural communities; and

3 (b) an area of natural or historic interest and beauty which provides  
4 the public with passive recreational opportunities.

5 S 20. (a) The state university trustees shall cause to be undertaken a  
6 survey of the real property included in section nineteen of this act.  
7 Such survey shall be completed and made available to the legislature and  
8 the public not later than six months after the effective date of this  
9 act.

10 (b) The state university trustees shall develop, in consultation with  
11 the department of environmental conservation, a stewardship plan for the  
12 maintenance of the real property included in section nineteen of this  
13 act as open lands. Such plan shall be completed and made available to  
14 the public not later than six months after the effective date of this  
15 act.

16 S 21. (a) Any contract or leases entered into by the state university  
17 of New York or the Purchase college advancement corporation pursuant to  
18 this act shall provide that not less than 20 percent of the units in the  
19 senior learning community must, upon the initial rental of the units and  
20 upon all subsequent rentals of the units after a vacancy, be affordable  
21 to and occupied or available for occupancy by individuals or families  
22 whose incomes at the time of initial occupancy do not exceed 80 percent  
23 of the median household income for the county of Westchester as calcu-  
24 lated by the United States Census Bureau.

25 (b) All affordable units must be geographically integrated with the  
26 market rate units and residents of such units shall be provided with and  
27 have access to the services and amenities available to other residents  
28 in the development.

29 (c) Residents of the county where the development is located shall  
30 have priority for the rental of 50 percent of the affordable units,  
31 provided they meet the income requirements of this section.

32 S 22. This act shall take effect immediately.