

3190--B

2011-2012 Regular Sessions

I N S E N A T E

February 11, 2011

Introduced by Sens. RANZENHOFER, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on 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 construction of new school facilities utilizing facility alternatives for schools; 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:

1 Section 1. This act shall be known and may be cited as the "2012
2 facility alternatives for schools act".
3 S 2. For the purposes of this act the terms:
4 1. "School district" shall mean any union free school district,
5 central school district, central high school district or city school
6 district.
7 2. "Person" shall mean a municipality or other governmental body,
8 public corporation or authority, private corporation, partnership or
9 individual.
10 S 3. (a) Notwithstanding the provisions of any other law, general,
11 special or local, relating to the length, duration and terms of
12 contracts a school district may enter into, any school district is here-
13 by authorized and empowered to enter into contracts, leases or rental
14 agreements with any person, upon such terms and conditions for such
15 consideration and for such terms or duration, not to exceed thirty
16 years, as may be agreed upon by the school district, and such person,
17 whereby such person is granted the right to construct, reconstruct,
18 finance or own a school building facility designed with a student capac-
19 ity not to exceed three thousand.

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

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1 (b) Notwithstanding the provisions of any general, special or local
2 law, a contract entered into between a school district and any person
3 pursuant to this act may be awarded pursuant to public bidding in
4 compliance with section 103 of the general municipal law or pursuant to
5 the following provisions for the award of a contract based on evaluation
6 of proposals submitted in response to a request for proposals prepared
7 by or for a school district. The school district shall require that each
8 proposal to be submitted shall include information relating to the expe-
9 rience of the proposer, the ability of the proposer to secure adequate
10 financing, identification and specification of all elements of cost
11 which would become a charge to the school district, in whatever form, in
12 return for the fulfillment by the proposer of all tasks and responsibil-
13 ities established by the request for the proposal for the full lifetime
14 of a proposed contract, including, as appropriate, but not limited to
15 the cost of planning, design, construction, reconstruction, financing,
16 ownership and/or maintenance of such school building facility and such
17 other information as the school district may determine to have a materi-
18 al bearing on its ability to evaluate any proposal for such school
19 building facility.

20 Prior to the issuance of a request for proposals pursuant to this act,
21 the school district shall publish notice of such issuance in the offi-
22 cial newspaper of the school district, if any, and in at least one news-
23 paper of general circulation. Concurrent with the publication of such
24 notice of a draft request for proposals shall be filed with the clerk of
25 the school district or the chief executive officer of such school
26 district. After allowing a thirty day comment period and an additional
27 thirty days to review such comments, the school district may publish the
28 final request for proposals and concurrent with such publication shall
29 publish notice of such issuance in the manner specified in this para-
30 graph. Concurrent with the publication of the final request for
31 proposals a set of comments filed in relation to the draft request for
32 proposals and findings related to the substantive elements of such
33 comments shall be filed along with the request for proposals with the
34 clerk or chief executive officer of such school district and in the
35 public library or libraries in proximity to the proposed school building
36 facility site.

37 Proposals received in response to such request for proposals shall be
38 evaluated by the school district as to net cost and in a manner consist-
39 ent with provisions set forth in the request for proposals, may be eval-
40 uated on the basis of additional factors, including, but not limited to,
41 facility design incorporating systems and approaches which provide maxi-
42 mum facility value at the lowest possible cost using the best current
43 development life cycle costs, construction, reconstruction, leasing and
44 financing techniques available.

45 The school district may make a contract award to any responsible
46 proposer selected based on a determination by the school district that
47 the selected proposal is most responsive to the request for proposals
48 and may negotiate with any proposer; provided, however, that if an award
49 is made to any proposer whose total proposal does not provide either the
50 lowest net cost, the school district shall adopt a resolution after
51 public hearing which includes particularized findings relevant to
52 factors evaluated indicating that the school district's requirements are
53 met by such award and that such action is in the public interest. Such
54 contract may be a single guaranteed maximum price general contract or
55 utilize a full construction management contract approach.

1 (c) All requests for proposals by the school district pursuant to this
2 act shall be subject to review and approval by the commissioner of
3 education prior to the issuance of such request for proposal by the
4 school district.

5 (d) Whenever the school district enters into a contract for the
6 construction of a school building facility pursuant to this act, the
7 provisions of section 220 of the labor law shall be applicable to such
8 construction work.

9 (e) Every contract entered into by the school district for
10 construction of a school building facility shall contain provisions that
11 the design and construction standards of such facility shall be subject
12 to the review and approval of the school district, that the project
13 developer shall furnish a bond guaranteeing prompt payment of moneys
14 that are due to all persons furnishing labor and materials pursuant to
15 the requirements of any construction contracts, and a security bond for
16 the faithful performance of the school district project which shall
17 conform to the provisions of section 103-f of the general municipal law
18 and that a copy of such performance and payment bonds shall be kept by
19 the school district and shall be open to public inspection.

20 S 4. Notwithstanding the provisions of section 3602 of the education
21 law or any other provision of law, the school district shall be entitled
22 to an apportionment for capital outlays and debt service for a school
23 building facility constructed pursuant to the provisions of this act in
24 the same manner as such school district would otherwise be entitled
25 pursuant to law for the construction of a new school building facility.

26 S 5. Contracts to be issued by the school district for the design,
27 construction, reconstruction, lease, financing or ownership of a school
28 building facility pursuant to the provisions of this act shall be
29 subject to the provisions of section 109-b of the general municipal law,
30 except for paragraph (a) of subdivision 3 and subdivision 5 of such
31 section and except to the extent section 109-b of the general municipal
32 law is inconsistent with the provisions of this act.

33 S 6. Contracts issued by the school district for the design,
34 construction, reconstruction, lease, financing or ownership of a school
35 building facility pursuant to the provisions of this act may be funded
36 by certificates of participation.

37 S 7. All contracts awarded or entered into by the school district for
38 the construction, reconstruction, alteration, lease or lease-purchase of
39 a school building facility pursuant to this act shall not be subject to
40 section 101 of the general municipal law.

41 S 8. Notwithstanding any other provision of law, a school building
42 facility constructed pursuant to the provisions of this act shall be
43 exempt from real property taxation when such facility is leased by the
44 school district and actually used for school purposes by such school
45 district.

46 S 9. Nothing in this act shall be construed to exempt a school
47 construction or reconstruction project undertaken pursuant to this act
48 from the review and approval procedures applied to such projects by the
49 education department when undertaken pursuant to the education law.

50 S 10. This act shall take effect immediately and shall expire and be
51 deemed repealed 5 years after such effective date.