

7574

I N S E N A T E

May 15, 2014

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the regulation of bus privatization contracts

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

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that decisions to use private contractors to provide public
3 transportation service must be based on factors which promote the public
4 interest. To ensure that citizens of the state receive high quality
5 transit services at low cost, with due regard for the taxpayers of the
6 state and the needs of public and private workers, the legislature finds
7 it necessary to regulate such privatization contracts.
8 S 2. The public authorities law is amended by adding a new section
9 2875-c to read as follows:
10 S 2875-C. REGULATION OF PRIVATIZATION CONTRACTS. 1. DEFINITIONS. AS
11 USED IN THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEAN-
12 INGS:
13 A. "PUBLIC TRANSPORTATION SYSTEM" MEANS ANY PASSENGER TRANSPORTATION
14 SERVICE PROVIDED BY BUS, WHICH, DURING ITS HOURS OF OPERATION, IS AVAIL-
15 ABLE ON AN EQUAL OPPORTUNITY BASIS TO ANY PERSON, WITHOUT PREFERENCE FOR
16 SERVICE AVAILABILITY, ELIGIBILITY OR DESIGN BEING GIVEN TO ANY PERSON OR
17 POPULATION SUB-GROUP BECAUSE OF AGE, GENDER, RACE, NATIONAL ORIGIN,
18 CREED OR AGENCY CLIENT STATUS, AND WHICH IS REGULARLY ADVERTISED AND
19 MARKETING AS AVAILABLE TO THE GENERAL PUBLIC. NOTHING IN THIS ARTICLE
20 SHALL BE DEEMED TO MEAN THAT THE TRANSPORTATION SERVICES OPERATED OR
21 PROVIDED BY HUMAN OR SOCIAL SERVICE AGENCIES SOLELY FOR THEIR CLIENTS OR
22 PROGRAMS CONSTITUTE, IN AND OF THEMSELVES, PUBLIC TRANSPORTATION
23 SERVICES.
24 B. "PRIVATIZATION CONTRACT" SHALL MEAN AGREEMENT OR COMBINATION OR
25 SERIES OF AGREEMENTS BY WHICH A PRIVATE PERSON OR ENTITY AGREES WITH A
26 PUBLIC TRANSPORTATION SYSTEM TO PROVIDE SERVICES, VALUED AT ONE HUNDRED
27 THOUSAND DOLLARS OR MORE, WHICH ARE SUBSTANTIALLY SIMILAR TO AND IN LIEU

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

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1 OF, SERVICES HERETOFORE PROVIDED, IN WHOLE OR IN PART, BY REGULAR
2 EMPLOYEES OF THE PUBLIC TRANSPORTATION SYSTEM. AN AGREEMENT SOLELY TO
3 PROVIDE LEGAL, MANAGEMENT CONSULTING, PLANNING, ENGINEERING OR DESIGN
4 SERVICES SHALL NOT BE CONSIDERED A PRIVATIZATION CONTRACT.

5 2. REQUIREMENTS. A. A PUBLIC TRANSPORTATION SYSTEM SHALL NOT MAKE ANY
6 PRIVATIZATION CONTRACT AND NO SUCH CONTRACT SHALL BE VALID UNLESS THE
7 PUBLIC TRANSPORTATION SYSTEM COMPLIES WITH EACH OF THE FOLLOWING
8 REQUIREMENTS:

9 (1) THE PUBLIC TRANSPORTATION SYSTEM SHALL PREPARE A SPECIFIC WRITTEN
10 STATEMENT OF THE SERVICES PROPOSED TO BE THE SUBJECT OF THE PRIVATIZA-
11 TION CONTRACT, INCLUDING THE SPECIFIC QUANTITY AND STANDARD OF QUALITY
12 OF THE SUBJECT SERVICES;

13 (2) THE PUBLIC TRANSPORTATION SYSTEM SHALL INCLUDE IN THE WRITTEN
14 STATEMENT A SUMMARY OF THE EMPLOYEES' SALARIES, PENSION BENEFITS AND
15 HEALTH CARE COVERAGE AND HOW THOSE SALARIES, PENSION BENEFITS AND HEALTH
16 CARE COVERAGE WILL BE AFFECTED BY THE PRIVATIZATION CONTRACT;

17 (3) THE ORGANIZATION SHALL SOLICIT COMPETITIVE SEALED BIDS FOR THE
18 PRIVATIZATION CONTRACTS BASED UPON THIS STATEMENT;

19 (4) THE DAY DESIGNATED BY THE PUBLIC TRANSPORTATION SYSTEM UPON WHICH
20 IT WILL ACCEPT THESE SEALED BIDS SHALL BE THE SAME FOR ANY AND ALL
21 PARTIES;

22 (5) THIS STATEMENT SHALL BE A PUBLIC RECORD, SHALL BE FILED AT THE
23 PUBLIC TRANSPORTATION SYSTEM, AND SHALL BE TRANSMITTED TO THE STATE
24 COMPTROLLER FOR REVIEW PURSUANT TO SUBDIVISION THREE OF THIS SECTION;

25 (6) THE TERM OF ANY PRIVATIZATION CONTRACT SHALL NOT EXCEED THREE
26 YEARS; AND

27 (7) NO AMENDMENT TO A PRIVATIZATION CONTRACT SHALL BE VALID IF IT HAS
28 THE PURPOSE OR EFFECT OF AVOIDING ANY REQUIREMENT OF THIS SECTION.

29 B. AFTER SOLICITING AND RECEIVING BIDS, THE PUBLIC TRANSPORTATION
30 SYSTEM SHALL PUBLICLY DESIGNATE THE BIDDER TO WHICH IT PROPOSES TO AWARD
31 THE CONTRACT. THE PUBLIC TRANSPORTATION SYSTEM SHALL PREPARE A COMPRE-
32 HENSIVE WRITTEN ANALYSIS OF THE CONTRACT COST BASED UPON THE DESIGNATED
33 BID, SPECIFICALLY INCLUDING THE COSTS OF TRANSITION FROM PUBLIC TO
34 PRIVATE OPERATION, OF ADDITIONAL UNEMPLOYMENT AND RETIREMENT BENEFITS,
35 IF ANY, AND OF MONITORING AND OTHERWISE ADMINISTERING CONTRACT PERFORM-
36 ANCE. IF THE DESIGNATED BIDDER IS HEADQUARTERED OUTSIDE THE STATE, SAID
37 CONTRACT COST SHALL BE INCREASED BY THE AMOUNT OF INCOME TAX REVENUE, IF
38 ANY, WHICH WILL BE LOST TO THE STATE.

39 C. THE PUBLIC TRANSPORTATION SYSTEM SHALL PROVIDE A COPY OF THE
40 PROPOSED PRIVATIZATION CONTRACT AS WELL AS CERTIFY IN WRITING TO THE
41 STATE COMPTROLLER THAT:

42 (1) IT HAS COMPLIED WITH ALL PROVISIONS OF THIS SECTION AND OF ALL
43 OTHER APPLICABLE LAWS;

44 (2) THE QUALITY OF THE PUBLIC TRANSPORTATION SERVICES TO BE PROVIDED
45 BY THE DESIGNATED BIDDER IS LIKELY TO SATISFY THE QUALITY REQUIREMENTS
46 OF THE STATEMENT PREPARED PURSUANT TO SUBPARAGRAPH ONE OF PARAGRAPH (A)
47 OF THIS SUBDIVISION AND TO EQUAL OR EXCEED THE QUALITY OF SERVICES WHICH
48 COULD BE PROVIDED BY REGULAR PUBLIC TRANSPORTATION SYSTEM EMPLOYEES;

49 (3) THE CONTRACT COST WILL BE AT LEAST FIFTEEN PERCENT LESS THAN THE
50 ESTIMATED CURRENT YEAR COST OF THE PUBLIC SYSTEM;

51 (4) THE DESIGNATED BIDDER AND ITS SUPERVISORY EMPLOYEES, WHILE IN THE
52 EMPLOY OF SAID DESIGNATED BIDDER, HAVE NO ADJUDICATED RECORD OF SUBSTAN-
53 TIAL OR REPEATED WILLFUL NONCOMPLIANCE WITH ANY RELEVANT FEDERAL OR
54 STATE REGULATORY STATUTE INCLUDING, BUT NOT LIMITED TO, STATUTES
55 CONCERNING LABOR RELATIONS, OCCUPATIONAL SAFETY AND HEALTH, NONDISCRIMI-

1 NATION AND AFFIRMATIVE ACTION, ENVIRONMENTAL PROTECTION AND CONFLICTS OF
2 INTEREST;

3 (5) THE PROPOSED PRIVATIZATION CONTRACT IS IN THE PUBLIC INTEREST, IN
4 THAT IT MEETS THE APPLICABLE QUALITY AND FISCAL STANDARDS SET FORTH
5 HEREIN; AND

6 (6) THE CONTRACT IS IN CONFORMANCE WITH THE PROVISIONS OF ANY APPLICA-
7 BLE COLLECTIVE BARGAINING AGREEMENT AND SUBJECT TO THE PROVISIONS OF ANY
8 EMPLOYEE PROTECTION ARRANGEMENTS ESTABLISHED UNDER 49 U.S.C. 5333(B).

9 3. REVIEW BY STATE COMPTROLLER; APPROVAL OR OBJECTION; PROCEDURES;
10 PROMULGATION OF REGULATIONS. A. NO PRIVATIZATION CONTRACT SHALL BE VALID
11 IF WITHIN THIRTY BUSINESS DAYS AFTER RECEIVING THE CERTIFICATION FROM
12 THE PUBLIC TRANSPORTATION SYSTEM, THE STATE COMPTROLLER NOTIFIES THE
13 PUBLIC TRANSPORTATION SYSTEM OF ITS OBJECTION. SUCH OBJECTION SHALL BE
14 IN WRITING AND SHALL STATE SPECIFICALLY THE STATE COMPTROLLER'S FINDING
15 THAT THE PUBLIC TRANSPORTATION SYSTEM HAS FAILED TO COMPLY WITH ONE OR
16 MORE REQUIREMENT FOR PRIVATIZATION, INCLUDING THAT THE STATE COMPTROLLER
17 FINDS INCORRECT, BASED ON INDEPENDENT REVIEW OF ALL THE RELEVANT FACTS,
18 ANY OF THE FINDINGS REACHED BY THE PUBLIC TRANSPORTATION SYSTEM. THE
19 STATE COMPTROLLER MAY EXTEND THE TIME FOR SUCH OBJECTION FOR AN ADDI-
20 TIONAL PERIOD OF THIRTY BUSINESS DAYS BEYOND THE ORIGINAL THIRTY BUSI-
21 NESS DAYS BY WRITTEN NOTICE TO THE PUBLIC TRANSPORTATION SYSTEM, STATING
22 THE REASON FOR SUCH EXTENSION.

23 B. FOR THE PURPOSE OF REVIEWING THE PUBLIC TRANSPORTATION SYSTEM'S
24 COMPLIANCE AND CERTIFICATION, THE STATE COMPTROLLER OR HIS OR HER DESIG-
25 NEE MAY REQUIRE BY SUMMONS THE ATTENDANCE AND TESTIMONY UNDER OATH OF
26 WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS AND OTHER RECORDS RELATING
27 TO SUCH REVIEW.

28 C. THE STATE COMPTROLLER MAY ADOPT REGULATIONS AND PRESCRIBE FORMS TO
29 CARRY OUT THE PROVISIONS OF THIS SECTION.

30 D. THE OBJECTION OF THE STATE COMPTROLLER PURSUANT TO PARAGRAPH A OF
31 THIS SUBDIVISION SHALL BE FINAL AND BINDING ON THE PUBLIC TRANSPORTATION
32 SYSTEM, UNLESS THE STATE COMPTROLLER THEREAFTER IN WRITING WITHDRAWS THE
33 OBJECTION, STATING THE SPECIFIC REASONS, BASED UPON A REVISED CERTIF-
34 ICATION BY THE PUBLIC TRANSPORTATION SYSTEM AND UPON THE STATE COMP-
35 TROLLER'S REVIEW THEREOF.

36 S 3. This act shall take effect on the ninetieth day after it shall
37 have become a law.