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

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I N A S S E M B L Y

March 3, 2016

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT authorizing the lease of lands located at the State University of New York College at Old Westbury

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

Section 1. Legislative findings. The legislature finds that the development, construction and operation of a child-care center upon the grounds of the State University of New York College at Old Westbury is necessary and appropriate to further the objectives and purposes of the State University of New York in its support of Old Westbury and fulfills a necessary and desirable public purpose. The legislature further finds that granting the trustees of the State University of New York the authority and power to lease and otherwise contract to make available grounds and facilities of the campus of the State University of New York College at Old Westbury will facilitate the development, construction and operation of such child-care center and also promote the effective use of such grounds and facilities which support the educational activities of Old Westbury.

S 2. Notwithstanding any other law to the contrary, the State University trustees are hereby authorized and empowered, without any public bidding, to lease and otherwise contract to make available to the Old Westbury College Foundation, Inc., a not-for-profit corporation, a portion of the lands of the State University of New York College at Old Westbury generally described in this act for the purpose of developing, constructing and operating a child-care center, and for uses in support of campus activities; provided, however, that the development and operation of a child-care center shall be of benefit to Old Westbury. Such lease or contract shall be for a period not exceeding 35 years without any fee simple conveyance and otherwise upon terms and conditions deter-

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

LBD14234-07-6

mined by such trustees, subject to the approval of the director of the division of the budget, the attorney general and the state comptroller. In the event that the real property that is the subject of such lease or contract shall cease to be used for the purpose described in this act, such lease or contract shall immediately terminate and the real property and any improvements thereon shall revert to the State University of New York. Any lease or contract entered into pursuant to this act shall provide that the real property that is the subject of such lease or contract and any improvements thereon shall revert to the State University of New York on the expiration of such contract or lease.

S 3. For the purposes of this act: (a) "project" shall mean work at the property authorized by this act to be leased to the Old Westbury College Foundation, Inc. as described in section 12 of this act that involves the design, construction, reconstruction, demolition, excavating, rehabilitation, repair, renovation, alteration or improvement of a child care center.

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

S 4. Any contract or lease entered into pursuant to this act shall be deemed to be a state contract for the purposes of article 15-A of the executive law, and any contractor, subcontractor, lessee or sublessee entering into such contract or lease for the construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration or improvement authorized pursuant to this act shall be deemed a state agency for the purposes of article 15-A of the executive law and subject to the provisions of such article.

S 5. Notwithstanding any general, special or local law or judicial decision to the contrary, all work performed on a project authorized by this act where all or any portion thereof involves a lease or agreement for construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration or improvement shall be deemed public work and shall be subject to and performed in accordance with the provisions of article 8 of the labor law to the same extent and in the same manner as a contract of the state, and compliance with all the provisions of article 8 of the labor law shall be required of any lessee, sublessee, contractor and/or subcontractor performing on the project including the enforcement of prevailing wage requirements by the fiscal officer as defined in paragraph e of subdivision 5 of section 220 of the labor law to the same extent as a contract of the state.

S 6. Notwithstanding any law, rule or regulation to the contrary, the State University of New York shall not contract out to Old Westbury College Foundation, Inc. or any subsidiary for the instruction or any pedagogical functions or services, or any administrative services, and professional services currently being performed by state employees. All such functions and services shall be performed by state employees pursuant to the civil service law. Nothing in this act shall result in the displacement of any currently employed state worker or the loss of position (including partial displacement such as reduction in the hours of non-overtime, wages or employment benefits), or result in the impairment of existing contracts for services or collective bargaining rights pursuant to existing agreements. All positions currently at the State

University of New York in the unclassified service of the civil service law shall remain in the unclassified service. No services or work currently performed by public employees or future work that is similar in scope and nature to the work being currently performed by public employees shall be contracted out or privatized by the State University of New York or by an affiliated entity or associated entity of the State University of New York. All such future work shall be performed by public employees.

S 7. Nothing in this act shall be deemed to waive or impair any rights or benefits of employees of the State University of New York that otherwise would be available to them pursuant to the terms of agreements between the certified representatives of such employees and the state of New York pursuant to article 14 of the civil service law; all work performed on such property that ordinarily would be performed by employees subject to article 14 of the civil service law shall continue to be performed by such employees.

S 8. Notwithstanding the provisions of any general, special, or local law or judicial decision to the contrary:

(a) The Old Westbury College Foundation, Inc. may require a contractor awarded a contract, subcontract, lease, grant, bond, covenant or other agreement for a project to enter into a project labor agreement during and for the work involved with such project when such requirement is part of The Old Westbury College Foundation, Inc. request for proposals for the project and when The Old Westbury College Foundation, Inc. determines that the record supporting the decision to enter into such an agreement establishes that the interests underlying the competitive bidding laws are best met by requiring a project labor agreement including: obtaining the best work at the lowest possible price; preventing favoritism, fraud and corruption; the impact of delay; the possibility of cost savings; and any local history of labor unrest.

(b) If The Old Westbury College Foundation, Inc. does not require a project labor agreement, then any contractor, subcontractor, lease, grant, bond, covenant or other agreements for a project shall be awarded pursuant to section 135 of the state finance law.

S 9. Without limiting the determination of the terms and conditions of such contracts or leases, such term and conditions may provide for leasing, subleasing, construction, reconstruction, rehabilitation, improvement, operation and management of and provision of services and assistance and the granting of licenses, easements and other arrangements with regard to such grounds and facilities by The Old Westbury College Foundation, Inc., and parties contracting with The Old Westbury College Foundation, Inc., and, in connection with such activities, the obtaining of funding or financing, whether public or private, unsecured or secured (including, but not limited to, secured by leasehold mortgages and assignments of rents and leases), by The Old Westbury College Foundation, Inc. and parties contracting with The Old Westbury College Foundation, Inc. for the purposes of completing the project described in this act.

S 10. Such lease shall include an indemnity provision whereby the lessee or sublessee promises to indemnify, hold harmless and defend the lessor against all claims, suits, actions, and liability to all persons on the leased premises, including tenant, tenant's agents, contractors, subcontractors, employees, customers, guests, licensees, invitees and members of the public, for damage to any such person's property, whether real or personal, or for personal injuries arising out of tenant's use or occupation of the demised premises.

S 11. Any contracts entered into pursuant to this act between The Old Westbury College Foundation, Inc. and parties contracting with The Old Westbury College Foundation, Inc. shall be awarded by a competitive process.

S 12. The property authorized by this act to be leased to the Old Westbury College Foundation, Inc. is generally described as that parcel of real property with improvements thereon, consisting of a total of approximately 5.500 acres, situated on the campus of the State University of New York College at Old Westbury. The description in this section of the parcel to be made available pursuant to this act is not meant to be a legal description, but is intended only to identify the parcel:

BEGINNING at a point in the dividing line between lands now or formerly of the State of New York, Old Westbury College and The Hamlet Condominiums Number one, said point being distant 0.57 feet on a course of North 64 degrees 45 minutes 53 seconds West from a granite monument found, all as shown on a certain map entitled "MAP OF SURVEY, OLD WESTBURY COLLEGE-TOWN OF OYSTER BAY, TOWN OF NORTH HEMPSTEAD, COUNTY OF NASSAU, STATE OF NEW YORK, DATED AUGUST 13, 2003, Prepared by Boswell Engineering (CAD File Supplied by the NEW YORK STATE OFFICE OF GENERAL SERVICES), Said Beginning Point having New York State Grid Coordinates North 226,605.93, East 1,104,156.61 (NAD 1983, New York State, Long Island Zone per said map); running thence (Bearings shown are in above-referenced system)

1) thence South 11 degrees 20 minutes 54 seconds East 524.04 feet to a point in said dividing line, marked by a Re-Bar set November 16, 2015;

2) thence along a new line, South 76 degrees 14 minutes 16 seconds West 659.59 feet to a point in a line established in the above reference CAD file, located approximately 10 feet from the edge of the traveled way of an access road known as Greentree Circle, said point also marked by a Re-Bar set November 16, 2015; running along said line the following 5 courses;

3) thence North 08 degrees 41 minutes 55 seconds West 25.61 feet to a point;

4) thence along a non-tangent curve to the RIGHT having a radius of 400.38 feet, an arc distance of 282.54 feet, a central angle of 40 degrees 25 minutes 55 seconds, a chord bearing of North 18 degrees 26 minutes 01 second East and a chord distance of 276.71 feet to a point;

5) thence along a non-tangent curve to the RIGHT having a radius of 1,319.33 feet, an arc distance of 203.46 feet, a central angle of 08 degrees 50 minutes 09 seconds, a chord bearing of North 44 degrees 09 minutes 14 seconds East and a chord distance of 203.26 feet to a point;

6) thence North 47 degrees 35 minutes 38 seconds East 274.70 feet to a point, marked by a Re-Bar set February 4, 2013;

7) thence North 64 degrees 41 minutes 06 seconds East 121.12 feet to the point and place of BEGINNING.

CONTAINING an area of 239,595 square feet or 5.500 acres of land, more or less. SUBJECT TO all existing easements and restrictions of record.

S 13. The State University of New York shall not lease lands described in this act unless any such lease shall be executed within three years of the effective date of this act.

S 14. Notwithstanding any law, rule or regulation to the contrary, the state university of New York shall not contract out to Old Westbury College Foundation, Inc. or any subsidiary for the instruction or any pedagogical functions or services, or any administrative services, and professional services currently being performed by state employees on the property described in section eleven of this act. All such functions

and services shall be performed by state employees pursuant to the civil service law. Nothing in this act shall result in the displacement of any currently employed state worker or the loss of position, (including partial displacement such as reduction in the hours of non-overtime, wages or employment benefits) or result in the impairment of existing contracts for services or collective bargaining rights pursuant to existing agreements. All positions currently at the state university of New York in the unclassified service of the civil service law shall remain in the unclassified service. No services or work on the property described in section eleven of this act currently performed by public employees or future work that is similar in scope and nature to the work being currently performed by public employees shall be contracted out or privatized by the state university of New York or by an affiliated entity or associated entity of the state university of New York. All such future work shall be performed by public employees.

S 15. Insofar as the provisions of this act are inconsistent with the provisions of any law, general, special or local, the provisions of this act shall be controlling.

S 16. This act shall take effect immediately.