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

1657

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the education law, in relation to establishing the "New York state authoring and printing textbooks law" to require the state to mandate that school textbooks be authored by current or former teachers and that the state supervise the printing of such textbooks

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

Section 1. Subdivision 1 of section 701 of the education law, as amended by chapter 587 of the laws of 1973, is amended to read as follows:

1. In the several cities and school districts of the state, boards of education, trustees or such body or officer as perform the functions of such boards, shall designate [text-books] TEXTBOOKS AS PRESCRIBED PURSUANT TO ARTICLE FIFTEEN-D OF THIS CHAPTER to be used in the schools under their charge.

S 2. The education law is amended by adding a new article 15-D to read as follows:

ARTICLE 15-D

NEW YORK STATE AUTHORING AND PRINTING TEXTBOOKS LAW

SECTION 730. SHORT TITLE.
731. LEGISLATIVE FINDINGS.
732. TEXTBOOK AUTHORING AND PRINTING.
733. POWERS AND DUTIES OF THE COMMISSIONER.
734. PROPOSALS FOR TEXTBOOK AUTHORING AND PRINTING.
735. RIGHT TO ANNUL CONTRACTS.
736. COMPLAINTS AGAINST CONTRACTOR.

S 730. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AS THE "NEW YORK STATE AUTHORING AND PRINTING TEXTBOOKS LAW".

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

LBD02208-01-9

S 731. LEGISLATIVE FINDINGS. THE LEGISLATURE HEREBY FINDS AND DECLARES THERE IS A NEED TO PROVIDE EQUAL AND BALANCED LEARNING OPPORTUNITIES TO STUDENTS IN GRADES KINDERGARTEN THROUGH TWELVE AND AN ACCURATE COMPARISON OF SUCH STUDENTS' TEST SCORES.

TO ACHIEVE THE ABOVE STATED GOALS, THE LEGISLATURE HEREBY FINDS AND DECLARES THAT THE STATE SHOULD REQUIRE THAT CURRENT AND FORMER TEACHERS OF THE STATE AUTHOR TEXTBOOKS FOR ALL SCHOOL SUBJECTS AND REQUIRE THE STATE TO SUPERVISE THE PRINTING OF SUCH TEXTBOOKS. THIS WILL REDUCE REPRINTING COSTS, ALLOW STUDENTS TO BE PROVIDED WITH UP-TO-DATE TEXTBOOKS AND CREATE JOBS FOR THE NEW YORK WORKFORCE.

S 732. TEXTBOOK AUTHORING AND PRINTING. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, TEXTBOOKS AS DEFINED PURSUANT TO SECTION SEVEN HUNDRED ONE OF THIS TITLE THAT ARE DESIGNATED FOR USE IN THE SEVERAL CITIES AND SCHOOL DISTRICTS OF THE STATE PURSUANT TO SUCH SECTION, SHALL BE AUTHORED BY CURRENT OR FORMER TEACHERS OF THE NEW YORK STATE SCHOOL DISTRICTS PURSUANT TO RULES AND REGULATIONS ESTABLISHED BY THE COMMISSIONER. SUCH TEXTBOOKS SHALL CONFORM TO CRITERIA AND STANDARDS THAT ARE CONSISTENT WITH APPLICABLE STATE AND FEDERAL REGULATIONS. TEXTBOOK AUTHORING FOR PURPOSES OF THIS ARTICLE SHALL MEAN THE WRITING OF A TEXTBOOK. AUTHORS THAT CO-AUTHOR WITH A TEACHER OR FORMER TEACHER IN THE PREPARATION OF A TEXTBOOK SHALL BE DEEMED TO BE AUTHORS FOR THE PURPOSES OF SUCH TEXTBOOK.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, TEXTBOOKS AS DEFINED PURSUANT TO SECTION SEVEN HUNDRED ONE OF THIS TITLE THAT ARE DESIGNATED FOR USE IN THE SEVERAL CITIES AND SCHOOL DISTRICTS OF THE STATE PURSUANT TO SUCH SECTION, SHALL BE PRINTED BY THE COMMISSIONER PURSUANT TO THIS ARTICLE. TEXTBOOK PRINTING SHALL INCLUDE, BUT NOT BE LIMITED TO OR RESTRICTED TO THE PRINTING, PUBLICATION AND BINDING OF TEXTBOOKS.

S 733. POWERS AND DUTIES OF THE COMMISSIONER. 1. THE COMMISSIONER SHALL HAVE GENERAL SUPERVISION OVER THE LETTING OF ALL CONTRACTS FOR TEXTBOOK AUTHORING AND PRINTING PROVIDED TO BE MADE IN THIS SECTION. IN ADDITION, THE COMMISSIONER SHALL EXERCISE SUCH FURTHER SUPERVISION AND CONTROL OVER ALL CONTRACTS FOR DEPARTMENT AUTHORING AND PRINTING AS DEFINED IN THIS SECTION THAT HE OR SHE HAS HERETOFORE EXERCISED OR MAY HEREAFTER DEEM APPROPRIATE INCLUDING, BUT NOT LIMITED TO, THE ESTABLISHMENT OF STANDARD SIZES AND GRADES OF PAPER AND SPECIFICATIONS FOR PAPER; PROVIDED, HOWEVER, THAT SUCH SPECIFICATIONS SHALL BE IN ACCORDANCE WITH THOSE ESTABLISHED PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW.

2. IT SHALL BE THE DUTY OF THE COMMISSIONER, IN ACCORDANCE WITH RULES AND REGULATIONS TO BE PRESCRIBED BY HIM OR HER, TO LET TO THE LOWEST RESPONSIBLE BIDDER, AS PROVIDED IN THIS SECTION, AND AS WILL BEST PROMOTE THE PUBLIC INTEREST, ALL CONTRACTS FOR THE WORK EMBRACED IN TEXTBOOK AUTHORING AND PRINTING AS THOSE TERMS ARE DEFINED IN THIS ARTICLE. NO CONTRACT FOR TEXTBOOK AUTHORING AND PRINTING SHALL BE LET TO A BIDDER WHO, IN THE OPINION OF THE COMMISSIONER, DOES NOT HAVE SATISFACTORY FACILITIES AND EQUIPMENT WHICH ARE AMPLE AND SUFFICIENT TO INSURE PROPER PERFORMANCE OF THE CONTRACT OR WHO HAS FAILED TO GIVE ADEQUATE SECURITY IN AN AMOUNT WHICH MAY BE REQUIRED BY THE COMMISSIONER. PROVIDED FURTHER, HOWEVER, THAT NO CONTRACT SHALL BE LET TO A BIDDER OTHER THAN THE LOWEST RESPONSIBLE BIDDER WITHOUT THE WRITTEN APPROVAL OF THE COMPTROLLER.

3. THE COMMISSIONER SHALL ADOPT AND PROMULGATE APPROPRIATE RULES AND REGULATIONS TOUCHING THE MANNER OF THE PERFORMANCE OF HIS OR HER WORK AND PRESCRIBING THE FORM AND MANNER OF ADVERTISEMENT FOR BIDS AND ALL REQUISITIONS MADE UPON HIM OR HER FOR TEXTBOOK AUTHORING AND PRINTING,

EXCEPT THAT THE COMMISSIONER SHALL MAKE NO RULE OR REGULATION INCONSISTENT WITH OR IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE.

S 734. PROPOSALS FOR TEXTBOOK AUTHORING AND PRINTING. 1. THE COMMISSIONER SHALL GIVE ADEQUATE NOTICE THAT HE OR SHE WILL, AT A TIME AND PLACE STATED THEREIN, RECEIVE SEALED PROPOSALS FOR TEXTBOOK AUTHORING AND PRINTING, THE WORK TO BE PERFORMED AS PRESCRIBED BY LAW IN THE NOTICE PUBLISHED BY THE COMMISSIONER. THE COMMISSIONER SHALL COMPILE THE VARIOUS TERMS, CONDITIONS AND SPECIFICATIONS FOR TEXTBOOK AUTHORING AND PRINTING, EXCEPT THAT AS SUCH SPECIFICATIONS RELATE TO THE PAPER REQUIRED FOR TEXTBOOK AUTHORING AND PRINTING THEY SHALL BE IN ACCORDANCE WITH THOSE ESTABLISHED PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW AND SHALL INVITE ALL BIDS AND LET ALL CONTRACTS THEREON AND THE SAME SHALL CONSTITUTE EACH SAID CONTRACT. A COPY OF SUCH REQUIREMENTS, WHEN PREPARED, SHALL BE FILED IN THE OFFICE OF THE COMMISSIONER AND SHALL BE OPEN TO PUBLIC INSPECTION AT ALL TIMES.

2. NO BIDS SHALL BE WITHDRAWN OR CANCELLED, BUT THE COMMISSIONER MAY REJECT ANY BIDS WHICH DO NOT CONFORM TO THE SPECIFICATIONS AND TO HIS OR HER RULES AND REGULATIONS, AND AGAIN ADVERTISE FOR BIDS IN THE MANNER PROVIDED FOR IN THIS SECTION. THE COMMISSIONER MAY DISCRIMINATE IN FAVOR OF ANY SUCH BID AS HE OR SHE MAY DEEM MOST FAVORABLE TO THE STATE, IF IN HIS OR HER OPINION THE INTERESTS OF THE STATE WILL BE PROMOTED THEREBY.

3. EVERY BID RECEIVED MUST BE A SEALED BID, AND THE BIDDING REQUIREMENTS MAY INCLUDE A PROVISION FOR ADEQUATE GUARANTY THAT A BIDDER WILL ENTER INTO THE CONTRACT IF IT SHALL BE AWARDED TO HIM OR HER. NOTICE OF THE REQUIREMENT OF SUCH GUARANTY SHALL BE EMBODIED IN THE PUBLIC NOTICE FOR SUCH LETTING, AND SUCH NOTICE SHALL ALSO REQUIRE, AND EACH CONTRACT SHALL PROVIDE, FOR THE GIVING OF A BOND IN SUCH AMOUNT AS SHALL BE PRESCRIBED, CONDITIONED FOR THE FAITHFUL PERFORMANCE OF THE CONTRACT.

4. THE CONTRACT WHEN AWARDED SHALL BE FORTHWITH FILED IN THE OFFICES OF THE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE GOVERNOR.

5. A CONTRACT AWARDED PURSUANT TO THIS SECTION MAY IN ANY CASE UPON WRITTEN CONSENT OF THE COMMISSIONER, SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED THIRTY-EIGHT OF THE STATE FINANCE LAW, BE ASSIGNED OR SUBLET, BUT, IN SUCH EVENT, THE ASSIGNEE OR SUBCONTRACTOR MAY BE REQUIRED TO GIVE A BOND IN SUCH AMOUNT AS THE COMMISSIONER SHALL PRESCRIBE, CONDITIONED FOR THE FAITHFUL PERFORMANCE OF THE CONTRACT ASSIGNED OR THE PORTION OF THE CONTRACT SUBLET, AS THE CASE MAY BE.

6. THE FAILURE OF THE COMMISSIONER TO GIVE NOTICE TO OR INCLUDE ANY REQUIREMENT OF THIS ARTICLE SHALL NOT GIVE RISE TO ANY CAUSE OF ACTION OR RIGHT TO RELIEF BY ANY BIDDER, PROSPECTIVE BIDDER, CONTRACTOR OR PROSPECTIVE CONTRACTOR OR OTHER THIRD PARTY BUT SUCH FAILURE MAY, PRIOR TO RATIFICATION BY THEM AND AT THE OPTION OF THE COMMISSIONER, BE REVOKED TO INVALIDATE ANY EXECUTORY AGREEMENT ARISING THEREFROM AND SUBSEQUENT THERETO.

7. IN THE CASE OF ANY AUTHORING OR PRINTING AUTHORIZED BY THIS SECTION, NO EXTRA CHARGE SHALL BE MADE EXCEPT FOR EXTRA PAPER OR WORK BEYOND THAT REQUIRED BY THE TERMS OF THE CONTRACT ACTUALLY FURNISHED WITH THE APPROVAL OF THE COMPTROLLER, AND FOR SUCH EXTRA PAPER AND WORK THE CHARGE ALLOWED SHALL NOT EXCEED THE CURRENT MARKET RATES. COMPOSITION SHALL NOT BE CHARGED A SECOND TIME BY THE SAME CONTRACTOR ON MATTER PRINTED FROM TYPE ALREADY SET OR NEGATIVES OR PLATES MADE AT STATE EXPENSE, BUT SUITABLE ALLOWANCE MAY BE MADE FOR HANDLING OF PLATES AND REIMPOSING NEGATIVES OR TYPE FORMS. IN ALL WORK REQUIRING ENGRAVING AND IN ALL CASES WHERE ILLUSTRATIONS ARE USED, THE DIES, PLATES AND ENGRAVINGS SHALL FORTHWITH BECOME THE PROPERTY OF THE STATE, AND THERE-

AFTER NO CHARGE SHALL BE MADE FOR THEIR SUBSEQUENT USE, EXCEPT A SUITABLE ALLOWANCE MAY BE MADE FOR THE HANDLING OF THE PLATES. IN ALL WORK MANUFACTURED BY THE PROCESS OF LITHOGRAPHY OR PHOTO COMPOSITION, THE ARTWORK, AND NEGATIVES SHALL FORTHWITH BECOME THE PROPERTY OF THE STATE.

8. EACH CONTRACT LET UNDER THIS SECTION SHALL COMMENCE AS PRESCRIBED BY THE COMMISSIONER AND SHALL BE FOR A TERM AS PRESCRIBED BY THE COMMISSIONER.

S 735. RIGHT TO ANNUL CONTRACTS. UPON THE FAILURE OR NON-PERFORMANCE OF THE TERMS OF ANY OF THE CONTRACTS SET FORTH IN THIS ARTICLE ON THE PART OF THE CONTRACTORS WITH THE STATE, THE COMMISSIONER MAY ANNUL THE CONTRACT IN WHICH DEFAULT IS MADE AND THE COMPTROLLER SHALL WITHHOLD PAYMENT FROM THE CONTRACTOR FOR ALL WORK DONE BY HIM OR HER UNTIL THE DAMAGE TO THE STATE SHALL BE ASCERTAINED BY PROPER ADJUDICATION, AND THE SAID COMMISSIONER MAY READVERTISE AND ENTER INTO A CONTRACT FOR THE BALANCE OF THE UNCOMPLETED TERM OF ANY CONTRACT SO ANNULLED OR ABROGATED IN ANY MANNER PRESCRIBED BY LAW.

S 736. COMPLAINTS AGAINST CONTRACTOR. COMPLAINT FOR VIOLATION OF ANY OF THE TERMS OF A CONTRACT ON THE PART OF THE CONTRACTOR, OR CONTRACTORS, FOR STATE AUTHORING OR PRINTING SHALL BE MADE TO THE COMMISSIONER, WHO SHALL AND IS HEREBY EMPOWERED AND DIRECTED, IN HIS OR HER DISCRETION, TO TAKE SUCH ACTION AS WILL AFFORD THE NECESSARY AND PROPER RELIEF.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.