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

1046

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sens. LAVALLE, ONORATO, PARKER, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to administrative flexibility of the state university construction fund and the development of university-related economic development facilities

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

Section 1. The opening paragraph of subdivision 1 and subdivision 2 of section 372-a of the education law, as added by chapter 624 of the laws of 1999 and paragraph a of subdivision 2 as amended by chapter 609 of the laws of 2003, are amended to read as follows:

Notwithstanding subdivisions one through six and eight through ten of section three hundred seventy-six of this article, the provisions of this section shall apply to the fund when it acts pursuant to the authorization under this section. Pursuant to the authorization in this section and approval by the trustees of the university, the fund may acquire, design, construct, reconstruct, rehabilitate, improve, lease, manage and/or operate university-related economic development facilities. University-related economic development facilities, as used in this chapter, shall mean FACILITIES AUTHORIZED BY SUBDIVISION TWO OF THIS SECTION WHICH ARE INTENDED TO SERVE THE UNIVERSITY COMMUNITY OR facilities for research, development and commercial enterprises dealing in products and/or services related to the mission or academic specialties of the campus associated with such facilities, or dealing in support products or services for such enterprises which will have a significant economic benefit. Consistent with such authorization, the state university trustees are authorized to enter into contracts or leases for lands and facilities authorized in subdivision two of this section. Such leases or contracts shall be for the development, construction, and operation of such facilities by the fund.

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

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Construction, acquisition, rehabilitation, improvement, facilities operation management, mortgaging with any private lender (including other security or financing arrangements incidental or related thereto or customary in connection therewith, leasehold mortgaging or assignment of rents) leasing, subleasing of, providing services for or otherwise assisting or granting of easements, licenses or other arrangements in regard to such facilities and underlying land may be provided from time to time without public bidding or sale by such contracts or leases (and replacements, modifications, substitutions and renewals thereof) and upon such terms as the trustees may approve provided, however, that:

2. Subsequent to the approval of the trustees of the state university, the following facilities are specifically and expressly authorized by law [and] SUBJECT to the terms and conditions set forth herein; PROVIDED, HOWEVER, THAT THE APPROVAL OF THE TRUSTEES SHALL INCLUDE A DETERMINATION BASED UPON THE RECORD BEFORE THEM THAT SUCH AUTHORIZATION, AND THE PARTICIPATION OF THE FUND, WILL ENHANCE ECONOMIC DEVELOPMENT, AND WILL NOT DISPLACE DEVELOPMENT BY THE PRIVATE SECTOR:

a. FACILITIES TO BE CONSTRUCTED ON REAL PROPERTY WHICH IS:

I. NOT PROPERTY OF THE STATE UNIVERSITY OF NEW YORK, OR

II. LEASED OR ASSIGNED UNDER AUTHORITY OF ANOTHER STATUTE OF THE STATE OF NEW YORK.

B. Pharmaceutical technology/manufacturing building and an affiliated academic incubator at state university of New York college at Farmingdale. The state university of New York is authorized to establish an account to receive payments from leases of the pharmaceutical technology/manufacturing building. Any payments deposited into this account may be transferred to the fund for payments related to design, construction, reconstruction, rehabilitation or improvement of the affiliated academic incubator authorized in this paragraph.

S 2. Subdivision 6 of section 376 of the education law, as amended by chapter 624 of the laws of 1999, is amended to read as follows:

6. Each contract for the construction, acquisition, reconstruction, rehabilitation or improvement of academic buildings, dormitories and other facilities shall include a provision that the architect who designed the facility, or an architect or engineer, [or, for projects authorized by section three hundred seventy-two-a of this article] a construction manager or other consultant, retained specifically for the purpose of supervision, shall supervise the work to be performed through to completion and shall see to it that the materials furnished and the work performed are in accordance with the drawings, plans, specifications and contract therefor.

S 3. Section 376 of the education law is amended by adding a new subdivision 11 to read as follows:

11. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION, UPON THE APPROVAL OF THE TRUSTEES, THE FUND MAY SOLICIT PROPOSALS AND AWARD CONTRACTS FOR DESIGN/BUILD PROJECTS TO AN ENTITY OR COMBINATION OF ENTITIES ON A PROJECT SPECIFIC BASIS. SUCH ENTITY OR COMBINATION OF ENTITIES SHALL BE SELECTED BY A COMPETITIVE PROCESS WHICH GIVES DUE CONSIDERATION TO COST. SUCH APPROVAL SHALL INCLUDE A JUSTIFICATION STATING THE FINANCIAL SCHEDULE AND/OR OTHER BENEFITS TO THE STATE UNIVERSITY AND THE PUBLIC OVER TRADITIONAL COMPETITIVE BIDDING PROCEDURES. THE FUND SHALL AWARD SUCH DESIGN/BUILD CONTRACTS IN ACCORDANCE WITH THE FUND'S GUIDELINES FOR THE AWARD OF PROCUREMENT CONTRACTS BASED ON A CLEAR AND DETAILED SCOPE OF WORK. SUCH GUIDELINES SHALL BE SUBJECT TO REVIEW AND APPROVAL BY THE STATE COMPTROLLER AND SHALL ESTABLISH PROCEDURES AND CRITERIA FOR PUBLIC ADVERTISEMENT, QUALIFICATION OF PROPOSERS AND AWARD

FOR DESIGN/BUILD CONTRACTS. NO MORE THAN SEVEN PERCENT OF THE VALUE OF THE UNIVERSITY'S CAPITAL PROGRAM SHALL BE SO EXPENDED UTILIZING THIS METHOD; THE COST OF ANY PROJECT WITH RESPECT TO WHICH THE LEGISLATURE EXPRESSLY AUTHORIZES OR DIRECTS THIS METHOD SHALL NOT BE COUNTED AGAINST THIS MAXIMUM. THE FUND SHALL ISSUE A REPORT ON OR BEFORE JUNE FIRST, TWO THOUSAND ELEVEN TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE DIRECTOR OF THE BUDGET AND THE CHAIRS OF THE SENATE FINANCE COMMITTEE AND THE ASSEMBLY WAYS AND MEANS COMMITTEE. THIS SUBDIVISION SHALL EXPIRE AND BE DEEMED REPEALED JUNE ONE, TWO THOUSAND THIRTEEN.

S 4. This act shall take effect immediately.