

5698

2009-2010 Regular Sessions

I N S E N A T E

May 28, 2009

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed,
and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law and the highway law, in
relation to mutual aid

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

1 Section 1. Section 99-r of the general municipal law, as amended by
2 chapter 165 of the laws of 2008, is amended to read as follows:
3 S 99-r. Contracts for services. Notwithstanding any other provisions
4 of law to the contrary, the governing board of any municipal corporation
5 may enter into agreements and/or contracts with any state agency includ-
6 ing any department, board, bureau, commission, division, office, coun-
7 cil, committee, or officer of the state, whether permanent or temporary,
8 [or a] ANY public benefit corporation or public authority, [or a] ANY
9 soil and water conservation district, [and] THE GOVERNING BOARD OF ANY
10 OTHER MUNICIPAL CORPORATION AND/OR any unit of the state university of
11 New York, pursuant to and consistent with sections three hundred fifty-
12 five and sixty-three hundred one of the education law within or without
13 such municipal corporation to provide OR RECEIVE fuel, equipment, main-
14 tenance and repair, supplies, water supply, street sweeping or mainte-
15 nance, sidewalk maintenance, RIGHT-OF-WAY MAINTENANCE, STORM WATER AND
16 OTHER drainage, sewage disposal, LANDSCAPING, MOWING, HIGHWAY INFRAS-
17 TRUCTURE INSPECTION, REPAIR OR MAINTENANCE, INCLUDING RELATED TRAFFIC
18 CONTROL AND ENFORCEMENT, TRAINING AND EDUCATION, ENGINEERING, or any
19 other services of government. Such MUNICIPAL CORPORATION, state agency,
20 soil and water conservation district, or unit of the state university of
21 New York, within the limits of any [specific] statutory appropriation
22 authorized and made available therefor by the legislature or by the
23 governing body responsible for the operation of such state agency, soil
24 and water conservation district, or unit of the state university of New
25 York may contract with any municipal corporation for such services as

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

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1 herein provided AND MAY PROVIDE, IN AGREEMENTS AND/OR CONTRACTS ENTERED
2 INTO PURSUANT TO THIS SECTION, FOR THE RECIPROCAL PROVISION OF SERVICES
3 OR OTHER CONSIDERATION OF APPROXIMATELY EQUIVALENT VALUE, INCLUDING, BUT
4 NOT LIMITED TO, ROUTINE AND/OR EMERGENCY SERVICES, MONIES, EQUIPMENT,
5 BUILDINGS AND FACILITIES, MATERIALS OR A COMMITMENT TO PROVIDE FUTURE
6 ROUTINE AND/OR EMERGENCY SERVICES, MONIES, EQUIPMENT, BUILDINGS AND
7 FACILITIES OR MATERIALS. Any such contract may be entered into by
8 direct negotiations and shall not be subject to the provisions of
9 section one hundred three of this chapter.

10 S 2. Section 10 of the highway law is amended by adding a new subdivi-
11 sion 46 to read as follows:

12 46. HAVE THE AUTHORITY TO ENTER INTO AGREEMENTS AND/OR CONTRACTS TO
13 PROVIDE OR RECEIVE SERVICES PURSUANT TO SECTION NINETY-NINE-R OF THE
14 GENERAL MUNICIPAL LAW UPON SUCH TERMS AND CONDITIONS AS DEEMED APPROPRI-
15 ATE BY THE COMMISSIONER OR HIS OR HER DESIGNEE.

16 S 3. Section 12 of the highway law, as amended by chapter 1110 of the
17 laws of 1971, subdivision 2 as amended by chapter 249 of the laws of
18 1972, subdivision 2-a as added by chapter 568 of the laws of 1986 and
19 subdivision 7 as added by chapter 691 of the laws of 1971, is amended to
20 read as follows:

21 S 12. Commissioner [of transportation] to provide for maintenance,
22 repair, and [for] control of snow and ice; roads and driveways on state
23 lands. 1. The maintenance and repair of improved state highways in towns
24 and incorporated villages, exclusive, however, of the cost of maintain-
25 ing and repairing bridges having a span in excess of twenty feet shall
26 be under the direct supervision and control of the commissioner [of
27 transportation] and he OR SHE shall be responsible therefor. The cost of
28 such maintenance and repair shall be borne wholly by the state and be
29 paid from moneys appropriated therefor by the legislature. Such mainte-
30 nance and repair may be done in the discretion of the commissioner
31 either directly by the department [of transportation] or by contract
32 awarded to the lowest responsible bidder at a public letting after due
33 advertisement, and under such rules and regulations as the commissioner
34 [of transportation] may prescribe. The commissioner [of transportation]
35 shall also have the power to adopt such system as may seem expedient so
36 that each section of such highways shall be effectively and economically
37 preserved, maintained and repaired.

38 2. The maintenance of state highways shall include the control of
39 snow and ice AND OTHER HIGHWAY MAINTENANCE ACTIVITIES on such highways
40 or any parts thereof, as the commissioner [of transportation] may deem
41 to be necessary to provide reasonable passage and movement of vehicles
42 over such highways. The commissioner [of transportation] is authorized
43 also to erect snow fences at suitable locations. The work of such
44 control of snow and ice AND OTHER HIGHWAY MAINTENANCE ACTIVITIES may be
45 done by any municipality which for the purposes of this section shall
46 include only a county, city, town or village. The governing board or
47 body of any such municipality and the commissioner [of transportation]
48 are hereby authorized to enter into an agreement for the performance of
49 the work of such control of snow and ice AND OTHER HIGHWAY MAINTENANCE
50 ACTIVITIES upon such terms, rules and regulations as may be deemed by
51 the commissioner [of transportation] to be for the best interest of the
52 public. Such agreement may provide for periodic payments based upon a
53 percentage of the estimated total cost. Any agreement authorized by this
54 subdivision shall be for a term of [three] UP TO FIVE years and at the
55 expiration of [each] THE year PRECEDING THE LAST YEAR of the term speci-
56 fied in the agreement, as such term may be extended as herein provided,

1 the municipality shall notify the commissioner either (a) that it
2 requests, with the approval of the commissioner, that the term of the
3 agreement be extended for [one year] A SPECIFIED TERM OF UP TO FIVE
4 YEARS or (b) it intends not to extend the agreement and such agreement
5 shall expire at the end of the term. If the municipality fails to notify
6 the commissioner as herein provided, it shall be deemed that the munici-
7 pality intends not to extend the agreement. SUCH AGREEMENT MAY BE
8 TERMINATED DURING THE SPECIFIED TERM PROVIDED THE MUNICIPALITY SHALL
9 NOTIFY THE COMMISSIONER EIGHTEEN MONTHS PRIOR TO SUCH TERMINATION OF AN
10 AGREEMENT FOR THE CONTROL OF SNOW AND ICE. If any such agreement
11 expires, a new agreement between the commissioner and a municipality may
12 be entered into for a term of [three] UP TO FIVE years, with extended
13 term or terms upon notification as above provided. Whenever the commis-
14 sioner shall deem the work of control of snow and ice AND OTHER HIGHWAY
15 MAINTENANCE ACTIVITIES by any municipality to be inadequate or unsatis-
16 factory according to the terms of any such agreement, he OR SHE may, by
17 official order to be filed in [his office] THE DEPARTMENT, and by filing
18 a certified copy thereof in the office of the department of state,
19 cancel said agreement, and the payments thereunder provided by the state
20 shall cease; whereupon the commissioner may carry out the work of
21 control of snow and ice AND OTHER HIGHWAY MAINTENANCE ACTIVITIES. [The]
22 AN official order provided in this subdivision AND RELATING TO THE
23 CONTROL OF SNOW AND ICE shall become effective at the expiration of five
24 days after the commissioner shall mail a certified copy thereof to the
25 clerk or other official who performs related duties in such munici-
26 pality. The governing board or body of any such municipality is author-
27 ized to appropriate such sum as it deems necessary to enable such muni-
28 cipality to perform the terms of such agreement. The work of such
29 control of snow and ice AND OTHER HIGHWAY MAINTENANCE ACTIVITIES may be
30 done by any of the methods provided in subdivision one of this section
31 for the work of maintenance and repair, or by a combination of such
32 methods. Any county is hereby authorized to enter into a contract with
33 another municipality located within the same county for the performance
34 of the work of such control of snow and ice AND OTHER HIGHWAY MAINTENANCE ACTIVITIES as a subcontractor under any agreement with the commis-
35 sioner [of transportation] as such agreement is hereinbefore provided.
36 Moneys received by a county under the terms of any agreement authorized
37 by this subdivision shall be credited to the fund from which moneys were
38 appropriated to enable the county to perform the terms of such agree-
39 ment. Moneys so received by a town shall be credited to the highway
40 fund. Moneys so received by a city or village shall be credited to the
41 general fund.

43 2-a. (a) Except as provided hereafter the state shall indemnify and
44 hold harmless such municipalities for any and all liability for damages
45 for personal injury, injury to property or wrongful death for losses
46 arising from or occasioned by the manner of performance of the functions
47 under any agreement with a municipality for the control of snow and ice
48 AND OTHER HIGHWAY MAINTENANCE ACTIVITIES pursuant to this section.

49 (b) In no event shall the state be obligated to defend or indemnify
50 such municipality, in any action, proceeding, claim or demand arising
51 out of the actual operation of an insured vehicle or vehicle subject to
52 self-insurance while engaged in the operation of snow and ice control
53 functions AND OTHER HIGHWAY MAINTENANCE ACTIVITIES under such agreement.

54 (c) The municipality shall be entitled to representation by the attor-
55 ney general in any claim described in paragraph (a) of this subdivision,
56 provided, however, that the municipality shall be entitled to itself

1 defend any such action, proceeding, claim or demand whenever the attor-
2 ney general determines, based upon his OR HER investigation and review
3 of the facts and circumstances of the case that representation by the
4 attorney general would be inappropriate, or whenever a court of compe-
5 tent jurisdiction determines that a conflict of interest exists and that
6 the municipality is entitled to be separately represented. Whenever the
7 municipality is entitled to defend the action itself, the state shall
8 reimburse the municipality for any and all costs and expenses, includ-
9 ing, but not limited to, counsel fees and disbursements.

10 (d) The state shall indemnify and save harmless such municipality in
11 the amount of any judgment obtained against such municipality in any
12 state or federal court on any claim described in paragraph (a) of this
13 subdivision, or in the amount of any settlement of such claim, or shall
14 pay such judgment or settlement; provided, however, that the act or
15 omission from which such judgment or settlement arose occurred while the
16 municipality was acting within the scope of its functions for control of
17 snow and ice AND OTHER HIGHWAY MAINTENANCE ACTIVITIES; provided,
18 further, that no stipulation of settlement of any such action, proceed-
19 ing, claim or demand shall be made or executed without approval of the
20 attorney general and of the commissioner [of transportation] or his OR
21 HER designee. Payment of any claim made pursuant to settlement shall not
22 exceed the sum of fifty thousand dollars. Nothing herein shall authorize
23 the state to indemnify or save harmless with respect to punitive or
24 exemplary damages.

25 (e) The duty to defend or indemnify and save harmless prescribed by
26 this subdivision shall be conditioned upon (i) delivery to the attorney
27 general or an assistant attorney general at the office of the department
28 of law located in Albany or New York city and by delivery to the commis-
29 sioner [of transportation] or his OR HER designee a copy of any claim,
30 summons, complaint, process, notice, demand or other pleading within ten
31 days after such municipality is served with such document and (ii) the
32 full cooperation of the municipality in the defense of such action,
33 proceeding, claim or demand and in the defense of any action, proceed-
34 ing, claim or demand against the state based upon the same act or omis-
35 sion, and in the prosecution of any appeal.

36 (f) The benefits of this subdivision shall inure only to such munici-
37 palities and shall not enlarge or diminish the rights of any other party
38 nor shall any provision of this subdivision be construed to effect,
39 alter or repeal any provision of the workers' compensation law.

40 (g) This subdivision shall not in any way affect the obligation of any
41 claimant to give notice to the state under section ten of the court of
42 claims act or any other provision of law.

43 (h) The provisions of this subdivision shall not be construed to
44 impair, alter, limit or modify the rights and obligations of any insurer
45 under any insurance agreement.

46 (i) Except as otherwise specifically provided in this subdivision, the
47 provisions of this subdivision shall not be construed in any way to
48 impair, alter, limit, modify, abrogate or restrict any immunity avail-
49 able to or conferred upon any unit, entity, officer or employee of the
50 state or municipality or any other level of government, or any right to
51 defense and indemnification provided for any governmental officer or
52 employee by, in accordance with, or by reason of, any other provision of
53 state or federal statutory or common law.

54 3. The commissioner [of transportation] shall have the power to
55 purchase (a) materials for such maintenance and repair, except where
56 such work is done by contract, and to contract for the delivery thereof

1 at convenient intervals along such highways, and (b) equipment and
2 appliances that he OR SHE may deem necessary to carry out the provisions
3 of this section. Any municipality, acting by and through its authorized
4 official, is hereby empowered to rent its machinery, tools, equipment,
5 and storage space, to the state, acting by and through the commissioner
6 [of transportation], for the purpose of such control of snow and ice AND
7 OTHER HIGHWAY MAINTENANCE ACTIVITIES upon such terms and at such rate as
8 may be agreed between the municipality and the commissioner [of trans-
9 portation]. Notwithstanding the provisions of any general, special or
10 local law or of any charter, the governing board or body of any such
11 municipality is hereby authorized to sell such machinery, tools and
12 equipment to the state, acting by and through the commissioner [of
13 transportation], for the purposes of this section and without compet-
14 itive bidding or other limitation or restriction provided in any gener-
15 al, special or local law or of any charter, and the commissioner [of
16 transportation], may, upon approval by the state comptroller and the
17 state commissioner of general services, purchase such machinery, tools
18 and equipment from any such municipality as herein provided.

19 4. Whenever funds therefor are made available, the commissioner [of
20 transportation] shall have power to acquire for the state, by purchase,
21 or by appropriation through the procedure described in section thirty of
22 this chapter, property for the purpose of storing, maintaining or proc-
23 essing construction [and], maintenance supplies, material or equipment
24 and for the purpose of providing, erecting and maintaining offices for
25 department personnel and structures for storing, maintaining or process-
26 ing construction and maintenance materials or equipment.

27 5. Whenever a state highway has been constructed at a greater width
28 than that provided in the original plans, upon petition of a village, as
29 provided in sections forty-six and forty-seven OF THIS CHAPTER, or upon
30 petition of a town or county, as provided in sections forty-eight,
31 forty-nine, or fifty-nine OF THIS CHAPTER, or whenever such highway has
32 been widened by a town or county under a permit granted as provided in,
33 or under conditions and regulations prescribed pursuant to section
34 fifty-two OF THIS CHAPTER, the additional width of pavement shall be
35 deemed to be a part of the highway and shall be maintained by the
36 commissioner [of transportation] as provided herein, but in no case
37 where any such highway has been widened as provided above, shall the
38 state be responsible for the maintenance of any curb or of any paved
39 gutter or paved shoulder, provided, however, that on any highway main-
40 tained by the state the commissioner shall have authority to clean any
41 pavement or paved gutter or repair any unpaved shoulder or unpaved
42 gutter outside of the pavement maintained by the state, where necessary
43 for the protection of such pavement.

44 6. Whenever the head of any state department having jurisdiction or
45 control over lands owned and occupied by the state, requests the commis-
46 sioner [of transportation] to maintain and to repair any road and drive-
47 way which is located on, over and across such lands, the commissioner
48 [of transportation] is, notwithstanding the provisions of any general,
49 special or local law, authorized to grant such request by his official
50 order therefor. Such official order shall contain a general description
51 of any such road and driveway. A certified copy of such official order
52 shall be filed by the commissioner [of transportation] in the office of
53 (a) the state department having jurisdiction or control over such lands,
54 and (b) the department of audit and control. Thereupon any such road
55 and driveway shall be maintained and repaired under the direct super-
56 vision and control of the commissioner [of transportation] in the same

manner as is provided in this section for the maintenance and repair of improved state highways in towns and in incorporated villages.

7. Whenever the head of any state department, agency, institution or public benefit corporation having jurisdiction or control over the lands owned and occupied by the state or such department, agency, institution or public benefit corporation requests the commissioner to construct, reconstruct, and/or maintain any loop or peripheral roadway which is or is to be located on, around, over, or across such lands, notwithstanding the provisions of any general, special or local law, the commissioner is authorized to grant such request and undertake such construction, reconstruction and/or maintenance. Before undertaking the work of construction, reconstruction and/or maintenance of such roadways, the commissioner and the head of the state department, agency, institution or public benefit corporation shall enter into a written agreement, subject to the approval of the director of the budget, providing the funds therefor, or reimbursement by such state department, agency, institution or public benefit corporation of the funds therefor, including all costs incurred by the department in connection with such construction, reconstruction and/or maintenance. Where such loop or peripheral roadway is to be constructed, reconstructed and/or maintained on lands occupied by either the state university of New York or the state university construction fund, both the state university of New York and the state university construction fund shall be parties to such agreement. Such roadway shall be constructed, or reconstructed, to mutually agreeable standards, in the same manner as state highways are constructed or reconstructed pursuant to this chapter. The maintenance of such roadway shall be in the same manner as provided for state highways in this chapter. If such a maintenance agreement extends for a period greater than one year, the funds shall be made available for, or reimbursed, on an annual basis. The head of such state department, agency, institution or public benefit corporation may terminate such maintenance agreement upon six months written notice to the commissioner making provision for the department [of transportation] to be reimbursed for all costs incurred by such department up to such termination date. In connection with the maintenance of such a roadway the commissioner shall cause an official order to be issued therefor. Such official order shall contain a general description of such roadway. A certified copy of such official order shall be filed by the commissioner in the office of the head of the state department, agency, institution or public benefit corporation making such request for maintenance and with the department of audit and control.

S 4. Section 55 of the highway law, as amended by chapter 1110 of the laws of 1971, is amended to read as follows:

S 55. Emergency aid [for control of snow and ice] in municipalities. Notwithstanding any inconsistent provision of law, general, special or local, the commissioner [of transportation], when authorized by the governor OR HIS OR HER DESIGNEE, is empowered to aid AND ACCEPT AID FROM any county, city, town or village of the state in [the control of snow and ice during] emergency situations, providing the governing board or body of any such municipality OR THE COMMISSIONER certifies to the governor (a) that such aid is required to promote the public welfare, (b) that such municipality OR THE DEPARTMENT does not have available and is unable to secure and provide the necessary equipment, facilities and personnel to perform the immediate work [of control of snow and ice], and (c) that adequate and appropriate provision has been made [to reimburse the state for] FOR REIMBURSEMENT OF any actual costs of labor and

1 of maintenance and operation and for the depreciation of the necessary
2 equipment and facilities [of the state]. The governing board or body of
3 any such municipality and the commissioner [of transportation] are here-
4 by authorized to enter into a contract for the purposes of this section
5 upon such terms and conditions as shall be reasonable for the protection
6 of the public.

7 S 5. This act shall take effect immediately.